

COLORADO REVISED STATUTES



TITLES 25-28

2012



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Colorado

Revised Statutes

2012

Titles 25-28
Health
Health Care Policy and Financing
Human Services Code
Behavioral Health
Military and Veterans



Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

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*Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado*

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COLORADO REVISED STATUTES**

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**CERTIFICATION
OF
COMMITTEE ON LEGAL SERVICES**

The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Titles 25, 26, 27, & 28	1975-81 Supplements	1982 Replacement Volume 1983-88 Supplements 1989 Replacement Volume Vol. 11A - Title 25 1990-96 Supplements Vol. 11B - Titles 26-28 1990-96 Supplements

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor’s proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

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25. 1. 1911

11. 1. 1911

TITLE 25

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(2) Whenever any law of this state refers to the state department of public health or to the department of health, said law shall be construed as referring to the department of public health and environment.

Source: L. 68: p. 106, § 73. C.R.S. 1963: § 66-1-1. L. 93: Entire section amended, p. 1095, § 9, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

This article is a legislative declaration of the prevailing policy of Colorado in connection with the practice of medicine and the operation of hospitals. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Overview of the state's three-tiered public health system and the responsibilities delegated under parts 5 and 6 of this article appears in

Jefferson County Health Servs. Ass'n v. Feeney, 974 P.2d 1001 (Colo. 1998).

County board of health, not the board of county commissioners, is the "governing body" of a county health department for purposes of notice under the Governmental Immunity Act. Jefferson County Health Servs. Ass'n v. Feeney, 974 P.2d 1001 (Colo. 1998).

25-1-101.5. Authority of revisor of statutes to amend references to department - affected statutory provisions. The revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the department of health from said reference to the department of public health and environment, as appropriate. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the renaming of the department to the department of public health and environment.

Source: L. 93: Entire section added, p. 1095, § 10, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

25-1-102. Department created - executive director - divisions. (1) There is hereby created a department of public health and environment, referred to in this part 1 and article 1.5 of this title as the "department". The head of the department shall be the executive director of the department of public health and environment, which office is hereby created. The governor shall appoint said executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109, C.R.S. The executive director shall administer the department, subject to the authority of the state board of health, the air quality control commission, the state water quality control commission, and the solid and hazardous waste commission.

- (2) The department shall consist of the following divisions:
- (a) The division of administration, and such sections and units established as provided by law.
- (b) (Deleted by amendment, L. 93, p. 1095, § 11, effective July 1, 1994.)

Source: L. 47: p. 505, § 2. CSA: C. 78, § 21 (2). CRS 53: § 66-1-2. C.R.S. 1963: § 66-1-2. L. 68: p. 106, § 74. L. 70: p. 237, §§ 2, 4. L. 71: pp. 106, 657, §§ 16, 3. L. 79: (1) amended, p. 1058, § 4, effective June 20. L. 86: (1) amended, p. 888, § 18, effective May 23. L. 92: (1) amended, p. 1235, § 2, effective August 1. L. 93: Entire section amended, p. 1095, § 11, effective July 1, 1994. L. 2003: (1) amended, p. 706, § 29, effective July 1. L. 2006: (1) amended, p. 1138, § 26, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

25-1-103. State board of health created. (1) There is hereby created a state board of health, referred to in this part 1 as the “board”, which shall consist of nine members, of which one member shall be appointed by the governor, with the consent of the senate, from each congressional district and the remainder from the state at large. A vacancy on the board occurs whenever any member moves out of the congressional district from which he was appointed. A member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy by appointment for the unexpired term. No more than five members of the board shall be members of the same major political party. Appointments made to take effect on January 1, 1983, shall be made in accordance with section 24-1-135, C.R.S. Appointments thereafter shall be made, with the consent of the senate, for terms of four years each and shall be made so that no business or professional group shall constitute a majority of the board. In making appointments to the board, the governor is encouraged to include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2), C.R.S., a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this subsection (1) are met.

(2) The first vacancy that occurs on the board after July 1, 1977, shall be filled by the appointment of a person who is then serving as a county commissioner. Thereafter, as vacancies occur and terms expire, there shall always be one county commissioner member on the board. Whenever a county commissioner ceases to hold the office of county commissioner, he ceases to hold his position as a member of the board. A county commissioner shall not vote on any matter coming before the board which affects his county in a manner significantly different from the manner in which it affects other counties.

Source: L. 47: p. 505, § 3. CSA: C. 78, § 21 (3). CRS 53: § 66-1-3. C.R.S. 1963: § 66-1-3. L. 68: p. 106, § 75. L. 72: p. 549, § 12. L. 77: Entire section amended, p. 1257, § 1, effective July 1. L. 82: (1) amended, p. 356, § 15, effective April 30. L. 2009: (1) amended, (HB 09-1281), ch. 399, p. 2154, § 3, effective August 5.

Cross references: For the transfer of the state board of health to an administrative department, see § 24-1-119.

25-1-104. State board - organization. The board shall elect from its members a president, a vice-president, and such other board officers as it shall determine. The executive director of the department, in the discretion of the board, may serve as secretary of the board but shall not be eligible to appointment as a member. All board officers shall hold their offices at the pleasure of the board. Regular meetings of the board shall be held not less than once every three months at such times as may be fixed by resolution of the board. Special meetings may be called by the president, by the executive director of the department, or by a majority of the members of the board at any time on three days' prior notice by mail or,

in case of emergency, on twenty-four hours' notice by telephone or telegraph. The board shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the board. Members shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. All meetings of the board, in every suit and proceeding, shall be taken to have been duly called and regularly held, and all orders and proceedings of the board to have been authorized, unless the contrary is proved.

Source: L. 47: p. 505, § 3. CSA: C. 78, § 21 (3). CRS 53: § 66-1-4. C.R.S. 1963: § 66-1-4. L. 81: Entire section amended, p. 1298, § 1, effective June 9.

25-1-105. Executive director - chief medical officer - qualifications - salary - office.

(1) The executive director of the department shall:

(a) Have a degree of doctor of medicine or doctor of osteopathy, be licensed to practice medicine in the state of Colorado, and have at least one of the following qualifications:

(I) One year of graduate study in a school of public health;

(II) Not less than two years' experience in an administrative capacity in a health care organization;

(III) Four years of said experience when one year of graduate study in a school of public health has not been completed; or

(b) Have, at a minimum, experience or education in public administration and public or environmental health.

(2) (a) If the governor appoints an executive director who does not have the qualifications specified in paragraph (a) of subsection (1) of this section, the executive director of the department shall, pursuant to the provisions of section 13 of article XII of the state constitution, upon consultation with the governor, and with the consent of a majority of the members of the senate, appoint a chief medical officer. The chief medical officer shall have the qualifications specified in paragraph (a) of subsection (1) of this section and shall serve at the pleasure of the governor. The executive director shall initially appoint the chief medical officer no later than three months after the executive director's appointment has been confirmed by the senate.

(b) The chief medical officer shall provide independent medical judgment, guidance, and advice to the governor and to the executive director regarding medical and public health issues in all areas identified in article 1.5 of this title.

(c) The chief medical officer shall be afforded direct access to the governor and the governor's staff.

(3) The executive director shall receive such salary as may be fixed by the board subject to the state constitution and state laws and within the limits of funds made available to the department by appropriation of the general assembly or otherwise. The executive director shall be allowed traveling and subsistence expenses actually and necessarily incurred in the performance of the executive director's official duties when absent from his or her place of residence. The executive director shall be custodian of all property and records of the department.

Source: L. 47: p. 506, § 4. CSA: C. 78, § 21 (4). CRS 53: § 66-1-5. C.R.S. 1963: § 66-1-5. L. 68: p. 106, § 76. L. 79: Entire section amended, p. 999, § 1, effective May 25. L. 96: Entire section amended, p. 785, § 1, effective July 1. L. 2003: (2)(b) amended, p. 706, § 30, effective July 1.

25-1-106. Division personnel. The executive director of the department shall appoint the director of the division of administration, pursuant to the provisions of section 13 of article XII of the state constitution. Each subdivision (and section) of the division of administration shall be under the management of a head, and such heads and all other subordinate personnel of the division shall be appointed by the director of the division, subject to the constitution and state personnel system laws of the state, and shall possess

qualifications approved by the board. All personnel shall receive such compensation as fixed by the executive director with the approval of the board, subject to the constitution and state personnel system laws of the state and within the limits of funds made available to the department by appropriation of the general assembly or otherwise. With the approval of the executive director, employees shall also be allowed traveling and subsistence expenses actually and necessarily incurred in the performance of their official duties when absent from their places of residence.

Source: **L. 47:** p. 506, § 4. **CSA:** C. 78, § 21(4). **CRS 53:** § 66-1-6. **C.R.S. 1963:** § 66-1-6. **L. 71:** p. 106, § 17.

Cross references: For the state personnel system, see article 50 of title 24.

25-1-107. Powers and duties of the department - repeal. (Repealed)

Source: **L. 47:** p. 508, § 5. **L. 49:** p. 438, § 1. **CSA:** C. 78, § 21 (5). **L. 53:** p. 341, § 1. **CRS 53:** § 66-1-7. **L. 55:** pp. 425, 426, §§ 1, 1. **L. 57:** p. 413, § 1. **L. 59:** pp. 467, 470, §§ 1, 1. **L. 62:** p. 171, § 1. **C.R.S. 1963:** § 66-1-7. **L. 64:** pp. 139, 478, §§ 67, 1. **L. 65:** p. 692, § 1. **L. 67:** p. 345, §§ 14, 16. **L. 69:** pp. 467, 468, §§ 1, 1. **L. 71:** p. 639, § 2. **L. 73:** pp. 893, 1405, §§ 2, 45. **L. 75:** (1)(l)(I) amended, p. 866, § 1, effective May 31; (1)(m) amended, p. 868, § 1, effective May 31; (1)(o) amended, p. 869, § 1, effective June 26. **L. 77:** (1)(e) and (2) amended and (1)(x) added, p. 1259, § 1, effective June 9; (1)(n) amended, p. 952, § 21, effective August 1. **L. 78:** (3) added, p. 408, § 1, effective April 27; (1)(l)(I) amended, p. 440, § 2, effective May 18. **L. 80:** (1)(y) added, p. 649, § 2, effective July 1. **L. 83:** (1)(z) added, p. 1026, § 1, effective May 3; (1)(aa) added, p. 1027, § 1, effective May 23; (1)(l)(I) amended, p. 1052, § 2, effective May 25; (1)(cc) added, p. 1028, § 1, effective June 10; (1)(q) amended, p. 1055, § 1, effective July 1; (1)(y) R&RE and (1)(bb), p. 1223, §§ 2, 3, effective July 1. **L. 84:** (1)(l)(I) amended, p. 337, § 3, effective April 25. **L. 85:** (1)(o) R&RE, p. 901, § 2, effective April 5; (1)(l)(I) amended, p. 927, § 6, effective July 1; (1)(l)(II.1) added, p. 683, § 12, effective July 1; (1)(dd) added, p. 877, § 1, effective July 1. **L. 87:** IP(1)(x)(V) and (1)(x)(VI) amended, p. 611, § 23, effective July 1. **L. 88:** (1)(x)(I) and (2) amended and (1)(x)(VIII) and (1)(x.5) added, p. 991, § 1, effective May 11; (1)(ee) added, p. 998, § 2, effective May 11. **L. 91:** (1)(ee)(II) amended, p. 1162, § 1, effective March 29; (1)(ee)(VI) amended, p. 929, § 1, effective April 1; (1)(bb) and (1)(ee)(IV) amended, pp. 720, 1856, §§ 2, 11, effective April 11; (1)(a), (1)(f), (1)(z), and (1)(dd) amended, p. 941, § 1, effective May 5; (3) amended, p. 974, § 3, effective May 6; (1)(ff) added, p. 442, § 9, effective May 29; (1)(x)(I) and (1)(x)(II)(A) amended, p. 961, § 1, effective July 1. **L. 92:** (1)(w) and (1)(ee) amended, pp. 1727, 1151, §§ 17, 8, effective July 1. **L. 93:** (1)(ee)(I)(B) amended, p. 1786, § 67, effective June 6; (1)(aa) amended, p. 1664, § 71, effective July 1; (1)(l)(II.5) added and (1)(u), IP(1)(ee)(I), (1)(ee)(I)(C), and (1)(ee)(II.5)(D) amended, pp. 1096, 1140, §§ 12, 13, 77, effective July 1, 1994. **L. 94:** (3)(c) amended, p. 695, § 1, effective April 19; (1)(ee)(II.5)(A) and (3)(c)(II) amended, p. 1638, § 55, effective May 31; (1)(n), (1)(l)(II.5), and (1)(ee)(II) amended and (4) added, pp. 2700, 2606, 2610, §§ 252, 7, 10, effective July 1; (1)(q) amended, p. 1665, § 1, effective July 1. **L. 95:** (1)(ee)(II.5)(H) and (1)(ee)(II.5)(I) amended and (1)(ee)(II)(J) added, p. 539, § 1, effective May 22; (1)(gg) added, p. 943, § 5, effective May 25; (1)(l)(I), (1)(l)(II), (1)(l)(II.1), and (1)(l)(III) amended and (1)(l)(II.2) added, p. 1021, § 1, effective July 1. **L. 96:** (1)(ee)(VI)(B) amended, p. 798, § 11, effective May 23; (1)(ee)(VII) repealed, p. 1253, § 138, effective August 7; (1)(ee)(II.5)(B) amended, p. 1695, § 37, effective January 1, 1997. **L. 98:** (1)(hh) added, p. 711, § 1, effective May 18; (1)(ee)(I.5), (1)(ee)(II.5)(I), (1)(ee)(III)(B), and (1)(ee)(VI) amended and (1)(ee)(I.6) added, p. 542, § 4, effective July 1; (1)(x)(II)(A) amended and (1)(x)(IX) added, p. 888, § 1, effective August 5. **L. 99:** (1)(y) amended, p. 436, § 5, effective April 30; (1)(x)(VII) amended and (1)(x.2) added, p. 23, § 1, effective July 1. **L. 2000:** (1)(a.5) added, p. 87, § 5, effective March 15; IP(1)(x)(VII), (1)(x)(VII)(D), and (1)(x.2) amended and (1)(x)(VII)(E) added, p. 144, § 1, effective March 16; (1)(n) amended, p. 802, § 1, effective May 24; (1)(ii) added, p. 2002,

§ 1, effective August 2. **L. 2001:** (1)(jj) added, p. 473, § 2, effective April 27; (1)(kk) added, p. 928, § 4, effective June 4; (1)(n)(I) amended, p. 1274, § 36, effective June 5; (1)(a.5)(IV), (1)(a.5)(V), and (1)(a.5)(VI) added, p. 824, § 1, effective August 8. **L. 2002:** (1)(x)(VII)(C.5) amended, p. 1024, § 45, effective June 1; (1)(l)(I) and (4) amended, p. 1327, § 14, effective July 1; (1)(m) amended, p. 411, § 4, effective July 1; (1)(q) amended, p. 427, § 3, effective July 1. **L. 2003:** (1)(II) added, p. 1035, § 7, effective April 17; (1)(ee)(II.5)(A) and (1)(ee)(II.5)(C) amended, p. 1997, § 45, effective May 22; entire section repealed, p. 676, § 1, effective July 1; IP(1)(a.5)(IV) amended, p. 1617, § 23, effective August 6.

Editor's note: This section was repealed, effective July 1, 2003, and relocated to article 1.5 of this title. Prior to its repeal, this section was amended by House Bill 03-1266, House Bill 03-1344, and House Bill 03-1100. Those amendments have been relocated and harmonized with article 1.5 of this title. Amendments to the introductory portion to subsection (1)(a.5)(IV) by House Bill 03-1266 were harmonized with Senate Bill 03-002 and relocated to the introductory portion to § 25-1.5-102 (1)(b)(IV). Amendments to subsections (1)(ee)(II.5)(A) and (1)(ee)(II.5)(C) by House Bill 03-1344 were harmonized with Senate Bill 03-002 and relocated to § 25-1.5-301 (2)(a) and (2)(b.5), respectively. Subsection (1)(II) as enacted by House Bill 03-1100 was harmonized with Senate Bill 03-002 and relocated to § 25-1.5-101 (1)(y).

25-1-107.5. Additional authority of department - rules - remedies against nursing facilities - criteria for recommending assessments for civil penalties - cooperation with department of health care policy and financing - nursing home penalty cash fund - accountability board - reports - repeal. (1) For the purposes of this section, unless the context otherwise requires:

(a) "Accountability board" means the nursing facility culture change accountability board, authorized by subsection (6) of this section.

(b) "Federal regulations for participation" means the regulations found in part 442 of title 42 of the code of federal regulations, as amended, for participation under Title XIX of the federal "Social Security Act", as amended.

(c) "Nursing facility" means any skilled or intermediate nursing care facility that receives federal and state funds under Title XIX of the federal "Social Security Act", as amended.

(2) The department, as the state agency responsible for certifying nursing facilities, is authorized to adopt rules necessary to establish a series of remedies in accordance with this section and the federal "Omnibus Budget Reconciliation Act of 1987", Pub.L. 100-203, as amended, that may be imposed by the department of health care policy and financing when a nursing facility violates federal regulations for participation in the medicaid program. The remedies shall include any remedies required under federal law and the imposition of civil money penalties.

(3) (a) In accordance with rules promulgated under this section, the department is authorized to recommend to the department of health care policy and financing an appropriate civil money penalty based on the nature of the violation. Any penalties recommended shall not be less than one hundred dollars nor more than ten thousand dollars for each day the facility is found to be in violation of the federal regulations. Penalties assessed shall include interest at the statutory rate.

(b) The department shall adopt criteria for determining the amount of the penalty to be recommended for assessment. The criteria shall include, but need not be limited to, consideration of the following factors:

- (I) The period during which the violation occurred;
- (II) The frequency of the violation;
- (III) The nursing facility's history concerning the type of violation for which the penalty is assessed;
- (IV) The nursing facility's intent or reason for the violation;
- (V) The effect, if any, of the violation on the health, safety, security, or welfare of the residents of the nursing facility;

(VI) The existence of other violations, in combination with the violation for which the penalty is assessed, that increase the threat to the health, safety, security, or welfare of the residents of the nursing facility;

(VII) The accuracy, thoroughness, and availability of records regarding the violation that the nursing facility is required to maintain; and

(VIII) The number of additional related violations occurring within the same period as the violation in question.

(c) (I) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to the health, safety, security, rights, or welfare of one or more residents, the department of health care policy and financing shall impose a penalty for each day the deficiencies that constitute the violation are found to exist.

(II) Except as provided in subparagraph (I) of this paragraph (c), the department of health care policy and financing shall not assess a penalty prior to the date a nursing facility receives written notice from the department of its recommendation to assess civil money penalties. The department shall provide the notice to the facility no later than five days after the last day of the inspection or survey during which the deficiencies that constitute the violation were found. The notice shall:

(A) Set forth the deficiencies that are the basis for the recommendation to assess a penalty;

(B) Provide instructions for responding to the notice; and

(C) Require the nursing facility to submit a written plan of correction. The department shall adopt criteria for the submission of written plans of correction by nursing facilities and approval of the plans by the department. If the facility acts in a timely and diligent manner to correct the violation in accordance with an approved plan of correction, the department may recommend to the department of health care policy and financing that it suspend or reduce the penalty during the period of correction specified in the approved plan of correction.

(d) Except as provided in sub-subparagraph (C) of subparagraph (II) of paragraph (c) of this subsection (3), the department of health care policy and financing shall continue to assess any penalty recommended under this section until the department verifies to the department of health care policy and financing that the violation is corrected or until the nursing facility notifies the department that correction has occurred, whichever is earlier. If the penalty has been suspended or reduced pursuant to sub-subparagraph (C) of subparagraph (II) of paragraph (c) of this subsection (3) and the nursing facility has not corrected the violation, the department of health care policy and financing shall reinstate the penalty at an increased amount and shall retroactively assess the penalty to the date the penalty was suspended.

(4) (a) The department of health care policy and financing, after receiving a recommendation from the department, is authorized to assess, enforce, and collect the civil money penalty pursuant to section 25.5-6-205, C.R.S., for credit to the nursing home penalty cash fund, created pursuant to section 25.5-6-205 (3) (a), C.R.S.

(b) (I) The department of public health and environment and the department of health care policy and financing have joint authority for administering the nursing home penalty cash fund; except that final authority regarding the administration of moneys in the fund is in the department of health care policy and financing.

(II) The authority of both departments includes establishing circumstances under which funds may be distributed in order to protect the health or property of individuals residing in nursing facilities that the department of health care policy and financing has found to be in violation of federal regulations for participation in the medicaid program.

(III) The department of health care policy and financing shall promulgate rules necessary to ensure proper administration of the nursing home penalty cash fund.

(c) The departments shall consider, as a basis for distribution from the nursing home penalty cash fund, the following:

(I) The need to pay costs to:

(A) Relocate residents to other facilities when a nursing facility closes;

(B) Maintain the operation of a nursing facility pending correction of violations;

- (C) Close a nursing facility;
- (D) Reimburse residents for personal funds lost;
- (II) Measures that will benefit residents of nursing facilities by improving their quality of life at the facilities, including:
 - (A) Consumer education to promote resident-centered care in nursing facilities;
 - (B) Training for state surveyors, supervisors, and the state and local long-term care ombudsman, established pursuant to article 11.5 of title 26, C.R.S., regarding resident-centered care in nursing facilities;
 - (C) Development of a newsletter and web site detailing information on resident-centered care in nursing facilities and related information; and
 - (D) Education and consultation for purposes of identifying and implementing resident-centered care initiatives in nursing facilities.
- (d) (I) The departments shall distribute the following amounts of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of this subsection (4):
 - (A) For the 2009-10 fiscal year, two hundred thousand dollars;
 - (B) For the 2010-11 fiscal year and each fiscal year thereafter, an amount equal to the lesser of the amount specified in a budget approved by the accountability board or twenty-five percent of the moneys deposited into the nursing home penalty cash fund in the immediately preceding fiscal year.
- (II) The departments may allocate the moneys specified in this paragraph (d) on a quarterly basis, but in no case shall the total amount distributed in any given fiscal year exceed the amount specified in subparagraph (I) of this paragraph (d).
- (III) Notwithstanding subparagraph (I) of this paragraph (d), the departments shall ensure that the balance of the nursing home penalty cash fund does not fall below one million dollars as a result of expenditures for the purposes described in subparagraph (II) of paragraph (c) of this subsection (4) and shall not distribute moneys pursuant to this paragraph (d) for such purposes if making a distribution would cause the fund balance to fall below the minimum balance required by this subparagraph (III).
- (IV) In determining how to allocate the moneys authorized to be distributed pursuant to this paragraph (d), the departments shall take into consideration the recommendations of the accountability board made pursuant to paragraph (c) of subsection (6) of this section. If the departments disagree with the recommendations of the accountability board, they shall meet with the accountability board to explain their rationale and shall seek to achieve a compromise with the accountability board regarding the allocation of the moneys. If a compromise cannot be achieved with regard to all or a portion of the moneys to be distributed, the medical services board created pursuant to section 25.5-1-301, C.R.S., shall have the final authority regarding the distribution of moneys for which a compromise has not been reached.
- (e) The departments shall not utilize moneys from the nursing home penalty cash fund for the purpose of paying their cost for administering such fund or for any administration costs associated with any specific movement, association, or organization; except that up to ten percent of the moneys distributed pursuant to paragraph (d) of this subsection (4) may be used to pay the cost to administer and operate the accountability board, including expense reimbursement for accountability board members.
- (5) Repealed.
- (6) (a) No later than September 1, 2009, the nursing facility culture change accountability board shall be established and operated under the department of health care policy and financing either directly or by contract with or grant to any public agency or appropriate private nonprofit organization. The department of health care policy and financing, in consultation with stakeholders, shall determine the appropriate entity to administer the accountability board. The accountability board shall be composed of ten members as follows:
 - (I) The state long-term care ombudsman or his or her designee;
 - (II) The executive director of the department of health care policy and financing or the executive director's designee;

(III) The executive director of the department of public health and environment or the executive director's designee;

(IV) Seven members appointed by the governor as follows:

- (A) Three members currently employed in long-term care nursing facilities;
- (B) One member who is or represents a consumer of long-term care;
- (C) One member representing the disability community who is either a resident of a nursing facility or a family member of a nursing facility resident;
- (D) One member representing the business community; and
- (E) One member representing the Colorado culture change coalition, or its successor organization.

(b) The members of the accountability board shall serve without compensation but may be reimbursed for expenses incurred while serving on the accountability board.

(c) The accountability board shall review and make recommendations to the departments regarding the use of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section.

(d) By October 1, 2010, and by each October 1 thereafter, the departments, with the assistance of the accountability board, shall jointly submit a report to the governor and the health and human services committees of the senate and house of representatives of the general assembly, or their successor committees, regarding the expenditure of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section. The report shall detail the amount of moneys expended for such purposes, the recipients of the funds, the effectiveness of the use of the funds, and any other information deemed pertinent by the departments or requested by the governor or the committees.

(7) (a) Subparagraph (II) of paragraph (c) of subsection (4) of this section, subsection (6) of this section, and this subsection (7) are repealed, effective September 1, 2016.

(b) Prior to such repeal, the nursing facility culture change accountability board and its functions, and the use of moneys in the nursing home penalty cash fund for the purposes described in subparagraph (II) of paragraph (c) of subsection (4) of this section, shall be reviewed pursuant to section 24-34-104, C.R.S.

Source: **L. 89, 1st Ex. Sess.:** Entire section added, p. 24, § 1, effective July 11. **L. 91:** (3)(b) amended, p. 1856, § 12, effective April 11; (4) added, p. 687, § 53, effective April 20; entire section repealed, p. 687, § 53, effective July 1, 1993. **L. 94:** Entire section RC&RE, p. 1316, § 1, effective May 25; (2), (3)(a), (3)(c)(II)(C), (3)(d), (4)(a), and (4)(b) amended, p. 2617, § 29, effective July 1. **L. 97:** (5) repealed, p. 106, § 2, effective March 24. **L. 2006:** (4)(a) amended, p. 2012, § 80, effective July 1. **L. 2009:** Entire section amended, (HB 09-1196), ch. 428, p. 2383, § 1, effective June 4.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (2), (3)(a), (3)(c)(II)(C), (3)(d), (4)(a), and (4)(b), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Section does not require recipient to exhaust all administrative remedies prior to filing a common law tort claim against provider. Reimbursement of amounts paid by or on behalf of the recipient was not available through

the administrative process and therefore administrative process was not a prerequisite to filing claims. *Salas v. Grancare, Inc.*, 22 P.3d 568 (Colo. App. 2001).

25-1-108. Powers and duties of state board of health. (1) In addition to all other powers and duties conferred and imposed upon the state board of health by the provisions of this part 1, the board has the following specific powers and duties:

(a) To determine general policies to be followed by the division of administration in administering and enforcing the public health laws and the orders, standards, rules, and regulations of the board;

(b) To act in an advisory capacity to the executive director of the department on all matters pertaining to public health;

(c) (I) To issue from time to time such orders, to adopt such rules and regulations, and to establish such standards as the board may deem necessary or proper to carry out the provisions and purposes of this part 1 and to administer and enforce the public health laws of this state;

(II) To adopt rules and regulations and standards concerning building regulations and fire safety for skilled and intermediate health care facilities. The enforcement of these rules and regulations may be waived by the board for periods of time as recommended by the department if the rigid application thereof would result in demonstrated financial hardship to a skilled or intermediate facility, but only if the waiver will not adversely affect the health and safety of patients.

(III) All rules, regulations, and standards adopted prior to February 21, 1947, by the board concerning building regulations or fire safety for nursing homes which are more strict than those provided by the highest standards as set forth in this paragraph (c) are nullified by this section, but nothing contained in this paragraph (c) shall be construed to prevent the department from adopting and enforcing, with respect to projects for which federal assistance has been obtained or shall be requested, such higher standards as may be required by applicable federal laws or regulations of federal agencies responsible for the administration of such federal laws.

(IV) For the purpose of this part 1, all rules, regulations, and standards adopted prior to February 21, 1947, by the board or any board, office, or bureau whose duties are by virtue of this section transferred to the board or the department, in effect immediately prior to February 21, 1947, and not inconsistent with the authority of the board as provided in this part 1 shall remain in full force and effect until superseded by rules, regulations, or standards duly adopted pursuant to this paragraph (c) by the board in conformance with this part 1, to the same effect as though such rules, regulations, and standards were adopted subsequent to the passage of this part 1 in full conformance therewith.

(V) Repealed.

(VI) To adopt rules and to establish such standards as the board may deem necessary or proper to assure that hospitals, other acute care facilities, county, district, and municipal public health agencies, trauma centers, area trauma advisory councils, and managed care organizations are prepared for an emergency epidemic, as defined in section 24-32-2103 (1.7), C.R.S., that is declared to be a disaster emergency, including the immediate investigation of any case of a suspected emergency epidemic.

(d) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon the board. The board may designate an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings for the board, pursuant to section 24-4-105, C.R.S., and to carry out such administrative and other duties of the board as the board may require in the conduct of its hearings.

(e) To establish and appoint, as the board may deem necessary or advisable, special advisory committees to advise and confer with the board concerning the public health aspects of any business, profession, or industry within the state of Colorado. Any committee established and appointed under the provisions of this section shall act only in an advisory capacity to the board and shall meet with the board at least once each year at such regular meeting of the board as may be designated by the board and at such other times as such committee may be called into meeting by the president of the board. Members of any special advisory committee shall serve without compensation but may, in the discretion of the board, be allowed actual and necessary traveling and subsistence expenses when in attendance at meetings away from their places of residence.

(f) To accept and, through the division of administration, use, disburse, and administer all federal aid or other property, services, and moneys allotted to the department for state and local public works or public health functions, or allotted without designation of a specific agency for purposes which are within the functions of the department; and to

prescribe, by rule or regulation not inconsistent with the laws of this state, the conditions under which such property, services, or moneys shall be accepted and administered. On behalf of the state, the board is empowered to make such agreements, with the approval of the attorney general, not inconsistent with the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance.

(g) Repealed.

(h) To comply with the requirements of section 24-1-136.5, C.R.S., concerning the preparation of operational master plans, facilities master plans, and facilities program plans, as if the state board of health were the executive director of the department.

(2) The board shall act only by resolution adopted at a duly called meeting of the board, and no individual member of the board shall exercise individually any administrative authority with respect to the department.

(3) In the exercise of its powers, the department shall not promulgate any rule or standard that limits or interferes with the ability of an individual to enter into a contract with a private pay facility concerning the programs or services provided at the private pay facility. For the purposes of this subsection (3), "private pay facility" means a skilled nursing facility or intermediate care facility subject to the requirements of section 25-1-120 or an assisted living residence licensed pursuant to section 25-27-105 that is not publicly funded or is not certified to provide services that are reimbursed from state or federal assistance funds.

(4) and (5) Repealed.

Source: L. 47: p. 511, § 6. CSA: C. 78, § 21(6). CRS 53: § 66-1-8. L. 55: p. 428, § 2. L. 59: p. 468, § 2. C.R.S. 1963: § 66-1-8. L. 67: p. 345, § 16. L. 68: pp. 107, 108, §§ 77, 81. L. 75: (1)(c)(II) R&RE, p. 871, § 1, effective July 14; (1)(d) amended, p. 872, § 1, effective July 14. L. 77: (1)(d) amended, p. 308, § 12, effective June 10. L. 87: (1)(d) amended, p. 967, § 76, effective March 13. L. 92: (1)(g) added, p. 1236, § 3, effective August 1. L. 94: (1)(c)(V) added, p. 32, § 5, effective March 9; (1)(h) added, p. 565, § 13, effective April 6; (3) added, p. 2610, § 11, effective July 1. L. 96: (1)(g) repealed, p. 1284, § 1, effective June 1. L. 2000: (1)(c)(VI) added, p. 88, § 6, effective March 15; (4) added, p. 545, § 23, effective July 1. L. 2002: (3) amended and (5) added, p. 1328, § 15, effective July 1. L. 2003: (5) amended, p. 2007, § 84, effective May 22. L. 2006: (1)(c)(V) repealed, p. 1127, § 1, effective July 1. L. 2007: (5) amended, p. 2040, § 62, effective June 1. L. 2008: (5) repealed, p. 662, § 1, effective August 5. L. 2010: (1)(c)(VI) amended, (HB 10-1422), ch. 419, p. 2089, § 83, effective August 11.

Editor's note: Subsection (4)(d) provided for the repeal of subsection (4), effective November 31, 2000, but the date was changed on revision to November 30, 2000. (See L. 2000, p. 545.)

Cross references: (1) For the duty of the board to supervise registration of births and deaths, see article 2 of this title.

(2) For the legislative declaration contained in the 1994 act adding subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Regulations held not unconstitutionally applied. Federal regulations adopted by the department of health were held not to be so vague that their application would deprive the regulated party of procedural due process. *Geriatrics, Inc. v. State Dept. of Health*, 650 P.2d 1288 (Colo. App. 1982), *aff'd in part, rev'd in part* on other grounds, 699 P.2d 952 (Colo. 1985).

State licensing standards which provided the basis for the revocation of a nursing facility's

operating license were not in violation of the regulated party's due process rights for the regulations were detailed and specific and the final agency decision set out detailed findings concerning the revocation of the operating license. *State Dept. of Health v. Geriatrics*, 699 P.2d 952 (Colo. 1985).

Applied in *Winkler v. State Dept. of Health*, 193 Colo. 170, 564 P.2d 107 (1977).

25-1-108.5. Additional powers and duties of state board of health and department - programs that receive tobacco settlement moneys - monitoring - annual report.

(1) As used in this section:

- (a) "Health sciences facility" has the meaning set forth in section 25-31-103.
- (b) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.
- (c) "Nurse home visitor program" means the tobacco settlement program established in article 31 of this title.

(d) "Tobacco settlement program" means any program that receives appropriations from moneys received by the state pursuant to the master settlement agreement.

(2) Except for the nurse home visitor program, which shall be monitored by the health sciences facility in accordance with section 25-31-105 (1), the state board and the department shall monitor the operation and effectiveness of tobacco settlement programs. Each tobacco settlement program shall annually submit to the department, in accordance with rules promulgated by the state board, the following information:

- (a) The amount of tobacco settlement moneys received by the program for the preceding fiscal year;
- (b) A description of the program, including the program goals, the population served by the program, including the actual number of persons served, and the services provided through the program;
- (c) Information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals; and
- (d) Any other information required by rule of the state board.

(3) (a) On or before January 15, 2002, and on or before each January 15 thereafter, the department shall submit to the joint budget committee, the health and human services committees of the senate and the house of representatives, or any successor committees, the attorney general, and the governor a report summarizing the information received by the department pursuant to subsection (2) of this section. In addition, the report shall include:

(I) The reports prepared by the state auditor during the preceding fiscal year pursuant to section 2-3-113, C.R.S., reviewing and evaluating tobacco settlement programs, so long as such reports have been previously released by the audit committee; and

(II) The state board's recommendations concerning any programs for which funding should be discontinued and any additional programs for which the general assembly should consider appropriating moneys received pursuant to the master settlement agreement.

(b) The report prepared pursuant to this subsection (3) shall also be available upon request to any member of the public.

(4) The state board shall adopt rules to ensure that no person who is involved in evaluating tobacco settlement programs pursuant to this section has a conflict of interest in conducting such evaluations, including but not limited to any conflict involving the person and the recipient of any tobacco settlement program moneys and any conflict involving the person and the tobacco industry. If the state board determines that a person has a conflict, as described by rule, the state board shall prohibit that person from participating in any reviews that may be affected by the conflict.

(5) Each tobacco settlement program shall pay a proportionate share of the costs incurred by the department in implementing the requirements of this section, with the amount paid by each tobacco settlement program proportionate to the amounts annually appropriated to each tobacco settlement program from the master settlement agreement; except that the total amount of the program evaluation costs shall not exceed four-tenths of one percent of the total amount of moneys received by the state pursuant to the master settlement agreement in any fiscal year.

Source: **L. 2000:** Entire section added, p. 592, § 2, effective May 18. **L. 2002:** (5) amended, p. 778, § 2, effective May 30. **L. 2003:** (5) amended, p. 1665, § 2, effective July 1. **L. 2007:** IP(3)(a) amended, p. 2040, § 63, effective June 1. **L. 2010:** (1), IP(2), and (5) amended, (SB 10-073), ch. 386, p. 1807, § 2, effective June 30.

25-1-108.7. Health care credentials uniform application act - legislative declaration - definitions - state board of health rules. (1) This section shall be known and may be cited as the “Health Care Credentials Uniform Application Act”.

(2) The purpose of the “Health Care Credentials Uniform Application Act” is to make credentialing more efficient, less costly, and less duplicative by making it uniform through the use of a single application form for the collection of core credentials data for use by entities.

(3) As used in this section, unless the context otherwise requires:

(a) “Core credentials data” means data, information, or answers to questions that are collected and retained and that are common and necessary for the credentialing or recredentialing of a health care professional, but does not include additional nonduplicative credentials data deemed essential by a credentialing entity to complete credentialing.

(b) “Credentialing” means the process of assessing and validating the qualifications of a health care professional.

(c) “Credentialing entity” means any health care entity or health care plan that is engaged in the collection of information to be used in the process of credentialing or recredentialing of health care professionals.

(d) “Health care entity” means any of the following that require health professionals to submit credentials data:

(I) A health care facility or other health care organization licensed or certified to provide medical or health services in Colorado;

(II) A health care professional partnership, corporation, limited liability company, professional services corporation, or group practice;

(III) An independent practice association or physician-hospital organization;

(IV) A professional liability insurance carrier; or

(V) An insurance company, health maintenance organization, or other entity that contracts for the provision of health benefits.

(e) “Health care plan” means any entity that is licensed by the division of insurance as a prepaid health care plan, health maintenance organization, or insurer and that requires the submission of credentials data.

(f) “Health care professional” means a physician, dentist, dental hygienist, chiropractor, podiatrist, psychologist, advanced practice nurse, optometrist, physician assistant, licensed clinical social worker, child health associate, marriage and family therapist, or other health care professional who is registered, certified, or licensed pursuant to title 12, C.R.S.; who is subject to credentialing; and who practices, or intends to practice, in Colorado.

(g) “Nonspecific credentials data” means credentials data that is aggregated and reported without reference to the identity of the individual health care professional to whom it pertains.

(4) (a) Nothing in this section shall be construed to restrict the authority of any health care entity or health care plan to approve, suspend, or deny an application for insurance, staff membership, clinical privileges, or managed care network participation. This section shall not be construed to apply to the licensing activities of any board responsible for licensing health care professionals.

(b) Nothing in this section shall be construed to require a credentialing entity to use a particular credentialing process or to restrict or require such an entity from using a particular vendor in the credentialing process.

(5) Upon the effective date of the rule established by the state board of health pursuant to paragraph (e) of subsection (6) of this section, a credentialing entity shall collect core credentials data through the use of the Colorado health care professional credentials application established pursuant to paragraph (a) of subsection (6) of this section. The form may be submitted electronically or by paper copy. The credentialing entity may require a

health care professional to answer only select provisions of the application according to the needs of the entity. Questions that are prohibited by law shall not be included in the request for credentialing data by the credentialing entity.

(6) (a) There is hereby established the health care credentials application review committee to recommend to the state board of health, and to periodically review, a single application form for the collection of core credentials data in this state. The form shall be known as the "Colorado health care professional credentials application". The review committee shall consist of the following eight members, who shall serve for terms of four years and who shall be appointed by the state board of health:

- (I) One member representing a statewide association or society of physicians;
- (II) One member representing a statewide association or society of Colorado hospitals;
- (III) One member representing a statewide association or society of health plans;
- (IV) One member representing a professional liability insurance carrier domiciled in Colorado that provides professional liability insurance to health care professionals in Colorado;
- (V) One member representing a statewide association or society of Colorado health care medical staff service specialists;
- (VI) One advanced practice nurse;
- (VII) Two members at large.

(b) Each board member may bring consultants and advisors to participate in board meetings. Consultants and advisors shall not have decision-making powers or voting privileges.

(c) The review committee shall be staffed by an entity approved by the Colorado medical board to collect medical license registration fees pursuant to section 12-36-123.5, C.R.S.

(d) Members of the review committee shall serve without compensation.

(e) Within one hundred twenty days after the time of appointment, the review committee shall make a recommendation to the state board of health regarding proposed contents of the Colorado health care professional credentials application. In accordance with section 24-4-103, C.R.S., the state board of health shall establish, by rule, the Colorado health care professional credentials application. The Colorado health care professional credentials application shall be the same as the provider application form developed by the council for affordable quality healthcare as of January 1, 2004, as modified, if necessary, to comply with Colorado law or as may be recommended by the majority of members of the review committee.

(f) The review committee shall meet at least annually to review and make any necessary recommendations for modifications to the Colorado health care professional credentials application to the state board of health.

(g) Initial appointments to the review committee shall be made on or before July 1, 2004. The state board of health shall appoint replacement members as necessary for a full committee.

(h) On or before September 1, 2008, the review committee shall make recommendations to the board concerning the feasibility of requiring all requests for additional credentials data deemed essential by a credentialing entity be uniform among all credentialing committees by July 1, 2009. On or before March 1, 2009, the review committee shall make recommendations to the board concerning the feasibility of requiring all Colorado health care professional credentials applications to be submitted through online electronic methods and that all health care entities required by this section to use the health care professional credentials application be required to accept and process the application through electronic means by January 1, 2010. If determined feasible by the board, the board shall establish by rule the standards, means, methods, and forms necessary to require the use of uniform supplemental questions and the submission, receipt, and processing of the health care professional credentials application electronically.

(7) Core credentials data collected and retained on behalf of a credentialing entity shall not be modified without the approval of the credentialing entity.

(8) The state board of health may promulgate rules as necessary to carry out the provisions of this section.

(9) (Deleted by amendment, L. 2008, p. 688, § 1, effective July 1, 2008.)

Source: L. 2004: Entire section added, p. 466, § 1, effective April 14. L. 2008: (2), (5), and (9) amended and (6)(h) added, pp. 688, 689, §§ 1, 2, effective July 1. L. 2010: (6)(c) amended, (HB 10-1260), ch. 403, p. 1990, § 85, effective July 1.

25-1-109. Powers and duties of division of administration. (1) In addition to the other powers and duties conferred and imposed in this part 1 upon the division of administration, the division, through the director or, upon the director's direction and under the director's supervision, through the other officers and employees of the division, has the following powers and duties:

(a) To administer and enforce the public health laws of the state of Colorado and the standards, orders, rules, and regulations established, issued, or adopted by the board;

(b) To exercise all powers and duties conferred and imposed upon the department not expressly delegated to the board by the provisions of this part 1;

(c) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon the division of administration. The director may designate an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings pursuant to section 24-4-105, C.R.S.

(d) Repealed.

(e) To supervise all subdivisions and boards of the department to determine that publications of the department and of any subdivisions thereof circulated in quantity outside the executive branch are issued in accordance with the provisions of section 24-1-136, C.R.S.;

(f) To appoint, pursuant to section 13 of article XII of the state constitution, a chief health inspector and such deputy inspectors as may be authorized. Such inspectors have the power to enter any workplace as provided in section 8-1-116, C.R.S. All expenses incurred by the division and its employees, pursuant to the provisions of this section, shall be paid from the funds appropriated for its use, upon approval of the director.

(g) Repealed.

(h) To administer and enforce the minimum general sanitary standards and regulations adopted pursuant to section 25-1.5-202.

Source: L. 47: p. 513, § 7. CSA: C. 78, § 21(7). CRS 53: § 66-1-9. C.R.S. 1963: § 66-1-9. L. 64: p. 140, § 68. L. 73: p. 917, § 1. L. 77: (1)(h) added, p. 1261, § 2, effective June 9; (1)(c) amended, p. 308, § 13, effective June 10. L. 80: (1)(f) amended and (1)(g) repealed, pp. 450, 451, §§ 5, 6, effective April 13. L. 83: (1)(d) and (1)(e) amended, p. 839, § 58, effective July 1. L. 87: (1)(c) amended, p. 967, § 77, effective March 13. L. 96: (1)(d) repealed, p. 1256, § 145, effective August 7. L. 2003: IP(1) and (1)(h) amended, p. 706, § 31, effective July 1.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Subsection (1)(c) grants subject matter jurisdiction. Subsection (1)(c) gives the department of health subject matter jurisdiction to conduct hearings relating generally to health

matters, such as nursing care services. *Geriatrics, Inc. v. State Dept. of Health*, 650 P.2d 1288 (Colo. App. 1982), *aff'd in part and rev'd in part* on other grounds, 699 P.2d 952 (Colo. 1985).

25-1-110. Higher standards permissible. Nothing in this part 1 shall prevent any incorporated city, city and county, town, county, or other political subdivision of the state from imposing and enforcing higher standards than are imposed under this part 1.

Source: L. 47: p. 513, § 7A. CSA: C. 78, § 21(8). CRS 53: § 66-1-10. C.R.S. 1963: § 66-1-10.

25-1-111. Revenues of department.

(1) Repealed.

(2) The department of the treasury of this state is designated as custodian of all funds allotted to the state for the purpose outlined by section 25-1-108 (1) (f). Such funds and all other funds of the department shall be payable only on voucher signed by the executive director of the department and by the president of the board and shall be paid by warrant of the controller.

Source: L. 47: p. 514, § 9. CSA: C. 78, § 21(10). CRS 53: § 66-1-11. C.R.S. 1963: § 66-1-11. L. 87: (1) repealed, p. 1124, § 1, effective July 1.

25-1-112. Legal adviser - actions. The attorney general shall be the legal adviser for the department and shall defend it in all actions and proceedings brought against it. The district attorney of the judicial district in which a cause of action may arise shall bring any action, civil or criminal, requested by the executive director of the department to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or to prosecute for the violation of or for the enforcement of the public health laws or the standards, orders, rules, and regulations of the department established by or issued under the provisions of this part 1. If the district attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or, with the approval of the board, by special counsel.

Source: L. 47: p. 514, § 10. CSA: C. 78, § 21(11). CRS 53: § 66-1-12. C.R.S. 1963: § 66-1-12.

25-1-113. Judicial review of decisions. (1) Any person aggrieved and affected by a decision of the board or the executive director of the department is entitled to judicial review by filing in the district court of the county of his residence, or of the city and county of Denver, within ninety days after the public announcement of the decision, an appropriate action requesting such review. The court may make any interested person a party to the action. The review shall be conducted by the court without a jury and shall be confined to the record, if a complete record is presented; except that, in cases of alleged irregularities in the record or in the procedure before the board or the division of administration, testimony may be taken in the court. The court may affirm the decision or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings and decisions of the board being: Contrary to constitutional rights or privileges; or in excess of the statutory authority or jurisdiction of the board or the executive director of the department; or affected by any error of law; or made or promulgated upon unlawful procedure; or unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious.

(2) Any party may have a review of the final judgment or decision of the district court by appellate review in accordance with law and the Colorado appellate rules.

Source: L. 47: p. 514, § 11. CSA: C. 78, § 21(12). CRS 53: § 66-1-13. C.R.S. 1963: § 66-1-13.

ANNOTATION

Claim of arbitrary refusal to grant license is cause of action. Petitioner states a cause of action under this section where he alleges that the state board of health has arbitrarily and capriciously refused to grant him a master

plumber's license although he has complied with all the requirements for the license. *Grimm v. State Bd. of Health*, 121 Colo. 269, 215 P.2d 324 (1950).

Action not controlled by C.R.C.P. 106. An

action under this section is a statutory action and is not controlled by C.R.C.P. 106. Grimm v. State Bd. of Health, 121 Colo. 269, 215 P.2d 324 (1950).

Court may enter own judgment. Under this section, the court may enter what is more or less its judgment because provision is made for the court to modify the decision of the board if it so concludes. Grimm v. State Bd. of Health, 121 Colo. 269, 215 P.2d 324 (1950).

No review of failure to act. This section does not provide for judicial review of the depart-

ment's failure to act. Nat'l Wildlife Fed'n v. Cotter Corp., 665 P.2d 598 (Colo. 1983).

County is a "person aggrieved and affected" by decision of department of public health and environment concerning the issuance of a hazardous waste permit. Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't, 218 P.3d 336 (Colo. 2009).

Applied in Stone Environmental Eng'r Servs., Inc. v. State Dept. of Health, 631 P.2d 1185 (Colo. App. 1981).

25-1-114. Unlawful acts - penalties. (1) It is unlawful for any person, association, or corporation, and the officers thereof:

(a) To willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, or regulation issued pursuant thereto; or

(b) To fail to make or file reports required by law or rule of the board relating to the existence of disease or other facts and statistics relating to the public health; or

(c) To conduct any business or activity over which the department possesses the power to license and regulate without such license or permit as required by the department; or

(d) To willfully and falsely make or alter any certificate or license or certified copy thereof issued pursuant to the public health laws; or

(e) To knowingly transport or accept for transportation, interment, or other disposition a dead body without an accompanying permit issued in accordance with the public health laws or the rules of the board; or

(f) To willfully fail to remove from private property under his control at his own expense, within forty-eight hours after being ordered so to do by the health authorities, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of the department, whether such person, association, or corporation is the owner, tenant, or occupant of such private property; except that, if such condition is due to an act of God, it shall be removed at public expense; or

(g) To pay, give, present, or otherwise convey to any officer or employee of the department any gift, remuneration, or other consideration, directly or indirectly, which such officer or employee is forbidden to receive by the provisions of this part 1; or

(h) To make, install, maintain, or permit any cross-connection between any water system supplying drinking water to the public and any pipe, plumbing fixture, or water system which contains water of a quality below the minimum general sanitary standards as to the quality of drinking water supplied to the public or to fail to remove such connection within ten days after being ordered in writing by the department to remove the same. For the purposes of this paragraph (h), "cross-connection" means any connection which would allow water to flow from any pipe, plumbing fixture, or water system into a water system supplying drinking water to the public.

(i) To sell or offer for sale any raw milk, milk product, or unsanitary dairy product, as defined in section 25-5.5-104, for other than human consumption unless it has first been treated with a dye approved by the department.

(2) It is unlawful for any officer or employee of the department or member of the board to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon him by or on behalf of the department.

(3) It is unlawful:

(a) For any officer or employee of the department to perform any work, labor, or services other than the duties assigned to him by or on behalf of the department during the hours such officer or employee is regularly employed by the department, or to perform his duties as an officer or employee of the department under any condition or arrangement that involves a violation of this or any other law of the state of Colorado;

(b) For any officer or employee of the department other than members of the board to perform any work, labor, or services which consist of the private practice of medicine, veterinary surgery, sanitary engineering, nursing, or any other profession which is or may be of special benefit to any private person, association, or corporation as distinguished from the department or the public generally, and which is performed by such officer or employee, directly or indirectly, for remuneration, whether done in an active, advisory, or consultative capacity or performed within or without the hours such officer or employee is regularly employed by the department.

(4) Except as provided in subsection (5) of this section, any person, association, or corporation, or the officers thereof, who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment and, in addition to such fine and imprisonment, shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. Conviction under the penalty provisions of this part 1 or any other public health law shall not relieve any person from any civil action in damages that may exist for an injury resulting from any violation of the public health laws.

(5) (a) It is unlawful for any person, association, or corporation, or the officers thereof, to tamper, attempt to tamper, or threaten to tamper with a public water system or with drinking water after its withdrawal for or treatment by a public water system. For purposes of this subsection (5), "tamper" means to introduce a contaminant into a public water system or into drinking water or to otherwise interfere with drinking water or the operation of a public water system with the intention of harming persons or the public water system. "Tamper" does not include the standardized and accepted treatment procedures performed by a supplier of water in preparing water for human consumption.

(b) (I) Any person, association, or corporation, or the officers thereof, who tampers with a public water system or with drinking water after its withdrawal for or treatment by a public water system commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(II) Any person, association, or corporation, or the officers thereof, who attempts to tamper or threatens to tamper with a public water system or with drinking water after its withdrawal for or treatment by a public water system commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(III) Conviction under this subsection (5) shall not relieve any person from a civil action initiated pursuant to section 25-1-114.1.

Source: L. 47: p. 515, § 12. CSA: C. 78, § 21(13). CRS 53: § 66-1-14. C.R.S. 1963: § 66-1-14. L. 64: p. 478, § 2. L. 75: (1)(i) added, p. 870, § 2, effective June 20. L. 86: (1)(i) amended, p. 1220, § 25, effective May 30. L. 87: (4) amended and (5) added, p. 610, § 21, effective July 1. L. 2002: (5)(b)(I) and (5)(b)(II) amended, p. 1536, § 262, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-1-114.1. Civil remedies and penalties. (1) The division of administration of the department may institute a civil action or administrative action, as described in subsection (2.5) of this section, against any person who violates a final enforcement order of the department issued for a violation of any minimum general sanitary standard or regulation adopted pursuant to section 25-1.5-202. Such civil action shall be brought in the district court of the county in which the violation of the standard or regulation is alleged to have occurred.

(2) Upon finding that a final enforcement order of the department has been violated and that the violation of the standard or regulation described in the order in fact occurred, the court shall:

(a) Impose a civil penalty on the violator of not more than one thousand dollars per day for each day the violation of the standard or regulation occurred if the court determines the violation was willful; or

(b) Enter such order as the public health may require, taking into consideration, where appropriate, the cost and time necessary to comply; or

(c) Impose such civil penalty and enter such order.

(2.5) (a) Any person who violates any minimum general sanitary standard and regulation promulgated pursuant to section 25-1.5-202 or 25-1-114 (1) (h), or any final enforcement order issued by the department, shall be subject to an administrative penalty as follows:

(I) For systems that serve a population of more than ten thousand people, an amount not to exceed one thousand dollars per violation per day; or

(II) For systems that serve a population of ten thousand people or less, an amount not to exceed one thousand dollars per violation per day, but only in an amount, as determined by the division, that is necessary to ensure compliance.

(b) Penalties under this subsection (2.5) shall be determined by the executive director or the executive director's designee and may be collected by the division of administration by an action instituted in a court of competent jurisdiction for collection of such penalty. The final decision of the executive director or the executive director's designee may be appealed to the water quality control commission, created pursuant to section 25-8-201. A stay of any order of the division ending judicial review shall not relieve any person from any liability with respect to past or continuing violations of any minimum general sanitary standard or any regulation promulgated pursuant to section 25-1.5-202 or 25-1-114 (1) (h), but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed. Any administrative penalty collected under this section shall be credited to the general fund.

(3) The department may request the attorney general to bring a suit for a temporary restraining order or a preliminary or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to section 25-1.5-202 or to prevent or abate any release or imminent release that causes or is likely to cause contamination resulting in liability under section 25-1.5-207, and the department, in such a suit, may collect, on behalf of political subdivisions or public water systems, the damages incurred by such political subdivisions or public water systems under section 25-1.5-207. The department shall pay to such political subdivisions or public water systems all damages collected on their behalf. The department is not required to issue an enforcement order prior to institution of such a suit. Upon a de novo finding by the court that such a violation has occurred, is occurring, or is about to occur or that such release or imminent release exists, the court may enjoin such violation, release, or imminent release and enter such order as the public health may require, taking into consideration, where appropriate, the cost and time necessary to comply. An enforcement settlement with the state under the provisions of this subsection (3) shall bar a separate action by a political subdivision or public water system under section 25-1.5-207 whenever notice and adequate opportunity to comment on the proposed settlement have been given to the political subdivision or public water system, damages have been collected on behalf of and paid to such political subdivision or public water system by the state, and the release or imminent release has been prevented or abated by means of the settlement.

(4) Suits brought pursuant to subsection (3) of this section shall be brought in the district court of the county in which the violation is alleged to have occurred. The institution of such a suit by the division of administration shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such proceeding and shall not preclude assessment of any civil penalties or any other enforcement action or sanction authorized by this section.

(4.5) An action for civil penalties under this section may be joined with a civil action to recover the state's costs pursuant to subsection (3) of this section.

(5) The powers of the department established by this section shall be in addition to, and not in derogation of, any powers of the department.

(6) (a) The attorney general, at the request of the department, or the district attorney of the county in which an affected public water system is located or the attorney of the supplier of water may institute a civil action against any person, association, or corporation, or the officers thereof, who tampers, attempts to tamper, or threatens to tamper with a public water system or with drinking water after its withdrawal for or treatment by a public water system. Such action shall be brought in the district court of the county in which the violation is alleged to have occurred. As used in this subsection (6), “tamper” means to introduce a contaminant into a public water system or into drinking water or to otherwise interfere with drinking water or the operation of a public water system with the intention of harming persons or public water systems. “Tamper” does not include the standardized and accepted treatment procedures performed by a supplier of water in preparing water for human consumption.

(b) Upon finding that tampering, attempting to tamper, or threatening to tamper has occurred, the court shall have the authority to:

(I) Order appropriate injunctive relief;

(II) Impose a civil penalty on the violator of not more than fifty thousand dollars for each act of tampering or of not more than twenty thousand dollars for each act of attempting to tamper or threatening to tamper;

(III) Impose on the violator all costs incurred by the state and by the affected public water system in assessing and remedying all consequences of the tampering, attempting to tamper, or threatening to tamper; and

(IV) Impose on the violator all court costs associated with remedying consequences of the tampering, attempting to tamper, or threatening to tamper.

(7) Any person subject to an action brought pursuant to subsection (3) of this section or section 25-1.5-207 shall have an affirmative defense to such action if such person’s potential liability results from a discharge of contaminants or substances authorized by and in substantial compliance with an existing federal or state permit which controls the quality of the release of the contaminant or substance.

Source: L. 77: Entire section added, p. 1262, § 1, effective July 1. L. 83: (1) and (2) amended and (3) and (5) added, p. 1029, § 1, effective July 1. L. 87: (6) added, p. 610, § 22, effective July 1. L. 88: (3) amended and (4.5) and (7) added, p. 996, § 3, effective May 11. L. 98: (1) amended and (2.5) added, p. 889, § 2, effective August 5. L. 2003: (1), IP(2.5)(a), (2.5)(b), (3), and (7) amended, p. 706, § 32, effective July 1. L. 2008: (2.5)(b) amended, p. 430, § 1, effective August 5.

ANNOTATION

Law reviews. For article, “Local Governments and the Environment: Part I, CERCLA”, see 17 Colo. Law. 1997 (1988). For article,

“Local Governments and the Environment: Part II, RCRA”, see 17 Colo. Law. 2159 (1988).

25-1-114.5. Voluntary disclosure arising from self-evaluation - presumption against imposition of administrative or civil penalties. (1) For the purposes of this section, a disclosure of information by a person or entity to any division or agency within the department of public health and environment regarding any information related to an environmental law is voluntary if all of the following are true:

(a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person or entity;

(b) The disclosure arises out of a voluntary self-evaluation;

(c) The person or entity making the disclosure initiates the appropriate effort to achieve compliance, pursues compliance with due diligence, and corrects the noncompliance within two years after the completion of the voluntary self-evaluation. Where such evidence shows the noncompliance is the failure to obtain a permit, appropriate efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.

(d) The person or entity making the disclosure cooperates with the appropriate division

or agency in the department of public health and environment regarding investigation of the issues identified in the disclosure.

(2) For the purposes of paragraph (c) of subsection (1) of this section, upon application to and at the discretion of the department of public health and environment, the time period within which the noncompliance is required to be corrected may be extended if it is not practicable to correct the noncompliance within the two-year period. A request for a de novo review of the decision of the department of public health and environment may be made to the appropriate district court or administrative law judge.

(3) If a person or entity is required to make a disclosure to a division or agency within the department of public health and environment under a specific permit condition or under an order issued by the division or agency, then the disclosure is not voluntary with respect to that division or agency.

(4) If any person or entity makes a voluntary disclosure of an environmental violation to a division or agency within the department of public health and environment, then there is a rebuttable presumption that the disclosure is voluntary and therefore the person or entity is immune from any administrative and civil penalties associated with the issues disclosed and is immune from any criminal penalties for negligent acts associated with the issues disclosed. The person or entity shall provide information supporting its claim that the disclosure is voluntary at the time that the disclosure is made to the division or agency.

(5) To rebut the presumption that a disclosure is voluntary, the appropriate division or agency shall show to the satisfaction of the respective commission in the department of public health and environment or the state board of health, if no respective commission exists, that the disclosure was not voluntary based upon the factors set forth in subsections (1), (2), and (3) of this section. A decision by the commission or the state board of health, whichever is appropriate, regarding the voluntary nature of a disclosure is final agency action. The division or agency may not include any administrative or civil penalty or fine or any criminal penalty or fine for negligent acts in a notice of violation or in a cease-and-desist order on any underlying environmental violation that is alleged absent a finding by the respective commission or the state board of health that the division or agency has rebutted the presumption of voluntariness of the disclosure. The burden to rebut the presumption of voluntariness is on the division or agency.

(6) The elimination of administrative, civil, or criminal penalties under this section does not apply if a person or entity has been found by a court or administrative law judge to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders on consent and that were due to separate and distinct events giving rise to the violations, within the three-year period prior to the date of the disclosure. Such a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the three-year period immediately prior to the date of the voluntary disclosure.

(7) Except as specifically provided in this section, this section does not affect any authority the department of public health and environment has to require any action associated with the information disclosed in any voluntary disclosure of an environmental violation.

(8) Unless the context otherwise requires, the definitions contained in section 13-25-126.5 (2), C.R.S., apply to this section.

(9) This section applies to voluntary disclosures that are made and voluntary self-evaluations that are performed on or after June 1, 1994.

Source: **L. 94:** Entire section added, p. 1870, § 3, effective June 1; IP(1), (1)(d), (2), (3), (4), (5), and (7) amended, p. 2618, § 30, effective July 1. **L. 99:** (9) amended, p. 301, § 3, effective April 14.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1) and subsections (1)(d), (2), (3), (4), (5), and (7), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For comment, “Colorado’s Environmental Audit Privilege Statute: Striking the Appropriate Balance?”, see 67 U. Colo. L. Rev. 443 (1996). For article, “Pilot Project Offers

New Hope for Colorado’s Environmental Self-Audit Law”, see 30 Colo. Law. 71 (February 2001).

25-1-114.6. Implementation of environmental self-audit law - pilot project - legislative declaration. (1) (a) The general assembly hereby finds and determines that, in order to encourage the regulated community to utilize the environmental self-audit provisions contained in this section and sections 25-1-114.5, 13-25-126.5, and 13-90-107 (1) (j), C.R.S., a pilot project is established. The general assembly hereby declares that the purpose of the environmental self-audit provisions contained in this section and sections 25-1-114.5, 13-25-126.5, and 13-90-107 (1) (j), C.R.S., is to encourage the regulated community to voluntarily identify environmental concerns and to address them expeditiously without fear of enforcement action by regulatory agencies. The general assembly recognizes that, due to concerns with the environmental self-audit provisions, the United States environmental protection agency has, in the past, taken direct action against entities in the regulated community that have made disclosures under the environmental self-audit provisions. The general assembly further declares that the pilot project enacted by this section is intended to allow entities to proceed under the environmental self-audit provisions with assurance that, if any such entity complies with such environmental self-audit provisions, the United States environmental protection agency will forego any enforcement action based on the disclosures made and addressed under the environmental self-audit pilot project.

(b) The general assembly further recognizes that, under the pilot project enacted by this section, the department of public health and environment will have discretion to consider certain factors in assessing a regulated entity’s eligibility for penalty immunity under the environmental laws. The general assembly intends that this additional flexibility to assess an entity’s eligibility, along with the protection from federal overfiling that the pilot project provides, will encourage entities to participate in the project and allow the department of public health and environment to assess the effectiveness of the environmental self-audit provisions.

(c) The provisions of this section shall only apply to disclosures made under this section and sections 25-1-114.5, 13-25-126.5, and 13-90-107 (1) (j), C.R.S., after the department of public health and environment and the United States environmental protection agency have entered into a memorandum of agreement binding Colorado and the federal government to enforce environmental laws in a manner consistent with the provisions of this section.

(2) Notwithstanding the provisions of sections 25-1-114.5 (4) and (5), 13-25-126.5, and 13-90-107 (1) (j), C.R.S., on and after May 30, 2000, the department of public health and environment may assess penalties for criminal negligence when available under federal environmental law.

(3) (a) In addition to the provisions of subsection (2) of this section, notwithstanding the provisions of sections 25-1-114.5 (4) and (5), 13-25-126.5, and 13-90-107 (1) (j), C.R.S., on and after May 30, 2000, in determining whether an entity is entitled to penalty immunity under the provisions of section 25-1-114.5, the department of public health and environment may consider:

(I) Whether the activities disclosed may create imminent and substantial endangerment of, or result in serious harm to, public health and the environment; and

(II) Whether the activities disclosed conferred an unfair or excessive economic benefit on the disclosing entity.

(b) Notwithstanding any provision of sections 25-1-114.5 (4) and (5), 13-25-126.5, and 13-90-107 (1) (j), C.R.S., the department of public health and environment has discretion to determine whether and to what degree the factors in paragraph (a) of this subsection (3) apply given the particular circumstances of each situation.

(4) The pilot project created by this section applies to voluntary disclosures made under this section and sections 25-1-114.5, 13-25-126.5, and 13-90-107 (1) (j), C.R.S., on and

after the effective dates of both this section (May 30, 2000) and the memorandum of agreement entered into under paragraph (c) of subsection (1) of this section.

(5) Pursuant to the procedures set forth in section 13-25-126.5, C.R.S., the department of public health and environment may obtain access to an environmental self-audit report where the department of public health and environment has independent evidence of any criminal violation of an environmental law. Evidence of a criminal violation constitutes "compelling circumstances" for purposes of section 13-25-126.5 (3) (c), C.R.S., where the department of public health and environment seeks access to an environmental self-audit report. When a self-audit report is obtained, reviewed, or used in a criminal proceeding under this subsection (5), the privilege provided in section 13-25-126.5, C.R.S., applicable to civil or administrative proceedings is not waived or eliminated.

(6) Repealed.

Source: L. 2000: Entire section added, p. 1377, § 1, effective May 30. L. 2008: (6) repealed, p. 1906, § 98, effective August 5.

25-1-115. Treatment - religious belief. Nothing in this part 1 shall authorize the department to impose any mode of treatment inconsistent with the religious faith or belief of any person.

Source: L. 47: p. 517, § 15. CSA: C. 78, § 21(14). CRS 53: § 66-1-15. C.R.S. 1963: § 66-1-15.

25-1-116. Licensed healing systems not affected. Nothing in this part 1 shall be construed or used to amend or restrict any statute in force pertaining to the scope of practice of any state licensed healing system.

Source: L. 47: p. 518, § 16. CSA: C. 78, § 21(15). CRS 53: § 66-1-16. C.R.S. 1963: § 66-1-16.

25-1-117. Acquisition of federal surplus property. The governor of the state of Colorado is authorized, for and on behalf of the state of Colorado, to make application for and secure the transfer to the state of Colorado of federal surplus property for the purpose of establishing state public health facilities in the state of Colorado; and to do and perform any acts and things which may be necessary to carry out the above, including the preparing, making, and filing of plans, applications, reports, and other documents, and the execution, acceptance, delivery, and recordation of agreements, deeds, and other instruments pertaining to the transfer of said property. The governor is further authorized to expend available general revenue funds, or such other funds as may be made available by the general assembly, for the purpose of making the above application and securing the transfer of said property in accordance with federal laws and with rules and regulations and requirements of the United States department of health, education, and welfare.

Source: L. 59: p. 473, § 1. CRS 53: § 66-1-22. C.R.S. 1963: § 66-1-22.

Cross references: For changes relating to the structure of the United States department of health, education, and welfare, see Public Law 96-88, Title III, section 301, and Title V, section 509, Oct. 17, 1979, 93 Stat. 677, 695.

25-1-118. Rental properties - salvage - fund created - repeal. (Repealed)

Source: L. 60: p. 145, § 1. CRS 53: § 66-1-23. C.R.S. 1963: § 66-1-23. L. 94: (1) amended, p. 2701, § 253, effective July 1. L. 2008: Entire section amended, p. 1345, § 2, effective May 27.

Editor's note: Subsection (4) provided for the repeal of this section effective July 1, 2008. (See L. 2008, p. 1345.)

25-1-119. Disposition and expenditures of moneys from fund. (Repealed)

Source: L. 60: p. 145, § 2. CRS 53: § 66-1-24. C.R.S. 1963: § 66-1-24. L. 94: (1)(a) amended, p. 2701, § 254, effective July 1. L. 2008: Entire section repealed, p. 1345, § 3, effective May 27.

25-1-120. Nursing facilities - rights of patients. (1) The department shall require all skilled nursing facilities and intermediate care facilities to adopt and make public a statement of the rights and responsibilities of the patients who are receiving treatment in such facilities and to treat their patients in accordance with the provisions of said statement. The statement shall ensure each patient the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decisions, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights;

(b) The right to have private and unrestricted communications with any person of his choice;

(c) The right to present grievances on behalf of himself or others to the facility's staff or administrator, to governmental officials, or to any other person, without fear of reprisal, and to join with other patients or individuals within or outside of the facility to work for improvements in patient care;

(d) The right to manage his own financial affairs or to have a quarterly accounting of any financial transactions made in his behalf, should he delegate such responsibility to the facility for any period of time;

(e) The right to be fully informed, in writing, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including charges for services not covered under medicare or medicaid or not covered by the basic per diem rate;

(f) The right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by his physician, and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by his physician, and to know the consequences of such actions;

(g) The right to receive adequate and appropriate health care consistent with established and recognized practice standards within the community and with skilled and intermediate nursing care facility rules and regulations as promulgated by the department;

(h) The right to have privacy in treatment and in caring for personal needs, confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions;

(i) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement of the services provided by the facility, including those required to be offered on an as-needed basis;

(j) The right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints initiated through the judgment of the professional staff for a specified and limited period of time or on the written authorization of a physician;

(k) The right to be transferred or discharged only for medical reasons or his welfare, or that of other patients, or for nonpayment for his stay and the right to be given reasonable advance notice of any transfer or discharge, except in the case of an emergency as determined by the professional staff;

(l) The right to devolution of his or her rights and responsibilities upon a sponsor, guardian, or person exercising rights contained in a designated beneficiary agreement executed pursuant to article 22 of title 15, C.R.S., who shall see that he or she is provided with adequate, appropriate, and respectful medical treatment and care and all rights which he or she is capable of exercising should he or she be determined to be incompetent pursuant to law and not be restored to legal capacity;

(m) The right to freedom of choice in selecting a health care facility;

(n) The right to copies of the facility's rules and regulations and an explanation of his responsibility to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other patients.

(1.5) If a facility requires a lease agreement with a provision requiring in excess of a month-to-month tenancy and the lease agreement results in or requires forfeiture of more than thirty days of rent if a patient moves due to a medical condition or dies during the term of the lease agreement, then the lease agreement shall be deemed to be against public policy and shall be void; except that inclusion of such a provision shall not render the remainder of the contract or lease agreement void. A contract provision or lease agreement that requires forfeiture of rent for thirty days after the patient moves due to a medical condition or dies does not violate this section. The provisions regarding forfeiture of rent shall appear on the front page of the contract or lease agreement and shall be printed in no less than twelve-point bold-faced type. The provisions shall read as follows:

This lease agreement is for a month-to-month tenancy. The lessor shall not require the forfeiture of rent beyond a thirty-day period if the lessee moves due to a medical condition or dies during the term of the lease.

In circumstances in which the patient moves due to a medical condition or dies during the term of a contract or lease agreement, the facility shall return that part of the rent paid in excess of thirty days' rent after a patient moves or dies to the patient or the patient's estate. The facility may assess daily rental charges for any days in which the former or deceased patient's personal possessions remain in the patient's room after the period for which the patient has paid rent and for the usual time to clean the room after the patient's personal possessions have been removed. The facility shall have forty-five days after the date the patient's personal possessions have been removed from the patient's room to reconcile the patient's accounts and to return any moneys owed. This subsection (1.5) applies to any facility, or a distinct part of a facility, that meets the state nursing home licensing standards set forth in section 25-1.5-103 (1) (a) (I) and the licensing requirements specified in section 25-3-101. For purposes of this section, "daily rental charges" means an amount not to exceed one-thirtieth of thirty days' rental amount plus reasonable expenses.

(2) Each skilled nursing facility or intermediate care facility shall provide a copy of the statement required by subsection (1) of this section to each patient or his guardian at or before the patient's admission to a facility and to each staff member of a facility. Each such facility shall prepare a written plan and provide appropriate staff training to implement the provisions of this section.

(3) Each skilled nursing facility or intermediate care facility shall prepare a written plan and provide appropriate facilities to ensure that the rights guaranteed by subsection (1) of this section are enforced by a grievance procedure which contains the following procedures and rights:

(a) A resident of any facility, the residents' advisory council, or the sibling, child, spouse, parent, or person exercising rights contained in a designated beneficiary agreement executed pursuant to article 22 of title 15, C.R.S., of any resident may formally complain in the manner described in this subsection (3) about any conditions, treatment, or violations of his or her rights by the facility or its staff or about any treatment, conditions, or violations of the rights of any other resident, regardless of the consent of the victim of the alleged improper treatment, condition, or violation of rights by the facility or its staff.

(b) Each facility shall designate one full-time staff member, referred to in this subsection (3) as the "designee", to receive all grievances when they are first made.

(c) Each facility shall establish a grievance committee consisting of the chief administrator of the facility or his designee, a resident selected by the resident population of the facility, and a third person to be agreed upon by the administrator and the resident representative.

(d) If anyone designated in paragraph (a) of this subsection (3) wishes to complain about treatment, conditions, or violations of rights, he shall write or cause to be written his grievance or shall state it orally to the designee no later than fourteen days after the

occurrence giving rise to the grievance. The designee shall confer with persons involved in the occurrence and with any other witnesses and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(e) If the complainant or aggrieved party is dissatisfied with the findings and remedies or the implementation thereof, he may then make the same grievance orally or in writing, with any additional comments or information, to the grievance committee no later than ten days after the receipt of the explanation from the designee. Said committee shall confer with persons involved in the occurrence and with any other witnesses and, no later than ten days after the appeal from the designee, give a written explanation of its findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) Each skilled nursing facility or intermediate care facility shall also establish a residents' advisory council which shall consist of not less than five members selected by and from the resident population of the facility. The council shall meet at least once a month with the administrator of the facility and a representative of the staff to make recommendations concerning policies of the facility. The council may also present grievances to the grievance committee on behalf of a resident.

(5) If a complainant or aggrieved party is dissatisfied with the findings and remedies of the grievance committee or implementation thereof, except for grievances against a physician or his prescribed treatment, he may file the same grievance in writing with the executive director of the department. The department shall investigate the facts and circumstances of the grievance and make findings of fact, conclusions, and recommendations, copies of which shall be transmitted to the complainant and the nursing home administrator. If the complainant or the nursing home administrator is aggrieved by the findings and the recommendations of the department, the aggrieved party may request a hearing to be conducted by the department pursuant to section 24-4-105, C.R.S. The board shall adopt rules and regulations to carry out the intent of this section.

(6) Implementation of this section shall be pursuant to section 25.5-6-204, C.R.S.

(7) Nothing in this section shall apply to any nursing institution conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend exclusively upon spiritual means through prayer for healing in the practice of the religion of such church or denomination.

(8) (a) A patient who is eligible to receive medicaid benefits pursuant to articles 4, 5, and 6 of title 25.5, C.R.S., and who qualifies for nursing facility care shall have the right to select any nursing care facility recommended for certification by the department of public health and environment under Title XIX of the federal "Social Security Act", as amended, as a provider of medicaid services and licensed by the department pursuant to article 3 of this title where space is available, and the department of health care policy and financing shall reimburse the selected facility for services pursuant to section 25.5-6-204, C.R.S., unless such nursing care facility shall have been notified by the department of health care policy and financing that it may not qualify as a provider of medicaid services.

(b) A patient who is residing in such nursing care facility shall be assured the resident rights which are provided by section 4211 of Title IV of the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203. Failure to protect and promote those rights shall subject the violating facility to sanctions imposed by the department.

(9) A patient who is eligible to receive benefits from a skilled or intermediate nursing care facility certified by the department under Title XVIII of the federal "Social Security Act", as amended, as a provider of medicare services shall be assured the same rights as provided in paragraph (a) of subsection (8) of this section.

Source: L. 75: Entire section added, p. 873, § 1, effective July 1. L. 76: (8) added, p. 640, § 1, effective May 26. L. 89: (3)(a) and (8) amended and (9) added, p. 1144, § 1,

effective April 4. **L. 91:** (6) and (8)(a) amended, p. 1856, § 13, effective April 11. **L. 94:** (8)(a) amended, p. 2624, § 42, effective July 1. **L. 2006:** (6) and (8)(a) amended, p. 2012, § 81, effective July 1; (1.5) added, p. 253, § 1, effective January 1, 2007. **L. 2009:** (1)(l) and (3)(a) amended, (HB 09-1260), ch. 107, p. 448, § 18, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (8)(a), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Advocating for Quality Nursing Home Care and Sufficient Staffing in Colorado", see 34 Colo. Law. 31 (October 2005). For article, "Involuntary Discharge From Nursing Homes", see 34 Colo. Law. 37 (October 2005).

Substantive and due process rights of nursing home patients are established by this sec-

tion. *Macleod v. Miller*, 44 Colo. App. 313, 612 P.2d 1158 (1980).

Burden is on nursing facility to show that the transfer is in accordance with subsections (1)(k) and (8). *Macleod v. Miller*, 44 Colo. App. 313, 612 P.2d 1158 (1980).

25-1-121. Patient grievance mechanism - institution's obligations to patient.

(1) As used in this section, "institution" means every hospital or related facility or institution having in excess of fifty beds and required to be licensed under part 1 of article 3 of this title or required to be certified pursuant to section 25-1.5-103 (1) (a) (II), except skilled nursing facilities and intermediate care facilities which are subject to the provisions of section 25-1-120.

(2) The department shall require every institution to submit to the department a plan for a patient grievance mechanism and a policy statement with respect to the obligations of the institution to patients using the facilities of such institution. The plan and policy statement must meet with the approval of the department prior to certification of compliance or issuance or renewal of a license.

(3) A patient grievance mechanism plan shall include, but not be limited to:

(a) A provision for a patient representative to serve as a liaison between the patient and the institution;

(b) A description of the qualifications of the patient representative;

(c) An outline of the job description of the patient representative;

(d) A description of the amount of decision-making authority given to the patient representative;

(e) A method by which each patient will be made aware of the patient representative program and how the representative of the program may be contacted.

(4) The policy statement with respect to the obligations of the institution to patients using facilities of such an institution shall be posted conspicuously in a public place on its premises and made available to each patient upon admission. Such policy statement shall include, but need not be limited to, a clarification of a physician's duty to provide informed consent, admission procedures, staff identification, privacy, medical records, billing procedures, and the obligation of the physician to provide information regarding research, experimental, or educational projects relating to the patient's own case. Nothing in this section shall apply to any nursing institution conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend exclusively upon spiritual means through prayer for healing in the practice of the religion of such church or denomination.

Source: **L. 76:** Entire section added, p. 640, § 2, effective May 26. **L. 2003:** (1) amended, p. 708, § 33, effective July 1.

25-1-122. Named reporting of certain diseases and conditions - access to medical records - confidentiality of reports and records. (1) With respect to investigations of epidemic and communicable diseases, morbidity and mortality, cancer in connection with

the statewide cancer registry, environmental and chronic diseases, sexually transmitted infections, tuberculosis, and rabies and mammal bites, the board has the authority to require reporting, without patient consent, of occurrences of those diseases and conditions by any person having knowledge of such to the state department of public health and environment and county, district, and municipal public health agencies, within their respective jurisdictions. Any required reports shall contain the name, address, age, sex, and diagnosis and such other relevant information as the board determines is necessary to protect the public health. The board shall set the manner, time period, and form in which such reports are to be made. The board may limit reporting for a specific disease or condition to a particular region or community or for a limited period of time. Nothing in this subsection (1) shall be construed to apply to cases of AIDS, HIV-related illness, or HIV infection, which shall be governed solely by the reporting requirements set forth in part 14 of article 4 of this title.

(2) When investigating diseases and conditions pursuant to subsection (1) of this section, authorized personnel of the state department of public health and environment and county, district, and municipal public health agencies, within their respective jurisdictions, may, without patient consent, inspect, have access to, and obtain information from pertinent patient medical, coroner, and laboratory records in the custody of all medical practitioners, veterinarians, coroners, institutions, hospitals, agencies, laboratories, and clinics, whether public or private, which are relevant and necessary to the investigation. Review and inspection of records shall be conducted at reasonable times and with such notice as is reasonable under the circumstances. Under no circumstances may personnel of the state department of public health and environment or county, district, or municipal public health agencies, within their local jurisdictions, have access pursuant to this section to any medical record that is not pertinent, relevant, or necessary to the public health investigation. Nothing in this subsection (2) shall be construed to apply to cases of AIDS, HIV-related illness, or HIV infection, which shall be governed solely by the requirements relating to access to records and the release of information as set forth in part 14 of article 4 of this title.

(3) Any report or disclosure made in good faith pursuant to subsection (1) or (2) of this section shall not constitute libel or slander or a violation of any right of privacy or privileged communication.

(4) Reports and records resulting from the investigation of epidemic and communicable diseases, environmental and chronic diseases, reports of morbidity and mortality, reports of cancer in connection with the statewide cancer registry, and reports and records resulting from the investigation of sexually transmitted infections, tuberculosis, and rabies and mammal bites held by the state department of public health and environment or county, district, or municipal public health agencies shall be strictly confidential. Such reports and records shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under any of the following circumstances:

(a) Release may be made of medical and epidemiological information in a manner such that no individual person can be identified.

(b) Release may be made of medical and epidemiological information to the extent necessary for the treatment, control, investigation, and prevention of diseases and conditions dangerous to the public health; except that every effort shall be made to limit disclosure of personal identifying information to the minimal amount necessary to accomplish the public health purpose.

(c) Release may be made to the person who is the subject of a medical record or report with written authorization from such person.

(d) An officer or employee of the county, district, or municipal public health agency or the state department of public health and environment may make a report of child abuse to agencies responsible for receiving or investigating reports of child abuse or neglect in accordance with the applicable provisions of the "Child Protection Act of 1987" set forth in part 3 of article 3 of title 19, C.R.S. However, in the event a report is made by the state department of public health and environment, only the following information shall be included in the report:

(I) The name, address, and sex of the child;

(II) The name and address of the person responsible for the child;

(III) The name and address of the person who is alleged to be responsible for the suspected abuse or neglect, if known; and

(IV) The general nature of the child's injury.

(e) Medical and epidemiological information may be released to a peace officer as described in section 16-2.5-101, C.R.S., the federal bureau of investigation, a federal law enforcement agency as designated by the United States attorney for the district of Colorado, or any prosecutor to the extent necessary for any investigation or prosecution related to bioterrorism; except that reasonable efforts shall be made to limit disclosure of personal identifying information to the minimal amount necessary to accomplish the law enforcement purpose. For purposes of this paragraph (e), "bioterrorism" means the intentional use of, attempted use of, conspiracy to use, or solicitation to use microorganisms or toxins of biological origin or chemical or radiological agents to cause death or disease among humans or animals.

(5) No officer or employee or agent of the state department of public health and environment or county, district, or municipal public health agency shall be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report obtained by such department pursuant to subsection (1) or (2) of this section without that individual's consent. However, this provision shall not apply to individuals who are under isolation or quarantine, school exclusion, or other restrictive action taken pursuant to section 25-1.5-102 (1) (c) or part 4, 5, 6, or 9 of article 4 of this title.

(6) Any officer or employee or agent of the state department of public health and environment or a county, district, or municipal public health agency who violates this section by releasing or making public confidential public health reports or records or by otherwise breaching the confidentiality requirements of subsection (4) or (5) of this section commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501 (1), C.R.S.

(7) Nothing in subsections (4) to (6) of this section shall apply to records and reports held by the state or local department of health pursuant to part 14 of article 4 of this title.

(8) Pursuant to section 25-1-113, any person may seek judicial review of a decision of the board or of the department affecting such person under this section.

(9) Notwithstanding any other provision of law to the contrary, the department shall administer the provisions of this section regardless of an individual's race, religion, gender, ethnicity, national origin, or immigration status.

Source: **L. 91:** Entire section added, p. 943, § 2, effective May 6. **L. 93:** (4)(d) added, p. 1609, § 3, effective June 6. **L. 94:** (2), IP(4), IP(4)(d), (5), and (6) amended, p. 2741, § 378, effective July 1. **L. 2002:** (6) amended, p. 1536, § 263, effective October 1. **L. 2003:** (4)(e) added, p. 1020, § 1, effective April 17; (5) amended, p. 708, § 34, effective July 1. **L. 2004:** (4)(e) amended, p. 1201, § 65, effective August 4. **L. 2006, 1st Ex. Sess.:** (9) added, p. 25, § 1, effective July 31. **L. 2009:** (1) and IP(4) amended, (SB 09-179), ch. 112, p. 474, § 19, effective April 9. **L. 2010:** (1), (2), IP(4), IP(4)(d), (5), and (6) amended, (HB 10-1422), ch. 419, p. 2090, § 84, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), the introductory portions to subsections (4) and (4)(d), and subsections (5) and (6), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

25-1-122.5. Confidentiality of genetic testing records - "Uniform Parentage Act". Notwithstanding any other law concerning public records, any records or information

concerning the genetic testing of a person for purposes of the determination of parentage pursuant to article 4 of title 19, C.R.S., shall be confidential and shall not be disclosed except as otherwise provided in section 19-1-308, C.R.S.

Source: **L. 94:** Entire section added, p. 1549, § 28, effective May 31. **L. 96:** Entire section amended, p. 1175, § 14, effective January 1, 1997.

25-1-123. Restructure of health and human services - development of plan - participation of department required. The department, in cooperation with the department of health care policy and financing and the department of human services, shall develop a plan for the restructuring of the health and human services delivery system in the state in accordance with article 1.7 of title 24, C.R.S.

Source: **L. 93:** Entire section added, p. 1097, § 14, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

25-1-124. Health care facilities - consumer information - reporting - release. (1) The general assembly hereby finds that an increasing number of people are faced with the difficult task of choosing a health care facility for themselves and their family members. This task may be made less difficult by improved access to reliable, helpful, and unbiased information concerning the quality of care and the safety of the environment offered by each health care facility. The general assembly further finds that it is appropriate that the department, in keeping with its role of protecting and improving the public health, solicit this information from health care facilities and disseminate it to the public in a form that will assist people in making informed choices among health care facilities.

(2) Each health care facility licensed pursuant to section 25-3-101 or certified pursuant to section 25-1.5-103 (1) (a) (II) shall report to the department all of the following occurrences:

(a) Any occurrence that results in the death of a patient or resident of the facility and is required to be reported to the coroner pursuant to section 30-10-606, C.R.S., as arising from an unexplained cause or under suspicious circumstances;

(b) Any occurrence that results in any of the following serious injuries to a patient or resident:

(I) Brain or spinal cord injuries;

(II) Life-threatening complications of anesthesia or life-threatening transfusion errors or reactions;

(III) Second- or third-degree burns involving twenty percent or more of the body surface area of an adult patient or resident or fifteen percent or more of the body surface area of a child patient or resident;

(c) Any time that a resident or patient of the facility cannot be located following a search of the facility, the facility grounds, and the area surrounding the facility and there are circumstances that place the resident's health, safety, or welfare at risk or, regardless of whether such circumstances exist, the patient or resident has been missing for eight hours;

(d) Any occurrence involving physical, sexual, or verbal abuse of a patient or resident, as described in section 18-3-202, 18-3-203, 18-3-204, 18-3-206, 18-3-402, 18-3-403, as it existed prior to July 1, 2000, 18-3-404, or 18-3-405, C.R.S., by another patient or resident, an employee of the facility, or a visitor to the facility;

(e) Any occurrence involving neglect of a patient or resident, as described in section 26-3.1-101 (4) (b), C.R.S.;

(f) Any occurrence involving misappropriation of a patient's or resident's property. For purposes of this paragraph (f), "misappropriation of a patient's or resident's property" means a pattern of or deliberately misplacing, exploiting, or wrongfully using, either temporarily or permanently, a patient's or resident's belongings or money without the patient's or resident's consent.

(g) Any occurrence in which drugs intended for use by patients or residents are diverted to use by other persons. If the diverted drugs are injectable, the health care facility shall also report the full name and date of birth of any individual who diverted the injectable drugs, if known.

(h) Any occurrence involving the malfunction or intentional or accidental misuse of patient or resident care equipment that occurs during treatment or diagnosis of a patient or resident and that significantly adversely affects or if not averted would have significantly adversely affected a patient or resident of the facility.

(2.5) (a) In addition to the reports required by subsection (2) of this section, if the Colorado attorney general, the division for developmental disabilities in the department of human services, a community centered board, an adult protection service, or a law enforcement agency makes a report of an occurrence as described in subsection (2) of this section involving a licensed long-term care facility, that report shall be provided to the department and shall be made available for inspection consistent with the provisions of subsection (6) of this section. Any reports concerning an adult protection service shall be in compliance with the confidentiality requirements of section 26-3.1-102 (7), C.R.S.

(b) For purposes of this subsection (2.5), a "licensed long-term care facility" means a licensed community residential or group home, a licensed intermediate care facility for the mentally retarded, and a licensed facility for persons with developmental disabilities.

(3) The board by rule shall specify the manner, time period, and form in which the reports required pursuant to subsection (2) of this section shall be made.

(4) Any report submitted pursuant to subsection (2) of this section shall be strictly confidential; except that information in any such report may be transmitted to an appropriate regulatory agency having jurisdiction for disciplinary or license sanctions. The information in such reports shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided in subsection (6) of this section.

(5) The department shall investigate each report submitted pursuant to subsection (2) of this section that it determines was appropriately submitted. For each report investigated, the department shall prepare a summary of its findings, including the department's conclusions and whether there was a violation of licensing standards or a deficiency or whether the facility acted appropriately in response to the occurrence. If the investigation is not conducted on site, the department shall specify in the summary how the investigation was conducted. Any investigation conducted pursuant to this subsection (5) shall be in addition to and not in lieu of any inspection required to be conducted pursuant to section 25-1.5-103 (1) (a) with regard to licensing.

(6) (a) The department shall make the following information available to the public:

(I) Any investigation summaries prepared pursuant to subsection (5) of this section;

(II) Any complaints against a health care facility that have been filed with the department and that the department has investigated, including the conclusions reached by the department and whether there was a violation of licensing standards or a deficiency or whether the facility acted appropriately in response to the subject of the complaint; and

(III) A listing of any deficiency citations issued against each health care facility.

(b) The information released pursuant to this subsection (6) shall not identify the patient or resident or the health care professional involved in the report.

(7) Prior to the completion of an investigation pursuant to this section, the department may respond to any inquiry regarding a report received pursuant to subsection (2) of this section by confirming that it has received such report and that an investigation is pending.

(8) In addition to the report to the department for an occurrence described in paragraph (d) of subsection (2) of this section, the occurrence shall be reported to a law enforcement agency.

Source: L. 97: Entire section added, p. 504, § 1, effective April 24. L. 2000: (2)(d) amended, p. 708, § 37, effective July 1. L. 2003: IP(2) and (5) amended, p. 708, § 35, effective July 1. L. 2006: (2.5) and (8) added, p. 349, § 1, effective April 6. L. 2010: IP(2) and (2)(g) amended, (HB 10-1414), ch. 338, p. 1552, § 1, effective June 5.

Cross references: For limitation on liability regarding transplants and transfusion of blood, see § 13-22-104.

25-1-124.5. Nursing care facilities - employees - criminal history check. (1) On and after September 1, 1996, prior to employing any person, a nursing care facility or the person seeking employment at a nursing care facility shall make an inquiry to the director of the Colorado bureau of investigation or to private criminal background check companies authorized to do business in the state of Colorado to ascertain whether such person has a criminal history, including arrest and conviction records. The Colorado bureau of investigation or private criminal background check companies are authorized to utilize fingerprints to ascertain from the federal bureau of investigation whether such person has a criminal history record. The nursing care facility or the person seeking employment in a nursing care facility shall pay the costs of such inquiry. The criminal history check shall be conducted not more than ninety days prior to the employment of the applicant. For purposes of this section, criminal background check companies shall be approved by the state board of nursing. In approving such companies, approval shall be based upon the provision of lawfully available, accurate, and thorough information pertaining to criminal histories, including arrest and conviction records.

(2) As used in this section, “nursing care facility” includes, but is not limited to:

(a) A nursing facility as defined in section 25.5-4-103 (14), C.R.S.;

(b) An intermediate nursing facility for the mentally retarded as defined in section 25.5-4-103 (9), C.R.S.;

(c) An adult day care facility as defined in section 25.5-6-303 (1), C.R.S.;

(d) An alternative care facility as defined in section 25.5-6-303 (3), C.R.S.;

(e) Any business that provides temporary nursing care services or that provides personnel who provide such services.

Source: L. 2002: Entire section added, p. 1180, § 3, effective July 1. L. 2006: (2)(a) to (2)(d) amended, p. 2013, § 82, effective July 1.

25-1-125. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant’s name, address, and social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, “license” means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to

participate in any recreational activity. “License” may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1285, § 28, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 51 of chapter 236. Session Laws of Colorado 1997.

25-1-126. County practitioner rural recruitment grant program - creation - legislative declaration - administration - report - definitions - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 2093, § 3, effective July 1, 2008.

Editor’s note: Subsection (6) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 2093.)

25-1-127. Medical equipment for rural communities grant program - creation - legislative declaration - administration - report - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 2093, § 3, effective July 1, 2008.

Editor’s note: Subsection (6) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 2093.)

PART 2

ALCOHOL AND DRUG ABUSE

25-1-201 to 25-1-217. (Repealed)

Source: L. 2010: Entire part repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor’s note: (1) This part 2 was numbered as article 36 of chapter 66, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this part 2 were relocated to article 80 of title 27 in 2010.

(3) Section 25-1-201 (4) was amended by House Bill 10-1422 and section 25-1-217 (3)(a) was amended by House Bill 10-1347. Said bills were harmonized with Senate Bill 10-175 and relocated to sections 27-80-101 and 27-80-117, respectively.

PART 3

ALCOHOLISM AND INTOXICATION TREATMENT

25-1-301 to 25-1-316. (Repealed)

Source: L. 2010: Entire part repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor’s note: (1) This part 3 was numbered as article 45 of chapter 66, C.R.S. 1963. For amendments to this part 3 prior to its repeal in 2010, consult the Colorado statutory research

explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this part 3 were relocated to article 81 of title 27 in 2010.

PART 4

STATE CHEMIST

25-1-401. Office of state chemist created. The professor of food and drug chemistry in the department of chemistry at the university of Colorado shall be the state chemist of Colorado. The office and laboratory of the state chemist shall be in the department of chemistry at the university of Colorado. The office of state chemist shall be a section of the division of administration of the department of public health and environment.

Source: L. 39: p. 550, § 1. CSA: C. 78, § 25(1). CRS 53: § 66-16-1. C.R.S. 1963: § 66-16-1. L. 68: p. 107, § 78. L. 94: Entire section amended, p. 2742, § 380, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-1-402. Employment of assistants. The state chemist has the power to employ such assistants as are necessary for the carrying out of this part 4. The appropriations for the office of state chemist shall be determined by each general assembly in the general appropriation bill. The state chemist and his assistant shall also be reimbursed for all legitimate and necessary expenses incurred in the performance of the duties of the office of state chemist.

Source: L. 39: p. 550, § 2. CSA: C. 78, § 25(2). CRS 53: § 66-16-2. C.R.S. 1963: § 66-16-2.

25-1-403. Analyses of food and drugs. It is the duty of the state chemist to make or cause to be made chemical analyses of all such samples of foods and drugs as may be collected for the purpose of analysis by the department of public health and environment. The state chemist shall make full and complete written reports, without unnecessary delay, of such analyses to the department of public health and environment.

Source: L. 39: p. 550, § 3. CSA: C. 78, § 25(3). CRS 53: § 66-16-3. C.R.S. 1963: § 66-16-3. L. 94: Entire section amended, p. 2742, § 381, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-1-404. Certificate presumptive evidence. By the authority of this part 4, every certificate of analysis of foods or drugs duly signed by the state chemist shall be presumptive evidence of the facts therein stated.

Source: L. 39: p. 550, § 4. CSA: C. 78, § 25(4). CRS 53: § 66-16-4. C.R.S. 1963: § 66-16-4.

PART 5

PUBLIC HEALTH

Editor's note: This part 5 was numbered as article 2 of chapter 66, C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 2008, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 2008, consult

the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 5, see the comparative tables located in the back of the index.

Cross references: For right to establish disposal districts in counties maintaining health departments, see part 2 of article 20 of title 30.

Law reviews: For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

SUBPART 1

GENERAL

25-1-501. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The public health system reduces health care costs by preventing disease and injury, promoting healthy behavior, and reducing the incidents of chronic diseases and conditions. Thus, the public health system is a critical part of any health care reform.

(b) Each community in Colorado should provide high-quality public health services regardless of its location. Thus, the state of Colorado and each local public health agency should have a comprehensive public health plan outlining how quality public health services will be provided.

(c) Each county should establish or be part of a local public health agency organized under a local board of health with a public health director and other staff necessary to provide public health services;

(d) A strong public health infrastructure is needed to provide essential public health services and is a shared responsibility among state and local public health agencies and their partners within the public health system; and

(e) Developing a strong public health infrastructure requires the coordinated efforts of state and local public health agencies and their public and private sector partners within the public health system to:

(I) Identify and provide leadership for the provision of essential public health services;

(II) Develop and support an information infrastructure that supports essential public health services and functions;

(III) Develop and provide effective education and training for members of the public health workforce;

(IV) Develop performance-management standards for the public health system that are tied to improvements in public health outcomes or other measures; and

(V) Develop a comprehensive plan and set priorities for providing essential public health services.

Source: L. 2008: Entire part R&RE, p. 2030, § 1, effective July 1.

25-1-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Agency" means a county or district public health agency established pursuant to section 25-1-506.

(2) "Core public health" shall be defined by the state board and shall include, but need not be limited to, the assessment of health status and health risks, development of policies to protect and promote health, and assurance of the provision of the essential public health services.

(3) "Essential public health services" means to:

(a) Monitor health status to identify and solve community health problems;

(b) Investigate and diagnose health problems and health hazards in the community;

(c) Inform, educate, and empower individuals about health issues;

- (d) Mobilize public and private sector collaboration and action to identify and solve health problems;
 - (e) Develop policies, plans, and programs that support individual and community health efforts;
 - (f) Enforce laws and rules that protect health and promote safety;
 - (g) Link individuals to needed personal health services and ensure the provision of health care;
 - (h) Encourage a competent public health workforce;
 - (i) Evaluate effectiveness, accessibility, and quality of personal and population-based public health services; and
 - (j) Contribute to research into insightful and innovative solutions to health problems.
- (4) “Medical officer” means a volunteer or paid licensed physician who contracts with or is employed by a county or district public health agency to advise the public health director on medical decisions if the public health director is not a licensed physician.
- (5) “Public health” means the prevention of injury, disease, and premature mortality; the promotion of health in the community; and the response to public and environmental health needs and emergencies and is accomplished through the provision of essential public health services.
- (6) “Public health agency” means an organization operated by a federal, state, or local government or its designees that acts principally to protect or preserve the public’s health. “Public health agency” includes a county public health agency or a district public health agency.
- (7) “Public health director” means the administrative and executive head of each county or district public health agency.
- (8) “Public health system” means state, county, and district public health agencies and other persons and organizations that provide public health services or promote public health.
- (9) “State board” means the state board of health created pursuant to section 25-1-103.
- (10) “State department” means the department of public health and environment created pursuant to section 25-1-102.

Source: L. 2008: Entire part R&RE, p. 2031, § 1, effective July 1.

25-1-503. State board - public health duties. (1) In addition to all other powers and duties conferred and imposed upon the state board, the state board has the following specific powers and duties:

- (a) To establish, by rule, the core public health services that each county and district public health agency must provide or arrange for the provision of said services;
- (b) To establish, by rule, the minimum quality standards for public health services;
- (c) To establish, by rule, the minimum qualifications for county and district public health directors and medical officers;
- (d) To ensure the development and implementation of a comprehensive, statewide public health improvement plan;
- (e) To review all county and district public health agency public health plans, which review shall be based on criteria established by rule by the state board and against which each county or district public health plan shall be evaluated; and
- (f) To establish, by rule, for the fiscal year beginning July 1, 2009, if practicable, and for each fiscal year thereafter, a formula for allocating moneys to county or district public health agencies based on input from the state department and from county or district public health agencies.

Source: L. 2008: Entire part R&RE, p. 2032, § 1, effective July 1.

SUBPART 2

PUBLIC HEALTH PLANS

25-1-504. Comprehensive public health plan - development - approval - reassessment - cash fund. (1) On or before December 31, 2009, and at a minimum on or before December 31 every five years thereafter, the state department shall develop a comprehensive, statewide public health improvement plan, referred to in this section as the “plan”, that assesses and sets priorities for the public health system. The state board may appoint ad hoc or advisory committees as needed for the plan development process. The plan shall be developed in consultation with the state board and representatives from the state department, county or district public health agencies, and their partners within the public health system. The plan shall rely on existing or available data or other information acquired pursuant to this part 5, as well as national guidelines or recommendations concerning public health outcomes or improvements.

(2) (a) The plan shall assess and set priorities for the public health system and shall:

(I) Guide the public health system in targeting core public health services and functions through program development, implementation, and evaluation;

(II) Increase the efficiency and effectiveness of the public health system;

(III) Identify areas needing greater resource allocation to provide essential public health services;

(IV) Incorporate, to the extent possible, goals and priorities of public health plans developed by county or district public health agencies; and

(V) Consider available resources, including but not limited to state and local funding, and be subject to modification based on actual subsequent allocations.

(b) The plan shall include or address at a minimum the following elements:

(I) Core public health services and standards for county and district public health agencies;

(II) Recommendations for legislative or regulatory action, including but not limited to updating public health laws, eliminating obsolete statutory language, and establishing an effective and comprehensive state and local public health infrastructure;

(III) Identification and quantification of existing public health problems, disparities, or threats at the state and county levels;

(IV) Identification of existing public health resources at the state and local levels;

(V) Declaration of the goals of the plan;

(VI) Identification of specific recommendations for meeting these goals;

(VII) Development of public and environmental health infrastructure that supports core public health functions and essential public health services at the state and local levels;

(VIII) Explanation of the prioritization of one or more conditions of public health importance;

(IX) Detailed description of strategies to develop and promote culturally and linguistically appropriate services;

(X) Development, evaluation, and maintenance of, and improvements to, an information infrastructure that supports essential public health services;

(XI) Detailed description of the programs and activities that will be pursued to address existing public and environmental health problems, disparities, or threats;

(XII) Detailed description of how public health services will be integrated and public health resources shared to optimize efficiency and effectiveness of the public health system;

(XIII) Detailed description of how the plan will support county or district public health agencies in achieving the goals of their county or district public health plans;

(XIV) Estimation of costs of implementing the plan;

(XV) A timeline for implementing various elements of the plan;

(XVI) A strategy for coordinating service delivery within the public health system; and

(XVII) Measurable indicators of effectiveness and successes.

(c) The plan, including core public health services and standards, shall prospectively cover up to five years, subject to annual revisions and the implementation schedule established by the state board.

(3) The state department shall make the plan available to the governor, the general assembly, the state board, county and district public health agencies, and other partners.

(4) The state department is authorized to solicit and accept any gifts, grants, or donations to pay for the development of the plan. Any moneys received pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the same to the comprehensive public health plan cash fund, which is hereby created and referred to in this subsection (4) as the “fund”. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. Moneys in the fund may be expended by the state department, subject to annual appropriation by the general assembly, for the development of the plan described in this section.

(5) If the moneys received by the state department through gifts, grants, and donations are insufficient to cover the direct and indirect costs of complying with the provisions of section 25-1-503 and this section, the state department shall not be required to implement the provisions of said sections.

Source: L. 2008: Entire part R&RE, p. 2033, § 1, effective July 1.

25-1-505. County and district public health plans - approval. (1) As soon as practicable after the approval of each comprehensive, statewide public health improvement plan pursuant to section 25-1-504, each county or district public health agency shall prepare a county or district public health plan, referred to in this section as the “local plan”. Each local plan shall not be inconsistent with the comprehensive, statewide public health improvement plan required under section 25-1-504.

(2) Each local plan shall, at a minimum:

- (a) Examine data about health status and risk factors in the local community;
- (b) Assess the capacity and performance of the county or district public health system;
- (c) Identify goals and strategies for improving the health of the local community;
- (d) Describe how representatives of the local community develop and implement the local plan;
- (e) Address how county or district public health agencies coordinate with the state department and others within the public health system to accomplish goals and priorities identified in the comprehensive, statewide public health improvement plan; and
- (f) Identify financial resources available to meet identified public health needs and to meet requirements for the provision of core public health services.

(3) Subject to available appropriations, the state department shall encourage and provide technical assistance to county or district public health agencies that request such assistance and otherwise work with county or district public health agencies to generate their local plans.

Source: L. 2008: Entire part R&RE, p. 2035, § 1, effective July 1.

SUBPART 3

COUNTY OR DISTRICT PUBLIC HEALTH AGENCIES

25-1-506. County or district public health agency. (1) Each county, by resolution of its board of county commissioners, shall establish and maintain a county public health agency or shall participate in a district public health agency. Any two or more contiguous counties, by resolutions of the boards of county commissioners of the respective counties, may establish and maintain a district public health agency. An agency shall consist of a county or district board of health, a public health director, and all other personnel employed or retained under the provisions of this subpart 3.

(2) (a) (I) The jurisdiction of any agency shall extend over all unincorporated areas and over all municipal corporations within the territorial limits of the county or the counties comprising the district, but not over the territory of any municipal corporation that

maintains its own public health agency. If the county has a county public health agency or a district board of health and if the county is within a district public health agency, any municipal corporation not otherwise within the jurisdiction of an agency, by agreement of its city council, board of trustees or other governing body, and the board of county commissioners of the county wherein the municipal corporation is situated may merge its department with the county or district public health agency.

(II) In the event of a merger between a health department of a municipal corporation with a county or district public health agency, the agreement of merger, among other things, shall provide that a member or members of the county or district board of health, as is specified in the agreement, shall be appointed by the city council or board of trustees of the municipal corporation rather than as provided in this section. The city council or board of trustees shall appoint the number of members specified in the agreement of merger, and the remaining members shall be appointed as provided in this section.

(III) The board of county commissioners, in order to give the municipal corporation representation on a county board of health previously established, may declare vacancies in the county board of health and permit the vacancies to be filled by the city council or board of trustees of the municipal corporation.

(b) All county or district boards of health existing within the county or district shall be dissolved upon the organization of a county or district public health agency under the provisions of this part 5 or upon the acceptance of a county into a district already established.

(c) In the event of the dissolution of any county or district public health agency, the withdrawal of a county from an established district, or the withdrawal of a municipal corporation that has voluntarily merged its health department or agency with a county or district public health agency, local boards of health shall be reestablished under the provisions of this part 5 and assume the powers and duties conferred upon such local boards.

(3) (a) Subject to available appropriations, an agency shall provide or arrange for the provisions of services necessary to carry out the public health laws and rules of the state board, the water quality control commission, the air quality control commission, and the solid and hazardous waste commission according to the specific needs and resources available within the community as determined by the county or district board of health or the board of county commissioners and as set out in both the comprehensive, statewide public health improvement plan developed pursuant to section 25-1-504 and the county or district public health plan developed pursuant to section 25-1-505.

(b) In addition to other powers and duties, an agency shall have the following duties:

(I) To complete a community health assessment and to create the county or district public health plan at least every five years under the direction of the county or district board and to submit the plan to the county or district board and state board for review;

(II) To advise the county or district board on public policy issues necessary to protect public health and the environment;

(III) To provide or arrange for the provision of quality, core public health services deemed essential by the state board and the comprehensive, statewide public health improvement plan; except that the agency shall be deemed to have met this requirement if the agency can demonstrate to the county or district board that other providers offer core public health services that are sufficient to meet the local needs as determined by the plan;

(IV) To the extent authorized by the provisions of this title or article 20 of title 30, C.R.S., to administer and enforce the laws pertaining to:

(A) Public health, air pollution, solid and hazardous waste, and water quality;

(B) Vital statistics; and

(C) The orders, rules, and standards of the state board and any other **type 1** agency created pursuant to the provisions of this title;

(V) To investigate and control the causes of epidemic or communicable diseases and conditions affecting public health;

(VI) To establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, and for this purpose only, to exercise physical control over property and over the

persons of the people within the jurisdiction of the agency as the agency may find necessary for the protection of the public health;

(VII) To close schools and public places and to prohibit gatherings of people when necessary to protect public health;

(VIII) To investigate and abate nuisances when necessary in order to eliminate sources of epidemic or communicable diseases and conditions affecting public health;

(IX) To establish, maintain, or make available chemical, bacteriological, and biological laboratories, and to conduct such laboratory investigations and examinations as it may deem necessary or proper for the protection of the public health;

(X) To purchase and distribute to licensed physicians and veterinarians, with or without charge, as the county or district board may determine upon considerations of emergency or need, approved biological or therapeutic products necessary for the protection of public health;

(XI) To initiate and carry out health programs consistent with state law that are necessary or desirable by the county or district board to protect public health and the environment;

(XII) To collect, compile, and tabulate reports of marriages, dissolutions of marriage, and declarations of invalidity of marriage, births, deaths, and morbidity, and to require any person having information with regard to the same to make such reports and submit such information as is required by law or the rules of the state board;

(XIII) To make necessary sanitation and health investigations and inspections, on its own initiative or in cooperation with the state department, for matters affecting public health that are within the jurisdiction and control of the agency; and

(XIV) To collaborate with the state department and the state board in all matters pertaining to public health, the water quality control commission in all matters pertaining to water quality, the air quality control commission and the division of administration of the state department in all matters pertaining to air pollution, and the solid and hazardous waste commission in all matters pertaining to solid and hazardous waste.

(c) If a county or district board of health does not receive sufficient appropriations to fulfill all the duties described in paragraph (b) of this subsection (3), the county or district board shall set priorities for fulfilling the duties and shall include the list of priorities in its county or district public health plan submitted pursuant to section 25-1-505.

(4) Repealed.

Source: L. 2008: Entire part R&RE, p. 2036, § 1, effective July 1.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 2008. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2009. (See L. 2008, p. 2036.)

ANNOTATION

Law reviews. For article, "Synthetic Fuels — Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980).

Annotator's note. Since § 25-1-506 is similar to §§ 25-1-501 and 25-1-506 as they existed prior to the 2008 repeal and reenactment of this part 5, relevant cases construing those provisions have been included in the annotations to this section.

Overview of the state's three-tiered public health system and the responsibilities delegated

under parts 5 and 6 of this article appears in *Jefferson County Health Servs. Ass'n v. Feeney*, 974 P.2d 1001 (Colo. 1998).

County board of health, not the board of county commissioners, is the "governing body" of a county health department for purposes of notice under the Colorado Governmental Immunity Act. *Jefferson County Health Servs. Ass'n v. Feeney*, 974 P.2d 1001 (Colo. 1998).

Applied in *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

25-1-507. Municipal board of health. Except as otherwise provided by law, the mayor and council of each incorporated town or city, whether incorporated under general statutes

or special charter in this state, may establish a municipal public health agency and appoint a municipal board of health. If appointed, the municipal board of health shall have all the powers and responsibilities and perform all the duties of a county or district board of health as provided in this part 5 within the limits of the respective city or town of which they are the officers.

Source: L. 2008: Entire part R&RE, p. 2039, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-609 as it existed prior to 2008.

25-1-508. County or district boards of public health - public health directors.

(1) Within ninety days after the adoption of a resolution to establish and maintain a county public health agency or to participate in a district public health agency, the respective board of county commissioners shall proceed to organize the agency by the appointment of a county or district board of health, referred to in this part 5 as a "county or district board".

(2) (a) (I) Each county board of health shall consist of at least five members to be appointed by the board of county commissioners for five-year terms; except that the board of county commissioners shall stagger the terms of the initial appointments. Thereafter, full-term appointments shall be for five years.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), a county with a population of less than one hundred thousand people may have a county board of health that consists of at least three members to be appointed by the board of county commissioners for five-year terms; except that the board of county commissioners shall stagger the terms of the initial appointments. Thereafter, full-term appointments shall be for five years.

(b) Each member of the county board of health shall be a resident of the county in which the county agency is located. Appointments shall be made to the board so that no business or professional group or governmental entity shall constitute a majority of the board. Any vacancy on the board shall be filled in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

(c) In a county with a population of less than one hundred thousand people that, as of July 1, 2008, does not have a board of health that is separate from the board of county commissioners, the board of county commissioners may designate itself as the county board of health as of July 1, 2008. The terms of the members of the county board of health shall coincide with their terms as commissioners. Such county boards shall assume all the duties of appointed county boards.

(d) Notwithstanding the provisions of paragraphs (a) to (c) of this subsection (2), a county board of health in a home-rule county shall comply with the requirements of its home-rule charter.

(3) (a) Each district board of health shall consist of a minimum of five members. The membership of each district board of health shall include at least one representative from each county in the district. The members of the board shall be appointed by an appointments committee composed of one member of each of the boards of county commissioners of the counties comprising the district. The appointments committee for each district board shall designate the number of members of its district board and shall establish staggered terms for the initial appointments. Thereafter, full-term appointments shall be for five years.

(b) Each member of the district board shall be a resident of one of the counties comprising the district, and there shall be at least one member from each of the counties comprising the district. Appointments shall be made to the district board so that no business or professional group or governmental entity shall constitute a majority of the district board. The appointments committee shall fill any vacancy on the district board by the appointment of a qualified person for the remainder of the unexpired term.

(c) Upon establishment of a district board, all county boards previously existing within the county or district shall be dissolved. Upon the acceptance of a new county into an established district, the county or district board previously existing for the county being added shall be dissolved and the chair of the previous county or district board or the chair's

designee shall represent the new county on the district board until a new member is appointed by the appointments committee.

(4) (a) A county or district board, at its organizational meeting, shall elect from its members a president and other officers as it shall determine. The public health director of the agency, at the discretion of the board, may serve as secretary but shall not be a member of the board. All officers and the public health director shall hold their positions at the pleasure of the board.

(b) (I) Regular meetings of a county or district board shall be held at least once every three months at such times as may be established by resolution of the board. Special meetings of a board may be called by the president, by the public health director, or by a majority of the members of the board at any time on three days' prior notice; except that, in case of emergency, twenty-four hours' notice shall be sufficient.

(II) A county or district board may adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority of the board shall constitute a quorum. Members of the board shall serve without compensation but shall be reimbursed for their actual and necessary travel and subsistence expenses to attend meetings.

(5) In addition to all other powers and duties conferred and imposed upon a county board of health or a district board of health by the provisions of this subpart 3, a county board of health or a district board of health shall have and exercise the following specific powers and duties:

(a) To develop and promote the public policies needed to secure the conditions necessary for a healthy community;

(b) To approve the local public health plan completed by the county or district agency, and to submit the local plan to the state board for review;

(c) (I) To select a public health director to serve at the pleasure of the county or district board. The public health director shall possess such minimum qualifications as may be prescribed by the state board. A public health director may be a physician, a public health nurse, or other qualified public health professional. A public health director may practice medicine or nursing within his or her license and scope of practice, as necessary, to carry out the functions of the office of the public health director. The qualifications shall reflect the resources and needs of the county or counties covered by the agency. If the public health director is not a physician, the county or district board shall employ or contract with at least one medical officer to advise the public health director on medical decisions. The public health director shall maintain an office location designated by the county or district board and shall be the custodian of all property and records of the agency.

(II) A person employed or under contract to act as a medical officer pursuant to this paragraph (c) shall be covered by the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., for duties performed for the agency.

(d) (I) In the event of a vacancy in the position of public health director or medical officer, to either employ or contract with a person deemed qualified to fill the position or to request temporary assistance from a public health director or a medical officer from another county. The county or district board may also request that an employee of the state department, such as a qualified executive director or the chief medical officer, serve on an interim basis with all the powers and duties of the position.

(II) A person filling a temporary vacancy as public health director or medical officer shall be covered by the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., for duties performed for the agency.

(e) To provide, equip, and maintain suitable offices and all necessary facilities for the proper administration and provision of core public health services, as defined by the state board;

(f) To determine general policies to be followed by the public health director in administering and enforcing public health laws, orders, and rules of the county or district board, and orders, rules, and standards of the state board;

(g) To issue orders and to adopt rules not inconsistent with the public health laws of this state nor with the orders or rules of the state board as the county or district board may deem

necessary for the proper exercise of the powers and duties vested in or imposed upon an agency or county or district board by this part 5;

(h) To act in an advisory capacity to the public health director on all matters pertaining to public health;

(i) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon a county or district board;

(j) To provide environmental health services and to assess fees to offset the actual, direct cost of such services; except that no fee for a service shall be assessed against any person who has already paid a fee to the state or federal government for the service, and except that the only fee that shall be charged for annual retail food establishment inspections shall be the fee set forth in section 25-4-1607;

(k) To accept and, through the public health director, to use, disburse, and administer all federal aid, state aid, or other property, services, or moneys allotted to an agency for county or district public health functions or allotted without designation of a specific agency for purposes that are within the functions of an agency, and to prescribe, by rule consistent with the laws of this state, the conditions under which the property, services, or moneys shall be accepted and administered. The county or district board is empowered to make agreements that may be required to receive such moneys or other assistance.

(l) To approve, as provided for in section 25-1-520, a clean syringe exchange program proposed by an agency. A county board of health or district board of health shall not be required to approve a proposed program.

(6) Repealed.

Source: L. 2008: Entire part R&RE, p. 2039, § 1, effective July 1. L. 2010: IP(5) and (5)(j) amended and (5)(l) added, (SB 10-189), ch. 272, p. 1252, § 2, effective August 11.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 2008. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2009. (See L. 2008, p. 2039.)

ANNOTATION

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

Annotator's note. Since § 25-1-508 is similar to §§ 25-1-505, 25-1-507, 25-1-601, and 25-1-610 as they existed prior to the 2008 repeal and reenactment of this part 5, relevant cases construing those provisions have been included in the annotations to this section.

This section is unlawful delegation of legislative power. Subsection (1)(d), delegating power to local boards of health to adopt rules and regulations, and § 25-1-514 (1)(a), providing that a violation of such rules and regulations shall be a misdemeanor, constitute an unlawful delegation of power to the executive department to define a crime in violation of Colo. Const. art. III. *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959).

The general assembly cannot lawfully delegate its power of defining a crime to district or county health departments. *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959).

County board's rules may not override statutory authority. County personnel rules,

even though adopted by the county board of health, do not override the explicit statutory authority of the board to discharge a public health officer appointed by the board at any time without cause or formal procedure. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

A county board of health, as a political subdivision of the state, may not by rule or regulation abdicate the authority and responsibility delegated to it by the general assembly. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Overview of the state's three-tiered public health system and the responsibilities delegated under parts 5 and 6 of this article appears in *Jefferson County Health Svcs. Ass'n v. Feeney*, 974 P.2d 1001 (Colo. 1998).

County board of health, not the board of county commissioners, is the "governing body" of a county health department for purposes of notice under the Colorado Governmental Immunity Act. *Jefferson County Health Svcs. Ass'n v. Feeney*, 974 P.2d 1001 (Colo. 1998).

Board may not discharge employee in retaliation for exercise of free speech rights. Even though a public health officer is subject to discharge at the pleasure of the board, this does not mean that the board's discretion is limitless. It is well established that even where a government employer may discharge an employee for no reason whatsoever, it nevertheless may not discharge that employee in retaliation for the exercise of his free speech rights. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Resignation prompted by threat of dismissal is equivalent of refusal to rehire. A resignation precipitated by the threat of dismissal is the substantive equivalent of a refusal to rehire by the board. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Appointed physician may substitute another physician's services. Even if the contract between a county and a physician to provide medical attention for the poor were one which called for personal services, it would be unreasonable to hold that the physician could not substitute another reputable physician in his stead during sickness or temporary absence. *Bd. of County Comm'rs v. Bedell*, 13 Colo. App. 261, 57 P. 187 (1899).

25-1-509. County and district public health directors. (1) (a) The director of each agency shall be the public health director.

(b) All other personnel required by an agency shall be selected by the public health director. All personnel shall perform duties as prescribed by the public health director.

(c) In the event of a public health emergency, the agency shall issue orders and adopt rules consistent with the laws and rules of the state as the public health director may deem necessary for the proper exercise of the powers and duties vested in or imposed upon the agency or county or district board.

(2) In addition to the other powers and duties conferred by this part 5 or by the agency, a public health director has the following powers and duties:

(a) To administer and enforce:

(I) The public health laws of the state and, as authorized by the provisions of this title or article 20 of title 30, C.R.S., the public health orders, rules, and standards of the state department or the state board; and

(II) The orders and rules of the county or district board;

(b) To exercise all powers and duties conferred and imposed upon agencies not expressly delegated by the provisions of this part 5 to a county or district board;

(c) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of his or her powers and duties;

(d) To act as the local registrar of vital statistics or to contract out the responsibility of registrar in the area over which the agency has jurisdiction;

(e) To direct the resources needed to carry out the county or district public health plan developed pursuant to section 25-1-505; and

(f) If requested by the county or district board, to serve as secretary to the board responsible for maintaining all records required by part 2 of article 72 of title 24, C.R.S., and ensuring public notice of all meetings in accordance with part 4 of article 6 of title 24, C.R.S. The director shall be the custodian of all properties and records for the agency.

Source: L. 2008: Entire part R&RE, p. 2043, § 1, effective July 1.

Editor's note: This section is similar to former §§ 25-1-505 (3) and 25-1-508 as they existed prior to 2008.

ANNOTATION

Annotator's note. Since § 25-1-509 is similar to §§ 25-1-505 and 25-1-508 as they existed prior to the 2008 repeal and reenactment of this part 5, a relevant case construing those provisions has been included in the annotations to this section.

County personnel rules do not override statutory authority. County personnel rules, even though adopted by the county board of

health, do not override the explicit statutory authority of the board to discharge a public health officer appointed by the board at any time without cause or formal procedure. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

A county board of health, as a political subdivision of the state, may not by rule or regulation abdicate the authority and responsibility

delegated to it by the general assembly. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Board may not discharge employee in retaliation for exercise of free speech rights. Even though a public health officer is subject to discharge at the pleasure of the board, this does not mean that the board's discretion is limitless. It is well established that even where a government employer may discharge an employee for no reason whatsoever, it nevertheless may not discharge that employee in retaliation for the exercise of his free speech rights. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Even with the enhanced potential for negative impact which the public statements of a policy-making employee may bear on the efficiency of governmental functions, the policymaking employee may nonetheless demonstrate that the interest in allowing free commentary on a matter of public concern overrides any governmental interest. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Resignation prompted by threat of dismissal is equivalent of refusal to rehire. A resignation precipitated by the threat of dismissal is the substantive equivalent of a refusal to rehire by the board. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

25-1-510. County or district board unable or unwilling to act. (1) If the county or district board is unable or unwilling to efficiently or promptly abate a nuisance or prevent the introduction or spread of a contagious or infectious disease, the county or district board or agency shall notify the state department and request assistance to take measures that will abate the nuisance or prevent the introduction or spread of disease.

(2) Upon receipt of the notice and request described in subsection (1) of this section, or upon determination that the county or district board is unable or unwilling to act, the state department has full power to take measures to ensure the abatement of the nuisance or prevent the introduction or spread of disease. The state department, for this purpose, may assume all powers conferred by law on the county or district board.

(3) The state department may reallocate state moneys from an agency that is not able to provide core public health services or standards to another entity to deliver services in that agency's jurisdiction.

Source: L. 2008: Entire part R&RE, p. 2044, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-602 as it existed prior to 2008.

25-1-511. County treasurer - agency funds. (1) In the case of a county public health agency, the county treasurer, as a part of his or her official duties as county treasurer, shall serve as treasurer of the agency, and the treasurer's official bond as county treasurer shall extend to and cover his or her duties as treasurer of the agency. In the case of a district public health agency, the county treasurer of the county in the district having the largest population as determined by the most recent federal census, as a part of his or her official duties as county treasurer, shall serve as treasurer of the district agency, and the treasurer's official bond as county treasurer shall extend to and cover his or her duties as treasurer of the district agency.

(2) The treasurer of an agency, upon organization of the agency, shall create a county or district public health agency fund, to which shall be credited:

- (a) Any moneys appropriated from a county general fund; and
- (b) Any moneys received from state or federal appropriations or any other gifts, grants, donations, or fees for local public health purposes.

(3) Any moneys credited to a fund created pursuant to subsection (2) of this section shall be expended only for the purposes of this part 5, and claims or demands against the fund shall be allowed only if certified by the public health director and the president of the county or district board or any other member of the county or district board designated by the president for such purpose.

(4) On or before September 1, 2008, and on or before September 1 of each year thereafter, a county board of health shall estimate the total cost of maintaining the county public health agency for the ensuing fiscal year, and the amount of moneys that may be available from unexpended surpluses or from state or federal funds or other grants or donations. On or before September 1 of each year, the estimates shall be submitted in the

form of a budget to the board of county commissioners. The board of county commissioners is authorized to provide any moneys necessary, over estimated moneys from surpluses, grants, and donations, to cover the total cost of maintaining the agency for the ensuing fiscal year by an appropriation from the county general fund.

(5) On or before September 1, 2008, and on or before September 1 of each year thereafter, a district board of health shall estimate the total cost of maintaining the district public health agency for the ensuing fiscal year, and the amount of moneys that may be available from unexpended surpluses or from state or federal funds or other grants or donations. On or before September 1 of each year, the estimates shall be submitted in the form of a budget to a committee composed of the chairs of the boards of county commissioners of all counties comprising the district. The cost for maintaining the agency, over estimated moneys from surpluses, grants, or donations, shall be apportioned by the committee among the counties comprising the district in the proportion that the population of each county in the district bears to the total population of all counties in the district, population figures to be based on the most recent federal census. The boards of county commissioners of the respective counties are authorized to provide any moneys necessary to cover the proportionate shares of their counties by an appropriation from the county general fund.

Source: L. 2008: Entire part R&RE, p. 2044, § 1, effective July 1.

Editor's note: This section is similar to former §§ 25-1-505 (2) and 25-1-509 as they existed prior to 2008.

ANNOTATION

Annotator's note. Since § 25-1-511 is similar to §§ 25-1-505 as it existed prior to the 2008 repeal and reenactment of this part 5, a relevant case construing that provision has been included in the annotations to this section.

County personnel rules do not override statutory authority. County personnel rules, even though adopted by the county board of health, do not override the explicit statutory authority of the board to discharge a public health officer appointed by the board at any time without cause or formal procedure. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

A county board of health, as a political subdivision of the state, may not by rule or regulation abdicate the authority and responsibility delegated to it by the general assembly. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Board may not discharge employee in retaliation for exercise of free speech rights.

Even though a public health officer is subject to discharge at the pleasure of the board, this does not mean that the board's discretion is limitless. It is well established that even where a government employer may discharge an employee for no reason whatsoever, it nevertheless may not discharge that employee in retaliation for the exercise of his free speech rights. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

Resignation prompted by threat of dismissal is equivalent of refusal to rehire. A resignation precipitated by the threat of dismissal is the substantive equivalent of a refusal to rehire by the board. *Johnson v. Jefferson County Bd. of Health*, 662 P.2d 463 (Colo. 1983).

25-1-512. Allocation of moneys - public health services support fund - created.

(1) (a) The state department shall allocate any moneys that the general assembly may appropriate for distribution to county or district public health agencies organized pursuant to this part 5 for the provision of local health services. The state board shall determine the basis for the allocation of moneys to the agencies. In determining the allocation of moneys, the state board shall take into account the population served by each agency, the additional costs involved in operating small or rural agencies, and the scope of services provided by each agency.

(b) (I) In order to qualify for state assistance, each county and city and county shall contribute a minimum of one dollar and fifty cents per capita for its local health services and may contribute additional amounts as it may determine to be necessary to meet its local health needs.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), for a district public health agency, the counties or cities and counties of the district in total shall contribute a minimum of one dollar and fifty cents per capita for local health services within the district.

(c) Federally funded and state-funded special projects and demonstrations shall be in addition to the allotments specified in paragraph (b) of this subsection (1).

(2) The public health services support fund is hereby created in the state treasury and shall be known in this section as the “fund”. The principal of the fund shall consist of tobacco litigation settlement moneys transferred by the state treasurer to the fund pursuant to section 24-75-1104.5 (1.5) (a) (IV), C.R.S., and shall, subject to annual appropriation by the general assembly to the state department, be allocated by the state department to all agencies authorized pursuant to this part 5 as specified in subsection (1) of this section; except that, at the end of the 2011-12 fiscal year and at the end of each fiscal year thereafter, all unexpended and unencumbered principal of the fund shall be transferred to the general fund, in accordance with section 24-75-1104.5 (1.5) (b), C.R.S. Interest and income earned on the deposit and investment of moneys in the public health services support fund before July 1, 2011, shall be credited to the fund and shall remain in the fund until the end of the fiscal year in which credited, when it shall be transferred to the general fund.

Source: L. 2008: Entire part R&RE, p. 2045, § 1, effective July 1. L. 2009: (2) amended, (SB 09-292), ch. 369, p. 1969, § 82, effective August 5. L. 2011: (2) amended, (SB 11-225), ch. 189, p. 730, § 3, effective May 19. L. 2012: (2) amended, (HB 12-1247), ch. 53, p. 193, § 3, effective March 22.

Editor’s note: This section is similar to former § 25-1-516 as it existed prior to 2008.

25-1-513. Enlargement of or withdrawal from public health agency. (1) Any county contiguous to a district maintaining a district public health agency may become a part of the district by agreement between its board of county commissioners and the boards of county commissioners of the counties comprising the district. The county, upon being accepted into the district, shall thereupon become subject to the provisions of this part 5.

(2) Any county in a district maintaining a district public health agency may withdraw from the district by resolution of its board of county commissioners. A county may not withdraw from a district within the two-year period following the establishment of the district or the county becoming a part of the district. A county may only withdraw from a district after one year’s written notice given to the agency. In the event of withdrawal of a county from a district, any moneys that had been appropriated by the county before withdrawal to cover its proportionate share of maintaining the district may be returned to the county. A county shall establish a county public health agency or join another district public health agency once the county withdraws from a district.

(3) A municipal corporation that has voluntarily merged its public health agency with a county or district public health agency under the authority of section 25-1-506 may withdraw from the county or district public health agency by resolution of its city council, board of trustees, or other governing body. A municipal corporation may not withdraw from an agency within the two-year period following the municipal corporation becoming a part of the agency. A county may only withdraw from a district ninety days after a written notice is given to the agency.

Source: L. 2008: Entire part R&RE, p. 2046, § 1, effective July 1.

Editor’s note: This section is similar to former § 25-1-511 as it existed prior to 2008.

25-1-514. Legal actions - legal adviser. The county attorney for the county or the district attorney of the judicial district in which a cause of action arises shall bring any civil or criminal action requested by a county or district public health director to abate a condition that exists in violation of, or to restrain or enjoin any action that is in violation

of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, and rules of the state board or a county or district board of health. If the county attorney or the district attorney fails to act, the public health director may bring an action and be represented by special counsel employed by him or her with the approval of the county or district board. An agency, through its county or district board of health or through its public health director with the approval of the state board, may employ or retain and compensate an attorney to be the legal adviser of the agency and to defend all actions and proceedings brought against the agency or the officers and employees of the agency.

Source: L. 2008: Entire part R&RE, p. 2047, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-512 as it existed prior to 2008.

25-1-515. Judicial review of decisions. (1) Any person aggrieved and affected by a decision of a county or district board of health or a public health director acting under the provisions of this part 5 shall be entitled to judicial review by filing, in the district court of any county over which the county or district board or public health director has jurisdiction, an appropriate action requesting the review within ninety days after the public announcement of the decision. The court may make any interested person a party to the action. The review shall be conducted by the court without a jury and shall be confined to the record, if a complete record is presented. In a case of alleged irregularities in the record or in the procedure before the county or district board or public health director, testimony may be taken in the court. The court may affirm the decision or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings and decision of the county or district board being:

- (a) Contrary to constitutional rights or privileges;
 - (b) In excess of the statutory authority or jurisdiction of the county or district board or public health director;
 - (c) Affected by any error of law;
 - (d) Made or promulgated upon unlawful procedure;
 - (e) Unsupported by substantial evidence in view of the entire record as submitted; or
 - (f) Arbitrary or capricious.
- (2) Any party may have a review of the final judgment or decision of the district court by appellate review in accordance with law and the Colorado appellate rules.

Source: L. 2008: Entire part R&RE, p. 2047, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-513 as it existed prior to 2008.

ANNOTATION

Applied in *C Bar H, Inc. v. Bd. of Health ex rel. Jefferson County*, 56 P.3d 1189 (Colo. App. 2002) (decided under former § 25-1-513).

25-1-516. Unlawful acts - penalties. (1) It is unlawful for any person, association, or corporation and the officers thereof to:

- (a) Willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, or rule;
- (b) Fail to make or file a report required by law or rule of the state board relating to the existence of disease or other facts and statistics relating to the public health;
- (c) Willfully and falsely make or alter a certificate or certified copy of any certificate issued pursuant to the public health laws;
- (d) Willfully fail to remove from private property under his or her control at his or her own expense, within forty-eight hours after being ordered to do so by the county or district public health agency, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of the agency whether the person, association, or corporation is the

owner, tenant, or occupant of the private property; except that, when the condition is due to an act of God, it shall be removed at public expense; or

(e) Pay, give, present, or otherwise convey to any officer or employee of an agency any gift, remuneration, or other consideration, directly or indirectly, that the officer or employee is forbidden to receive by the provisions of this part 5.

(2) It is unlawful for any officer or employee of any agency or member of any county or district board of health to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon him or her by or on behalf of the agency or by the provisions of this part 5.

(3) Any person, association, or corporation, or the officers thereof, who violates any provision of this section is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished pursuant to the provisions of section 18-1.3-501, C.R.S. In addition to the fine or imprisonment, the person, association, or corporation shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. Conviction under the penalty provisions of this part 5 or any other public health law shall not relieve any person from any civil action in damages that may exist for an injury resulting from any violation of the public health laws.

Source: L. 2008: Entire part R&RE, p. 2048, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-514 as it existed prior to 2008.

ANNOTATION

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

Annotator's note. Since § 25-1-516 is similar to § 25-1-514 as it existed prior to the 2008 repeal and reenactment of this part 5, a relevant case construing that provision has been included in the annotations to this section.

This section is unlawful delegation of legislative power to define crime. Section 25-1-507(1)(d), delegating power to local boards of health to adopt rules and regulations, and sub-

section (1)(a), providing that a violation of such rules and regulations shall be a misdemeanor, constitute an unlawful delegation of power to the executive department to define a crime in violation of art. III, Colo. Const. *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959).

Only general assembly may declare an act to be a crime, and that precious power cannot be delegated to others not elected by or responsible to the people. *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959).

25-1-517. Mode of treatment inconsistent with religious creed or tenet. Nothing in this part 5 authorizes a county or district board of health to impose on any person any mode of treatment inconsistent with the creed or tenets of any religious denomination of which he or she is an adherent if the person complies with sanitary and quarantine laws and rules.

Source: L. 2008: Entire part R&RE, p. 2049, § 1, effective July 1.

Editor's note: This section is similar to former § 25-1-515 as it existed prior to 2008.

25-1-518. Nuisances. (1) **Removal of nuisances.** The county or district board of health shall examine all nuisances, sources of filth, and causes of sickness, which, in its opinion, may be injurious to the health of the inhabitants, within its town, city, county, city and county, or district, and it shall destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, as the case may require.

(2) **Unhealthy premises cleaned - structures removed.** If any cellar, vault, lot, sewer, drain, place, or premises within any city is damp, unwholesome, offensive, or filthy, or is covered for any portion of the year with stagnant or impure water, or is in a condition as to produce unwholesome or offensive exhalations, the county or district board of health may cause the area to be drained, filled up, cleaned, amended, or purified; or may require the owner or occupant or person in charge of the lot, premises, or place to perform such duty; or may cause the removal to be done by the proper officers of the city.

(3) **Expense for abating nuisance.** If any person or company neglects to remove or abate any nuisance or to perform any requirement made by or in accordance with any ordinance or resolution of the county or district board of health for the protection of the health of the inhabitants and if any expense is incurred by the board in removing or abating the nuisance or in causing such duty or requirement to be performed, such expense may be recovered by the board in an action against such person or company. In all cases where the board incurs any expense for draining, filling, cleaning, or purifying any lot, place, or premises, or for removing or abating any nuisance found upon such lot or premises, the board, in addition to all other remedies, may provide for the recovery of such expense, charge the same or such part thereof as it deems proper to the lot or premises upon or on account of which such expense was incurred or from which such nuisance was removed or abated, and cause the same to be assessed upon such lot or premises and collected as a special assessment.

(4) **Removal of nuisance on private property - penalty.** Whenever any nuisance, source of filth, or cause of sickness is found on private property, the county or district board of health shall order the owner or occupant or the person who has caused or permitted such nuisance, at his or her own expense, to remove the same within twenty-four hours. In default thereof, he or she shall forfeit a sum not to exceed one hundred dollars at the suit of the board of county commissioners of the proper county or the board of the proper city, town, or village for the use of the county or district board of health of the city or town where the nuisance is found.

(5) **Board to remove - when.** If the owner or occupant does not comply with an order of the county or district board of health, the board may cause the nuisance, source of filth, or cause of sickness to be removed, and all expense incurred thereby shall be paid by the owner or occupant or by such other person who has caused or permitted the nuisance, source of filth, or cause of sickness.

(6) **Conviction - nuisance to be abated.** Whenever any person is convicted of maintaining a nuisance that may be injurious to the public health, the court, in its discretion, may order the nuisance abated, removed, or destroyed at the expense of the defendant under the direction of the county or district board of health of the town, city, county, or district where the nuisance is found, and the form of the warrant to the sheriff or other officer may be varied accordingly.

(7) **Stay warrant of conviction.** The court, on the application of the defendant, may order a stay of a warrant issued pursuant to subsection (6) of this section for such time as may be necessary, not exceeding six months, to give the defendant an opportunity to remove the nuisance upon giving satisfactory security to do so within the time specified in the order.

(8) **Expense of abating.** The expense of abating and removing the nuisance pursuant to a warrant issued pursuant to subsection (6) of this section shall be collected by the officer in the same manner as damages and costs are collected upon execution; except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be sold by the officer in like manner as goods are sold on execution for the payment of debts. The officer may apply the proceeds of the sale to defray the expenses of the removal and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the expenses incurred pursuant to this subsection (8), the sheriff shall collect the residue thereof as provided in subsection (3) of this section.

(9) **Refusal of admittance to premises.** (a) Whenever a county or district board of health finds it necessary for the preservation of the lives or health of the inhabitants to enter any building, car, or train of cars in its town, city, county, or district for the purpose of examining and abating, removing, or preventing any nuisance, source of filth, or cause of sickness and is refused entry, any member of the board may make complaint under oath to the county court of his or her county stating the facts of the case as far as he or she has knowledge thereof.

(b) The court may thereupon issue a warrant directed to the sheriff commanding him or her to take sufficient aid and, being accompanied by any two or more members of the county or district board of health, during daylight hours, to return to the place where the nuisance, source of filth, or cause of sickness complained of may be and destroy, remove, or prevent

the nuisance, source of filth, cause of sickness, or danger to life or limb under the direction of the members of the board of health.

(10) **Damages occasioned by nuisance - action.** Any person injured either in his or her comfort or in the enjoyment of his or her estate by any nuisance may have an action for damages sustained thereby.

Source: L. 2008: Entire part R&RE, p. 2049, § 1, effective July 1. L. 2009: (1) amended, (SB 09-292), ch. 369, p. 1970, § 83, effective August 5.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2008. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. Since § 25-1-518 is similar to § 25-1-613 as it existed prior to the 2008 repeal and reenactment of this part 5, relevant cases construing that provision have been included in the annotations to this section.

Only nuisances per se may be removed or abated summarily. City of Denver v. Mullen, 7 Colo. 345, 3 P. 693 (1884).

Compensation required for property mistakenly destroyed as nuisance. If property is destroyed under a mistaken belief that it is a nuisance, when in fact it is not a nuisance, it is taken for a public use, and the loss to the owner should be made good. McMahon v. City of Telluride, 79 Colo. 281, 244 P. 1017 (1926).

25-1-519. Existing intergovernmental agreements. Nothing in this part 5 shall void the terms of any intergovernmental agreement concerning public health entered into as of July 1, 2008, so long as all core and essential public health services continue to be provided.

Source: L. 2008: Entire part R&RE, p. 2051, § 1, effective July 1.

25-1-520. Clean syringe exchange programs - approval - reporting requirements - repeal. (1) A county public health agency or district public health agency may request approval from its county board of health or district board of health, referred to in this section as the "board", for a clean syringe exchange program operated by the agency or by a nonprofit organization with which the agency contracts to operate the clean syringe exchange program. Prior to approving or disapproving any such optional program, the board shall consult with the agency and interested stakeholders concerning the establishment of the clean syringe exchange program. Interested stakeholders shall include, but need not be limited to, local law enforcement agencies, district attorneys, substance abuse treatment providers, persons in recovery, nonprofit organizations, hepatitis C and HIV advocacy organizations, and members of the community. The board and interested stakeholders shall consider, at a minimum, the following issues:

(a) The scope of the problem being addressed and the population the program would serve;

(b) Concerns of the law enforcement community; and

(c) The parameters of the proposed program, including methods for identifying program workers and volunteers.

(2) Each proposed clean syringe exchange program shall, at a minimum, have the ability to:

(a) Provide an injection drug user with the information and the means to protect himself or herself, his or her partner, and his or her family from exposure to blood-borne disease through access to education, sterile injection equipment, voluntary testing for blood-borne diseases, and counseling;

(b) Provide thorough referrals to facilitate entry into drug abuse treatment, including opioid substitution therapy;

(c) Encourage usage of medical care and mental health services as well as social welfare and health promotion;

(d) Provide safety protocols and classes for the proper handling and disposal of injection materials;

(e) Plan and implement the clean syringe exchange program with the clear objective of reducing the transmission of blood-borne diseases within a specific geographic area; and

(f) Develop a timeline for the proposed program and for the development of policies and procedures.

(3) The board may approve or disapprove the proposed clean syringe exchange program based on the results of the meetings held pursuant to subsection (1) of this section.

(4) If the board approves a clean syringe exchange program that is operated through a contract with a nonprofit organization, the contract shall be subject to annual review and shall be renewed only if the board approves the contract after consultation with the county or district public health agency and interested stakeholders as described in subsection (1) of this section.

(5) One or more counties represented on a district board of health may at any time opt out of a clean syringe exchange program proposed or approved pursuant to this section.

(6) (a) On or before July 1, 2011, and on or before July 1 each year thereafter, each board that authorizes a clean syringe exchange program pursuant to this section shall submit a report to the department of public health and environment concerning the results of the program. On or before September 1, 2011, and on or before September 1 each year thereafter, the department of public health and environment shall submit a report to the health and human services committees of the house of representatives and the senate, or any successor committees, summarizing the reports received from boards pursuant to this paragraph (a).

(b) This subsection (6) is repealed, effective July 1, 2014.

Source: L. 2010: Entire section added, (SB 10-189), ch. 272, p. 1253, § 3, effective August 11.

PART 6

LOCAL BOARDS OF HEALTH

25-1-601 to 25-1-667. (Repealed)

Source: L. 2008: Entire part repealed, p. 2051, § 3, effective July 1.

Editor's note: This part 6 was numbered as article 3 of chapter 66, C.R.S. 1963. For amendments to this part 6 prior to its repeal in 2008, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 6 were relocated to part 5 of this article. For the location of specific provisions, see the editor's notes following each section in said part 5 and the comparative tables located in the back of the index.

PART 7

REGIONAL HEALTH DEPARTMENTS

25-1-701 to 25-1-719. (Repealed)

Source: L. 2008: Entire part repealed, p. 2051, § 3, effective July 1.

Editor's note: This part 7 was numbered as article 37 of chapter 66, C.R.S. 1963. For amendments to this part 7 prior to its repeal in 2008, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 8

PATIENT RECORDS

Law reviews: For article, “Rights to and Disclosure of Medical Information: HIPAA and Colorado Law”, see 33 Colo. Law. 101 (October 2004).

25-1-801. Patient records in custody of health care facility. (1) (a) Every patient record in the custody of a health facility licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this title, or both, or any entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (22), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (26.5), C.R.S., or otherwise shall be available for inspection to the patient or the patient’s designated representative through the attending health care provider or such provider’s designated representative at reasonable times and upon reasonable notice, except records pertaining to mental health problems or notes by a physician that, in the opinion of a licensed physician who practices psychiatry and is an independent third party, would have significant negative psychological impact upon the patient. Such independent third-party physician shall consult with the attending physician prior to making a determination with regard to the availability for inspection of any patient record and shall report in writing findings to the attending physician and to the custodian of said record. A summary of records pertaining to a patient’s mental health problems may, upon written request and signed and dated authorization, be made available to the patient or the patient’s designated representative following termination of the treatment program.

(b) (I) Following any treatment, procedure, or health care service rendered by a health facility licensed or certified pursuant to section 25-1.5-103 (1) or article 3 of this title, or both, or by an entity regulated under title 10, C.R.S., providing health care services, as defined in section 10-16-102 (22), C.R.S., directly or indirectly through a managed care plan, as defined in section 10-16-102 (26.5), C.R.S., or otherwise, copies of said records, including X rays, shall be furnished to the patient upon submission of a written authorization-request for records, dated and signed by the patient, and upon the payment of the reasonable costs.

(II) In the event that a licensed health care professional determines that a copy of any X ray, mammogram, CT SCAN, MRI, or other film is not sufficient for diagnostic or other treatment purposes, the health facility or entity shall make the original of any such film available to the patient or another health care professional or facility as specifically directed by the patient pursuant to a written authorization-request for films and upon the payment of the reasonable costs for such film. If a health facility releases an original film pursuant to this subparagraph (II), it shall not be responsible for any loss, damage, or other consequences as a result of such release. Any original X ray, mammogram, CT SCAN, MRI, or other film made available pursuant to this subparagraph (II) shall be returned upon request to the lending facility within thirty days.

(c) The hospital or related facility or institution shall post in conspicuous public places on the premises a statement of the requirements set forth in paragraphs (a) and (b) of this subsection (1) and shall make available a copy of said statement to each patient upon admission.

(d) Nothing in this section shall be construed to require a person responsible for the diagnosis or treatment of sexually transmitted infections or addiction to or use of drugs in the case of minors pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S., to release patient records of such diagnosis or treatment to a parent, guardian, or person other than the minor or his or her designated representative.

(2) All requests by patients for inspection of their medical records made under this section shall be noted with the time and date of the patient’s request, and the time and date of inspection noted by the attending health care provider or his designated representative. The patient shall acknowledge the fact of his inspection by dating and signing his record file.

(3) Nothing in this section shall apply to any nursing institution conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care and treatment of the sick who depend exclusively upon spiritual means through prayer for healing and the practice of the religion of such church or denomination.

(4) For the purposes of this section, medical information transmitted during the delivery of health care via telemedicine, as defined in section 12-36-106 (1) (g), C.R.S., is part of the patient's medical record maintained by the health care facility.

Source: **L. 76:** Entire part added, p. 648, § 1, effective July 1. **L. 83:** (1)(a) R&RE, p. 1040, § 1, effective May 20. **L. 97:** (1)(a) and (1)(b) amended, p. 348, § 1, effective April 19. **L. 2001:** (4) added, p. 1163, § 10, effective January 1, 2002. **L. 2003:** (1)(a) and (1)(b)(I) amended, p. 708, § 36, effective July 1. **L. 2009:** (1)(d) amended, (SB 09-179), ch. 112, p. 475, § 20, effective April 9.

Cross references: For the legislative declaration contained in the 2001 act enacting subsection (4), see section 1 of chapter 300, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "The Authorization to Release Medical Information Form: Its Genesis and Usage", see 11 Colo. Law. 1179 (1982). For article, "Legislative Update", see 12 Colo. Law. 1251 (1983).

Exception to broad disclosure. This section can be read consistently with former § 27-10-116 (1)(a) as a specific exception to a general policy of broad disclosure and is not unconstitutional on its face as it operates with the short-term commitment procedure. *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983).

The phrase "the reasonable costs" of providing copies of medical records, as used in

subsection (1)(b), does not indicate that providers may only charge for the singular costs directly incurred in the physical act of copying. The term "costs" is not singular and is not limited to the costs of supplies and the labor of copying. *Colo. Consumer Health Initiative v. Colo. Bd. of Health*, 240 P.3d 525 (Colo. App. 2010).

"Reasonable costs" may include the costs inherent in record inspection. *Colo. Consumer Health Initiative v. Colo. Bd. of Health*, 240 P.3d 525 (Colo. App. 2010).

25-1-802. Patient records in custody of individual health care providers.

(1) (a) Every patient record in the custody of a podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., or a person practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., except records pertaining to mental health problems, shall be available to the patient upon submission of a written authorization-request for inspection of records, dated and signed by the patient, at reasonable times and upon reasonable notice. A summary of records pertaining to a patient's mental health problems may, upon written request and signed and dated authorization, be made available to the patient or the patient's designated representative following termination of the treatment program.

(b) (I) A copy of such records, including X rays, shall be made available to the patient or the patient's designated representative, upon written authorization-request for a copy of such records, dated and signed by the patient, upon reasonable notice and payment of the reasonable costs.

(II) In the event that a licensed health care professional determines that a copy of any X ray, mammogram, CT SCAN, MRI, or other film is not sufficient for diagnostic or other treatment purposes, the podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, audiologist, acupuncturist, direct-entry midwife, or physical therapist required to be licensed under title 12, C.R.S., or, subject to the provisions of section 25-1-801 (1) (a) and paragraph (a) of this subsection (1), the person practicing psychotherapy under the provisions of article 43 of title 12, C.R.S., shall make the original of any such film available to the patient or another health care professional or facility as

specifically directed by the patient pursuant to a written authorization-request for films and upon the payment of the reasonable costs for such film. If a practitioner releases an original film pursuant to this subparagraph (II), the practitioner shall not be responsible for any loss, damage, or other consequences as a result of such release. Any original X ray, mammogram, CT SCAN, MRI, or other film made available pursuant to this subparagraph (II) shall be returned upon request to the lending practitioner within thirty days.

(2) Nothing in this section shall be construed to require a person responsible for the diagnosis or treatment of sexually transmitted infections or addiction to or use of drugs in the case of minors pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S., to release patient records of such diagnosis or treatment to a parent, guardian, or person other than the minor or his or her designated representative.

(3) For purposes of this section, "patient record" does not include a doctor's office notes.

(4) All requests by patients for inspection of their medical records made under this section shall be noted with the time and date of the patient's request and the time and date of inspection noted by the health care provider or his designated representative. The patient shall acknowledge the fact of his inspection by dating and signing his record file.

(5) For the purposes of this section, medical information transmitted during the delivery of health care via telemedicine, as defined in section 12-36-106 (1) (g), C.R.S., is part of the patient's medical record maintained by a health care provider.

Source: L. 76: Entire part added, p. 649, § 1, effective July 1. L. 97: (1) amended, p. 349, § 2, effective April 19; (1)(a) amended, p. 1032, § 69, effective August 6. L. 2001: (5) added, p. 1163, § 11, effective January 1, 2002. L. 2009: (2) amended, (SB 09-179), ch. 112, p. 475, § 21, effective April 9.

Cross references: For the legislative declaration contained in the 2001 act enacting subsection (5), see section 1 of chapter 300, Session Laws of Colorado 2001.

ANNOTATION

The phrase "mental health problems" means psychiatric or psychological problems. The phrase does not include general professional counseling, addressing life skill building, decision making, and problem solving, unrelated to psychiatric or psychological problems. Therefore, such records are available to the patient under this section. *Dauwe v. Musante*, 122 P.3d 15 (Colo. App. 2004).

The phrase "the reasonable costs" of providing copies of medical records, as used in subsection (1)(b), does not indicate that pro-

viders may only charge for the singular costs directly incurred in the physical act of copying. The term "costs" is not singular and is not limited to the costs of supplies and the labor of copying. *Colo. Consumer Health Initiative v. Colo. Bd. of Health*, 240 P.3d 525 (Colo. App. 2010).

"Reasonable costs" may include the costs inherent in record inspection. *Colo. Consumer Health Initiative v. Colo. Bd. of Health*, 240 P.3d 525 (Colo. App. 2010).

25-1-803. Effect of this part 8 on similar rights of a patient. (1) Nothing in this part 8 shall be construed so as to:

(a) Limit the right of a patient or the patient's designated representative to inspect the patient's medical or mental health data pursuant to section 24-72-204 (3) (a) (I), C.R.S.; or

(b) Limit a right to inspect the patient's records which is otherwise granted by state statute to the patient or his designated representative.

Source: L. 76: Entire part added, p. 650, § 1, effective July 1. L. 97: (1)(a) amended, p. 350, § 3, effective April 19.

PART 9

ADVISORY COMMISSION ON FAMILY MEDICINE

25-1-901. Legislative declaration. (1) The general assembly hereby finds and declares that:

- (a) Physicians engaged in family medicine are in critically short supply in this state;
- (b) Because of the distribution of such physicians, many rural and urban areas of the state are underserved;
- (b.1) A significant portion of the state population is medically underserved because of indigency;
- (b.2) Family physicians provide health care to all segments of the population;
- (c) The provision of more competent family physicians is a public purpose of great importance; and
- (d) The creation of an advisory commission on family medicine is a desirable, necessary, and economic means of addressing the needs described in paragraphs (a) and (b) of this subsection (1).

Source: **L. 77:** Entire part added, p. 1271, § 1, effective July 1. **L. 83:** (1)(b.1) and (1)(b.2) added, p. 1041, § 1, effective May 20.

25-1-902. Commission created - composition - terms of office. (1) There is hereby created, in the department of health, the commission on family medicine, referred to in this part 9 as the "commission". Appointments of members made to take effect on January 1, 1983, shall be made in accordance with section 24-1-135, C.R.S. No more than eight members of the commission shall be members of the same major political party. A vacancy on the commission occurs whenever any health care consumer member moves out of the congressional district from which he was appointed. A health care consumer member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy by appointment for the unexpired term. The commission shall consist of members determined as follows:

- (a) The dean of the university of Colorado school of medicine or his designated representative;
- (b) The director of all family medicine programs in the state accredited by the accreditation council on graduate medical education of the American medical association or the American osteopathic association;
- (c) A representative of the Colorado academy of family physicians; and
- (d) A health care consumer to be appointed by the governor from each congressional district in the state.

(2) The members appointed under paragraph (d) of subsection (1) of this section shall serve at the pleasure of the governor and shall serve for three-year terms.

(3) The commission shall elect a chairman and a vice-chairman from among its members. Administrative, staff, and clerical services shall be provided to the commission by the Colorado academy of family physicians, as determined necessary by the academy. Members of the commission shall serve without compensation, but members described in paragraphs (b), (c), and (d) of subsection (1) of this section shall be entitled to their actual and necessary expenses incurred in the performance of their duties. The commission shall meet on call of the chairman, but not less than once every three months. A majority of the members of the commission constitutes a quorum for the transaction of business.

Source: **L. 77:** Entire part added, p. 1271, § 1, effective July 1. **L. 79:** IP(1) and (3) amended, p. 1001, § 1, effective July 1. **L. 82:** IP(1) amended, p. 356, § 16, effective April 30. **L. 83:** IP(1), (1)(b), (2), and (3) amended, p. 1041, § 2, effective May 20. **L. 89:** IP(1) amended, p. 1146, § 1, effective April 6.

25-1-903. Duties of commission. (1) The commission shall:

(a) Assure that family medicine residency program standards are equal to or more stringent than the standards established by the accreditation council on graduate medical education of the American medical association or the American osteopathic association for residency training in family medicine;

(b) In cooperation with the dean of the school of medicine, approve and recommend allocation of any funds which are identified and appropriated in the general appropriation bill as a line item for any community family medicine residency training program;

(c) Monitor the state's family medicine residency programs and recommend from time to time that the general assembly appropriate funds for said programs;

(d) Locate specific areas of the state which are underserved by family physicians and determine the priority of need among such areas;

(e) Offer to the general assembly alternative ideas on providing medical care to the medically indigent in the state.

(2) Repealed.

Source: **L. 77:** Entire part added, p. 1272, § 1, effective July 1. **L. 83:** (1)(a) and (1)(b) amended and (1)(e) added, p. 1042, § 3, effective May 20; (2) amended, p. 839, § 59, effective July 1. **L. 96:** (2) repealed, p. 1253, § 139, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-1-904. Sunset review. (Repealed)

Source: **L. 77:** Entire part added, p. 1272, § 1, effective July 1. **L. 79:** Entire section amended, p. 1001, § 2, effective July 1. **L. 83:** Entire section amended, p. 1042, § 4, effective May 20. **L. 86:** Entire section R&RE, p. 420, § 41, effective March 26. **L. 89:** Entire section repealed, p. 1147, § 3, effective April 6.

PART 10**CHILD CARE PROGRAMS IN NURSING HOME FACILITIES**

25-1-1001. Legislative declaration. The general assembly hereby finds that the operation of child care centers in nursing home facilities is desirable because the benefit to nursing home facility employees in having on-location child care will improve the quality of care in nursing home facilities by stabilizing the nursing home work force and because the general public, especially in rural areas, will benefit from the increased availability of day care centers in their communities. The general assembly also finds that the operation of child care centers in nursing home facilities is desirable because the intergenerational contact has been proven to be beneficial to the health and well-being of elderly persons and, therefore, will improve the quality of life of elderly residents in nursing home facilities and because the intergenerational contact will be beneficial to the children as well. The general assembly, therefore, declares that the intent of this part 10 is to encourage the development of child care centers in nursing home facilities by encouraging the creation of private grants to provide funds to start such centers and by requiring the state agencies which license nursing home facilities and child care centers to study and recommend statutory and regulatory changes to facilitate and encourage the development of child care centers in nursing home facilities.

Source: **L. 88:** Entire part added, p. 1003, § 1, effective April 28.

25-1-1002. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Nursing home facility" means a facility which provides skilled nursing home services or intermediate care nursing home services.

Source: L. 88: Entire part added, p. 1004, § 1, effective April 28.

25-1-1003. Grant program - requirements - use of medical assistance funds prohibited. (1) The department of public health and environment may encourage the development of a private grant program to provide start-up funds to nursing home facilities for the purpose of establishing child care centers located in such nursing home facilities.

(2) The state board of health, after consultation with the division in the department of human services involved in licensing child care centers and if the committee formed in section 25-1-1004 recommends the establishment of child care facilities in nursing homes, shall promulgate reasonable rules and regulations establishing any necessary requirements for operating a day care center in a nursing home facility. Such rules and regulations shall include, but need not be limited to, the following:

(a) Requirements for the operation of a safe and good-quality child care operation in the nursing home facility or upon the nursing home facility's grounds, which shall include:

(I) Precautions required to be taken to ensure that all staff and residents who will participate in the intergenerational programs have not been involved in incidents of sexual abuse or child abuse;

(II) Requirements relating to the ability to properly care for the children;

(III) Child care ratios of staff to children;

(IV) Requirements relating to the constant supervision of the children by staff members and not by nursing home residents;

(V) Life safety and fire regulations;

(b) Requirements on the amount and type of liability insurance necessary to insure the risks associated with the child care operation;

(c) Requirements on the ways in which the nursing home residents may be involved in the child care center and the requirement that the participation of nursing home residents in intergenerational activities with the children in the child care operation shall be on a voluntary basis;

(d) Requirements that any fees assessed to the employees of the nursing home facility whose children participate in the child care program will be based on a sliding scale;

(e) Requirements that the participation of employees of the nursing home facility in the enrollment of their children in the intergenerational day care program of the nursing home facility shall be on a voluntary basis.

(3) No medical assistance funds under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., shall be used to subsidize the cost of operating a day care center or day care program in a nursing home facility.

Source: L. 88: Entire part added, p. 1004, § 1, effective April 28. L. 94: (1) and IP(2) amended, pp. 2746, 2702, §§ 395, 255, effective July 1. L. 2006: (3) amended, p. 2014, § 85, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1) and the introductory portion to subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-1-1004. Study of statutes and rules and regulations pertaining to nursing home facilities and day care centers. (1) The department of public health and environment and the department of human services, in conjunction with representatives of the nursing home industry, child care operators, and experts on child care programs in nursing home facilities, shall examine and study the existing statutes and rules and regulations concerning the licensing of child care centers and of nursing home facilities to determine what statutory or regulatory changes or both would make it easier for a nursing home facility to operate a child care center. The study shall also include an examination of the advantages and disadvantages of operating such intergenerational programs and the most appropriate and practical ways to design such intergenerational child care programs which are beneficial both to the children and to the elderly persons.

(2) The study conducted by the department of public health and environment and the department of human services shall include, but need not be limited to, consideration of the following:

(a) The establishment of new rules and regulations by the department of public health and environment and the department of human services which would allow nursing home facilities to operate a child care operation in the nursing home facilities;

(b) A coordinated licensure program to license a child care operation in a nursing home facility which would be based on rules and regulations designed specifically for the operation of a child care center in a nursing home facility.

(3) Repealed.

(4) The department of public health and environment and the department of human services shall comply with the requirements of this part 10 within the current appropriation established for each department. No request for appropriations shall be made to the general assembly for the implementation of this part 10.

Source: L. 88: Entire part added, p. 1005, § 1, effective April 28. L. 94: (1), IP(2), (2)(a), (3), and (4) amended, p. 2747, § 396, effective July 1. L. 96: (3) repealed, p. 1257, § 147, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), the introductory portion to subsection (2), and subsections (2)(a), (3), and (4), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

PART 11

DRUG ABUSE PREVENTION, EDUCATION, AND TREATMENT

25-1-1100.2 to 25-1-1112. (Repealed)

Source: L. 2010: Entire part repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: (1) This part 11 was added in 1991. For amendments to this part 11 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this part 11 were relocated to article 82 of title 27 in 2010.

PART 12

MEDICAL RECORD CONFIDENTIALITY

25-1-1201. Legislative declaration. The general assembly hereby finds, determines, and declares that maintaining the confidentiality of medical records is of the utmost importance to the state and of critical importance to patient privacy for high quality medical care. Most people in the United States consider confidentiality of health information important and worry that the increased computerization of health records may result in inappropriate disclosure of such records. Patients have a strong interest in preserving the privacy of their personal health information, but they also have an interest in medical research and other efforts by health care organizations to improve the medical care they receive. How best to preserve confidentiality within a state health information infrastructure is an important discussion that is affected by recent regulations promulgated by the federal department of health and human services related to the electronic storage of health information. The purpose of this part 12 is to index the provisions that govern medical

record confidentiality to facilitate locating the law concerning the confidentiality of medical records and health information. It is not intended to expand, narrow, or clarify existing provisions.

Source: L. 2001: Entire part added, p. 828, § 5, effective August 8.

25-1-1202. Index of statutory sections regarding medical record confidentiality and health information. (1) Statutory provisions concerning policies, procedures, and references to the release, sharing, and use of medical records and health information include the following:

(a) Section 10-16-1003, C.R.S., concerning use of information by health care cooperatives;

(b) Section 8-43-404, C.R.S., concerning examinations by a physician or chiropractor for the purposes of workers' compensation;

(c) Section 8-43-501, C.R.S., concerning utilization review related to workers' compensation;

(d) Section 8-73-108, C.R.S., concerning the award of benefits for unemployment compensation benefits;

(e) Section 10-3-1104.7, C.R.S., concerning the confidentiality and use of genetic testing information;

(f) Section 10-16-113, C.R.S., concerning the procedures related to the denial of health benefits by an insurer;

(g) Section 10-16-113.5, C.R.S., concerning the use of independent external review when health benefits have been denied;

(h) Section 10-16-423, C.R.S., concerning the confidentiality of medical information in the custody of a health maintenance organization;

(i) Section 12-32-108.3, C.R.S., concerning disciplinary actions against podiatrists;

(j) Section 12-33-126, C.R.S., concerning disciplinary actions against chiropractors;

(k) Section 12-35-129, C.R.S., concerning disciplinary actions against dentists and dental hygienists;

(l) Section 12-36-118, C.R.S., concerning disciplinary actions against physicians;

(m) Section 12-36-135 (1), C.R.S., concerning reporting requirements for physicians pertaining to certain injuries;

(n) Section 12-36.5-104, C.R.S., concerning professional review committees for physicians;

(o) Section 12-36.5-104.4, C.R.S., concerning hospital professional review committees;

(p) Section 12-37.5-104, C.R.S., concerning reporting requirements by physicians related to abortions for minors;

(q) Section 12-38-116.5, C.R.S., concerning disciplinary proceedings against a practical nurse, a professional nurse, or a psychiatric technician;

(r) Section 12-43-218, C.R.S., concerning the disclosure of confidential communications by a mental health professional;

(s) Section 12-43-224 (4), C.R.S., concerning disciplinary proceedings against a mental health professional;

(t) Section 13-21-110, C.R.S., concerning confidentiality of information, data, reports, or records of a utilization review committee of a hospital or other health care facility;

(u) Section 13-21-117, C.R.S., concerning civil liability of a mental health professional, mental health hospital, community mental health center, or clinic related to a duty to warn or protect;

(v) Sections 13-22-101 to 13-22-106, C.R.S., concerning the age of competence for certain medical procedures;

(w) Section 13-64-502, C.R.S., concerning civil liability related to genetic counseling and screening and prenatal care, or arising from or during the course of labor and delivery, or the period of postnatal care in a health institution;

- (x) Section 13-80-103.7, C.R.S., concerning a limited waiver of medical information in civil actions related to sexual assault or sexual offenses against a child;
- (y) Section 13-90-107 (1) (d), C.R.S., concerning when a physician, surgeon, or registered professional nurse may testify related to the care and treatment of a person;
- (z) Section 14-10-124, C.R.S., concerning the best interests of a child for the purposes of a separation or dissolution of marriage;
- (aa) Section 14-10-127, C.R.S., concerning the allocation of parental responsibilities with respect to a child;
- (bb) Section 17-27.1-101 (4), C.R.S., concerning nongovernmental facilities for offenders and the waiver of confidential information;
- (cc) Section 18-3-203 (1) (f.5), C.R.S., concerning assault in the second degree and the availability of medical testing for certain circumstances;
- (dd) Section 18-4-412, C.R.S., concerning theft of medical records or medical information;
- (ee) Sections 18-6-101 to 18-6-104 C.R.S., concerning a justified medical termination of pregnancy;
- (ee.5) Section 18-18-406.3, C.R.S., concerning medical marijuana patient records;
- (ff) Section 18-18-503, C.R.S., concerning cooperative agreements to control substance abuse;
- (gg) Section 19-3-304, C.R.S., concerning persons required to report child abuse or neglect;
- (hh) Section 19-3-305, C.R.S., concerning postmortem investigation related to the death of a child;
- (ii) Section 19-3-306, C.R.S., concerning evidence of abuse or neglect of a child;
- (jj) Section 19-5-103 (2), C.R.S., concerning relinquishment of rights concerning a child;
- (kk) Section 19-5-305, C.R.S., concerning access to adoption records;
- (ll) Section 22-1-123 (5), C.R.S., concerning the protection of student data;
- (mm) Sections 22-32-109.1 (6) and 22-32-109.3 (2), C.R.S., concerning specific powers and duties of the state board of education;
- (nn) Section 22-64-216, C.R.S., concerning confidentiality of records maintained by school district retirement plans;
- (oo) Section 24-51-213, C.R.S., concerning confidentiality of records maintained by the public employees' retirement association;
- (pp) Section 24-72-204 (3), C.R.S., concerning public records not open to public inspection;
- (qq) Section 25-1-122, concerning reporting of certain diseases and conditions for investigation of epidemic and communicable diseases, morbidity and mortality, cancer in connection with the statewide cancer registry, environmental and chronic diseases, sexually transmitted infections, tuberculosis, and rabies and mammal bites by the department of public health and environment;
- (rr) Section 25-1-124 (2), concerning health care facilities and reporting requirements;
- (ss) Sections 27-81-110 and 27-81-113, C.R.S., concerning the treatment of intoxicated persons;
- (tt) Section 25-1-801, concerning patient records in the care of a health care facility;
- (uu) Section 25-1-802, concerning patient records in the care of individual health care providers;
- (vv) Sections 27-82-106 and 27-82-109, C.R.S., concerning the treatment of drug abusers;
- (vv.5) Section 25-1.5-106, concerning the medical marijuana program;
- (ww) Section 25-2-120, concerning reports of electroconvulsive treatment;
- (xx) Section 25-3-109, concerning quality management functions of health care facilities licensed by the department of public health and environment;

- (yy) Section 25-3.5-501, concerning records maintained by ambulance services and emergency medical service providers;
- (zz) Section 25-3.5-704 (2) (d) and (2) (f), concerning the designation of emergency medical facilities and the statewide trauma system;
- (aaa) Section 25-4-402 (4), concerning the reporting of sexually transmitted infections;
- (bbb) Section 25-4-1003, concerning newborn screening programs and genetic counseling;
- (ccc) Sections 25-4-1402 to 25-4-1407, concerning reporting and investigation of the human immunodeficiency virus;
- (ddd) Section 25-4-1705, concerning immunization information;
- (eee) Section 25-4-1905, concerning records collected related to Gulf War syndrome;
- (fff) Section 25-32-106, concerning the release of medical information to a poison control service provider;
- (ggg) Section 26-3.1-102 (2), C.R.S., concerning reporting requirements related to at-risk adults;
- (hhh) Section 26-11.5-108, C.R.S., concerning the long-term ombudsman program and access to medical records;
- (iii) Section 27-65-103 (2), C.R.S., concerning voluntary applications for mental health services;
- (jjj) Sections 27-65-121 (2) and 27-65-122, C.R.S., concerning records related to mental health services for minor children;
- (kkk) Section 30-10-606 (6), C.R.S., concerning postmortem investigations and records;
- (lll) Section 35-9-109, C.R.S., concerning confidentiality of information released to the commissioner of agriculture related to human exposure to pesticide applications;
- (mmm) Section 42-2-112, C.R.S., concerning information supplied to the department of revenue for the purpose of renewing or obtaining a license to operate a motor vehicle; and
- (nnn) Section 12-42.5-406, C.R.S., concerning information entered into the prescription drug monitoring program database.

Source: **L. 2001:** Entire part added, p. 829, § 5, effective August 8. **L. 2002:** (1)(fff) amended, p. 428, § 6, effective July 1. **L. 2003:** (1)(ii) amended, p. 1997, § 46, effective May 22. **L. 2004:** (1)(k) amended, p. 857, § 3, effective July 1; (1)(a) amended, p. 1010, § 21, effective August 4. **L. 2009:** (1)(qq) and (1)(aaa) amended, (SB 09-179), ch. 112, p. 475, § 22, effective April 9. **L. 2010:** (1)(ss), (1)(vv), (1)(iii), and (1)(jjj) amended, (SB 10-175), ch. 188, p. 797, § 57, effective April 29; (1)(vv.5) added, (SB 10-109), ch. 356, p. 1696, § 2, effective June 7. **L. 2011:** (1)(ee.5) added, (HB 11-1043), ch. 266, p. 1215, § 29, effective July 1; (1)(nnn) added, (SB 11-192), ch. 230, p. 987, § 13, effective July 1. **L. 2012:** (1)(yy) amended, (HB 12-1059), ch. 271, p. 1437, § 18, effective July 1; (1)(nnn) amended, (HB 12-1311), ch. 281, p. 1627, § 69, effective July 1.

Editor's note: Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (1)(yy) applies to acts committed on or after July 1, 2012.

25-1-1203. Electronic storage of medical records. Health plans, health care clearinghouses, and health care providers shall develop policies, procedures, and systems to comply with federal regulations promulgated by the federal department of health and human services related to electronic storage and maintenance of medical record information pursuant to federal law.

Source: **L. 2001:** Entire part added, p. 833, § 5, effective August 8.

25-1-1204. On-line exchange of advanced directives forms permitted. A public or private entity, including a nonprofit organization, that facilitates the exchange of health information among emergency medical service providers, doctors, hospitals, nursing homes, pharmacies, home health agencies, health plans, and local health information agencies through the use of health information technology may facilitate the voluntary, secure, and confidential exchange of forms containing advanced directives regarding a person's acceptance or rejection of life-sustaining medical or surgical treatment.

Source: L. 2010: Entire section added, (HB 10-1050), ch. 80, p. 271, § 1, effective August 11. L. 2012: Entire section amended, (HB 12-1059), ch. 271, p. 1437, § 19, effective July 1.

Editor's note: Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act amending this section applies to acts committed on or after July 1, 2012.

PART 13

CLIMATE CHANGE MARKETS GRANT PROGRAM

25-1-1301. Short title. This part 13 shall be known and may be cited as the "Colorado Climate Change Markets Act".

Source: L. 2006: Entire part added, p. 1743, § 4, effective June 6.

25-1-1302. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) As the United States and other countries take action to address issues related to climate change, Colorado faces important policy choices.

(b) Emerging technologies and markets related to climate change promise significant economic opportunities for the state, particularly for agriculture and rural economies.

(c) The general assembly enacts the "Colorado Climate Change Markets Act" for the purpose of positioning Colorado at the forefront of emerging markets related to climate change and helping affected industries and economies benefit from these opportunities.

Source: L. 2006: Entire part added, p. 1743, § 4, effective June 6.

25-1-1303. Grants for research - reports to general assembly. (1) The department of public health and environment shall administer a program to award grants pursuant to this section.

(2) (a) A grant of fifty thousand dollars shall be awarded to Colorado state university to conduct research on the potential for the use of terrestrial carbon sequestration in agricultural, rangeland, and forest soils as a technique for mitigating the emissions of greenhouse gases in the state.

(b) A grant of fifty thousand dollars shall be awarded to the Colorado school of mines to conduct research on the potential for the use of geologic carbon sequestration as a technique for mitigating the emissions of greenhouse gases in the state.

(c) A grant of thirty-five thousand dollars shall be awarded to the university of Colorado to conduct research on the emerging international and domestic markets in greenhouse gas emissions and to conduct research on private firms in various economic sectors that are reducing emissions of greenhouse gases.

(3) Each recipient of a grant awarded pursuant to this section shall report the results of the research conducted under the grant to the agriculture committees of the senate and the house of representatives no later than March 15, 2007.

Source: L. 2006: Entire part added, p. 1743, § 4, effective June 6.

PART 14

HEALTH INFORMATION TECHNOLOGY

25-1-1401 to 25-1-1403. (Repealed)

Editor’s note: (1) This part 14 was added in 2007 and was not amended prior to its repeal in 2012. For the text of this part 14 prior to 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 25-1-1403 provided for the repeal of this part 14, effective July 1, 2012. (See L. 2007, p. 1182.)

ARTICLE 1.5

Powers and Duties of the Department
of Public Health and Environment

Editor’s note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

PART 1

GENERAL POWERS AND DUTIES

- 25-1.5-101. Powers and duties of department - laboratory cash fund.
- 25-1.5-102. Epidemic and communicable diseases - powers and duties of department.
- 25-1.5-103. Health facilities - powers and duties of department - limitations on rules promulgated by department.
- 25-1.5-104. Regulation of standards relating to food - powers and duties of department.
- 25-1.5-105. Detection of diseases - powers and duties of department.
- 25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - created - repeal.
- 25-1.5-107. Pandemic influenza - purchase of antiviral therapy - definitions.
- 25-1.5-108. Regulation of dialysis treatment clinics - training for hemodialysis technicians - state board of health rules - definitions - repeal.
- 25-1.5-109. Food allergies and anaphylaxis form for schools - powers and duties of department.

PART 2

POWERS AND DUTIES OF THE
DEPARTMENT WITH RESPECT TO
WATER

- 25-1.5-201. Definitions.
- 25-1.5-202. Water - minimum general sanitary standards.
- 25-1.5-203. Water - powers and duties of department.
- 25-1.5-204. Inspection for violations of minimum general sanitary standards relating to quality of drinking water.
- 25-1.5-205. Advice to other entities.
- 25-1.5-206. Applicability.
- 25-1.5-207. Damages and injunctive relief to prevent or abate release of contaminants in water.
- 25-1.5-208. Grant program for drinking water and water treatment systems - small communities water and wastewater grant fund - rules.
- 25-1.5-209. Drinking water fee - drinking water cash fund.

PART 3

ADMINISTRATION OF MEDICATIONS

- 25-1.5-301. Definitions.
- 25-1.5-302. Administration of medications - powers and duties of department - criminal history record checks.
- 25-1.5-303. Medication reminder boxes or systems - medication cash fund.
- 25-1.5-304. Repeal of part. (Repealed)

PART 1

GENERAL POWERS AND DUTIES

25-1.5-101. Powers and duties of department - laboratory cash fund. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) To close theaters, schools, and other public places, and to forbid gatherings of people when necessary to protect the public health;

(b) (I) To establish and enforce minimum general sanitary standards as to the quality of wastes discharged upon land and the quality of fertilizer derived from excreta of human beings or from the sludge of sewage disposal plants.

(II) The phrase "minimum general sanitary standards" as used in this section means the minimum standards reasonably consistent with assuring adequate protection of the public health. The word "standards" as used in this section means standards reasonably designed to promote and protect the public health.

(c) (I) To collect, compile, and tabulate reports of marriages, dissolution of marriages, declaration of invalidity of marriages, births, deaths, and morbidity and to require any person having information with regard to the same to make such reports and submit such information as the board shall by rule or regulation provide.

(II) For the purposes of this paragraph (c), the board is authorized to require reporting of morbidity and mortality in accordance with the provisions of section 25-1-122.

(d) To regulate the disposal, transportation, interment, and disinterment of the dead;

(e) (I) To establish, maintain, and approve chemical, bacteriological, and biological laboratories, and to conduct such laboratory investigations and examinations as it may deem necessary or proper for the protection of the public health.

(II) The department shall transmit all fees received by the department in connection with the laboratories established pursuant to this paragraph (e), with the exception of fees received pursuant to part 10 of article 4 of this title that are credited to the newborn screening and genetic counseling cash funds created in section 25-4-1006 (1), to the state treasurer, who shall deposit them in the laboratory cash fund, which is hereby created in the state treasury. The state treasurer shall credit all interest earned from the revenues in the fund to the fund. At the end of each fiscal year, the unencumbered balance of the fund remains in the fund. The revenues in the fund are subject to annual appropriation by the general assembly to the department to carry out its duties under this paragraph (e).

(f) To make, approve, and establish standards for diagnostic tests by chemical, bacteriological, and biological laboratories, and to require such laboratories to conform thereto; and to prepare, distribute, and require the completion of forms or certificates with respect thereto;

(g) To purchase, and to distribute to licensed physicians and veterinarians, with or without charge, as the board may determine upon considerations of emergency or need, such vaccines, serums, toxoids, and other approved biological or therapeutic products as may be necessary for the protection of the public health;

(h) To establish and enforce sanitary standards for the operation and maintenance of orphanages, day care nurseries, foster homes, family care homes, summer camps for children, lodging houses, guest child care facilities as defined in section 26-6-102 (5), C.R.S., public services short-term child care facilities as defined in section 26-6-102 (6.7), C.R.S., hotels, public conveyances and stations, schools, factories, workshops, industrial and labor camps, recreational resorts and camps, swimming pools, public baths, mobile home parks, and other buildings, centers, and places used for public gatherings;

(i) (I) To establish sanitary standards and make sanitary, sewerage, and health inspections and examinations for charitable, penal, and other public institutions, and, with respect to the state institutions under the department of human services specified in section 27-90-104, C.R.S., or under the department of corrections specified in section 17-1-104.3 (1) (b), C.R.S., such inspections and examinations shall be made at least once each year. Reports on such inspections of institutions under control of the department of human

services or the department of corrections shall be made to the executive director of the appropriate department for appropriate action, if any.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (i), the standards adopted pursuant to subparagraph (I) of this paragraph (i) with regard to space requirements, furnishing requirements, required special use areas or special management housing, and environmental condition requirements, including but not limited to standards pertaining to light, ventilation, temperature, and noise level, shall not apply to any penal institution operated by or under contract with a county or municipality if the penal institution begins operations on or after August 30, 1999, and if the governing body of the jurisdiction operating the penal institution has adopted standards pertaining to such issues for the penal institution pursuant to section 30-11-104 (1), C.R.S., or section 31-15-711.5, C.R.S., whichever is applicable.

(j) (I) To disseminate public health information;

(II) To provide poison control services, for the fiscal year beginning July 1, 2002, and fiscal years thereafter, on a statewide basis and to provide for the dissemination of information concerning the care and treatment of individuals exposed to poisonous substances pursuant to article 32 of this title;

(k) To establish and enforce standards for exposure to toxic materials in the gaseous, liquid, or solid phase that may be deemed necessary for the protection of public health;

(l) To establish and enforce standards for exposure to environmental conditions, including radiation, that may be deemed necessary for the protection of the public health;

(m) (I) To accept on behalf of and in the name of the state, gifts, donations, and grants for any purpose connected with the work and programs of the department.

(II) Any such property so given shall be held by the state treasurer, but the department shall have the power to direct the disposition of any property so given for any purpose consistent with the terms and conditions under which such gift was created.

(n) To carry out the policies of the state as set forth in part 1 of article 6 of this title with respect to family planning;

(o) To carry out the policies of this state relating to the "Colorado Health Care Coverage Act" as set forth in parts 1 and 4 of article 16 of title 10, C.R.S.;

(p) To compile and maintain current information necessary to enable the department to answer any inquiry concerning the proper action to take to counteract, eliminate, or minimize the public health hazards of a hazardous substance incident involving any specific kind of hazardous substance. To make such information available and to facilitate the reporting of hazardous substance incidents, the department shall establish, maintain, and publicize an environmental emergency telephone service that shall be available to the public twenty-four hours each day. With respect to the powers and duties specified in this paragraph (p), the department shall have no rule-making authority and shall avail itself of all available private resources. As used in this paragraph (p), the terms "hazardous substance" and "hazardous substance incident" shall have the meanings ascribed to them in section 29-22-101, C.R.S. The department shall coordinate its activities pursuant to this section with the Colorado state patrol.

(q) (I) To establish and maintain a statewide cancer registry providing for compilation and analysis of appropriate information regarding incidence, diagnosis, treatment, and end results and any other data designed to provide more effective cancer control for the citizens of Colorado.

(II) For the purposes of this paragraph (q), the board is authorized to require reports relating to cancer in accordance with the provisions of section 25-1-122 and to have access to medical records relating to cancer in accordance with the provisions of section 25-1-122.

(r) To operate and maintain a program for children with disabilities to provide and expedite provision of health care services to children who have congenital birth defects or who are the victims of burns or trauma or children who have acquired disabilities;

(s) To annually enter into an agreement with a qualified person to perform necessary hazardous substance incident response actions when such actions are beyond the ability of the local and state response capabilities. Such response actions may include, but are not limited to, containment, clean-up, and disposal of a hazardous substance. Nothing in this

article shall prevent the attorney general's office from pursuing cost recovery against responsible persons.

(t) To operate special health programs for migrant and seasonal farm workers and their dependent family members and to accept and employ federal and other moneys appropriated to implement such programs;

(u) To carry out the duties prescribed in article 11.5 of title 16, C.R.S., relating to substance abuse in the criminal justice system;

(v) To establish and maintain a statewide gulf war syndrome registry pursuant to part 19 of article 4 of this title providing for compilation and analysis of information regarding incidence, diagnosis, treatment, and treatment outcomes of veterans or family members of veterans suffering from gulf war syndrome;

(w) (I) To act as the coordinator for suicide prevention programs throughout the state.

(II) The department is authorized to accept gifts, grants, and donations to assist it in performing its duties as the coordinator for suicide prevention programs. All such gifts, grants, and donations shall be transmitted to the state treasurer who shall credit the same to the suicide prevention coordination cash fund, which fund is hereby created. Any moneys remaining in the suicide prevention coordination cash fund at the end of any fiscal year shall remain in the fund and shall not be transferred or credited to the general fund. The general assembly shall make appropriations from the suicide prevention coordination cash fund for expenditures incurred by the department in the performance of its duties under this paragraph (w).

(III) (A) As part of its duties as coordinator for suicide prevention programs, on or before each November 1, the department shall submit to the chairs of the senate health and human services committee and the house of representatives health and environment committee, or their successor committees, and to the members of the joint budget committee a report listing all suicide prevention programs in the state and describing the effectiveness of the department acting as the coordinator for suicide prevention programs. For the report submitted in 2013 and each year thereafter, the department shall include any findings and recommendations it has to improve suicide prevention in the state.

(B) (Deleted by amendment, L. 2012.)

(IV) In its role as coordinator for suicide prevention programs, the department may collaborate with each facility licensed or certified pursuant to section 25-1.5-103 in order to coordinate suicide prevention services. When a facility treats a person who has attempted suicide or exhibits a suicidal gesture, the facility may provide oral and written information or educational materials to the person or, in the case of a minor, to parents, relatives, or other responsible persons to whom the minor will be released, prior to the person's release, regarding warning signs of depression, risk factors of suicide, methods of preventing suicide, available suicide prevention resources, and any other information concerning suicide awareness and prevention. The department may work with facilities to determine whether and where gaps exist in suicide prevention programs and services, including gaps that may be present in:

(A) The information and materials being used and distributed in facilities throughout the state;

(B) Resources available to persons who attempt suicide or exhibit a suicidal gesture and, when the person is a minor, to parents, relatives, and other responsible persons to whom a minor is released; and

(C) The process for referring persons who attempt suicide or exhibit a suicidal gesture to suicide prevention services and programs or other appropriate health care providers for treatment.

(x) To implement the state dental loan repayment program created in article 23 of this title;

(y) To coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop resource management plans consistent with this article for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712;

(z) To perform the duties specified in part 6 of article 10 of title 30, C.R.S., relating to the Colorado coroners standards and training board;

(aa) To determine if there is a shortage of drugs critical to the public safety of the people of Colorado and declare an emergency for the purpose of preventing the practice of unfair drug pricing as prohibited by section 6-1-714, C.R.S.;

(bb) To include on its public web site home page a link to forms containing advanced directives regarding a person's acceptance or rejection of life-sustaining medical or surgical treatment, which forms are available to be downloaded electronically.

Source: L. 2003: Entire article added with relocations, p. 676, § 2, effective July 1; (1)(y) added, p. 1035, § 7, effective April 17; (1)(z) added, p. 1830, § 2, effective August 6. **L. 2005:** (1)(aa) added, p. 372, § 1, effective April 22. **L. 2007:** (1)(h) amended, p. 866, § 4, effective May 14. **L. 2010:** (1)(i)(I) amended, (SB 10-175), ch. 188, p. 798, § 58, effective April 29; (1)(bb) added, (HB 10-1050), ch. 80, p. 271, § 2, effective August 11. **L. 2011:** (1)(e) amended, (SB 11-161), ch. 12, p. 34, § 1, effective March 9. **L. 2012:** (1)(w)(III) amended and (1)(w)(IV) added, (HB 12-1140), ch. 173, p. 619, § 1, effective May 11.

Editor's note: This section is similar to former § 25-1-107 (1)(c), (1)(e), (1)(f), (1)(g), (1)(h), (1)(i), (1)(j), (1)(m), (1)(n), (1)(q), (1)(s), (1)(t), (1)(u), (1)(v), (1)(w), (1)(y), (1)(z), (1)(aa), (1)(bb), (1)(cc), (1)(ff), (1)(hh), (1)(ii), and (1)(kk) as they existed prior to 2003.

Cross references: For the legislative declaration contained in the 2003 act enacting (1)(y), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Colorado Legislative Session — Water", see 28 Rocky Mt. L. Rev. 58 (1955). For note, "Water Pollution Control in Colorado", see 36 U. Colo. L. Rev. 413 (1964). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For article, "A Critical Evaluation of the Federal Role in Nursing Home Quality Enforcement", see 51 U. Colo. L. Rev. 607 (1980). For article, "Local Governments and the Environment: Part I, CERCLA", see 17 Colo. Law. 1997 (1988). For article, "Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988). For article, "The Legal Risks of AIDS: Moving Beyond Discrimination", see 18 Colo. Law. 606 (1989).

Annotator's note. Since § 25-1.5-101 is similar to § 25-1-107 as it existed prior to its

2003 repeal and relocation to this article 1.5, a relevant case construing that provision has been included in the annotations to this section.

Constitutionality of subsection (1)(m). Subsection (1)(m) does not unconstitutionally delegate any power or duty to the department of health, nor does it abdicate the legislative prerogative of making or defining a law. People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971).

The scope of authority and guidelines to be followed by the department of health in adopting sanitary standards are to be those which are reasonably designed to promote and protect the public health. People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971).

25-1.5-102. Epidemic and communicable diseases - powers and duties of department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) (I) To investigate and control the causes of epidemic and communicable diseases affecting the public health.

(II) For the purposes of this paragraph (a), the board shall determine, by rule and regulation, those epidemic and communicable diseases and conditions that are dangerous to the public health. The board is authorized to require reports relating to such designated diseases in accordance with the provisions of section 25-1-122 and to have access to medical records relating to such designated diseases in accordance with the provisions of section 25-1-122.

(III) For the purposes of this paragraph (a), "epidemic diseases" means cases of an illness or condition, communicable or noncommunicable, in excess of normal expectancy, compared to the usual frequency of the illness or condition in the same area, among the

specified population, at the same season of the year. A single case of a disease long absent from a population may require immediate investigation.

(IV) For the purposes of this paragraph (a), “communicable diseases” means an illness due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(b) (I) To investigate and monitor the spread of disease that is considered part of an emergency epidemic as defined in section 24-32-2103 (1.7), C.R.S., to determine the extent of environmental contamination resulting from the emergency epidemic, and to rapidly provide epidemiological and environmental information to the governor’s expert emergency epidemic response committee, created in section 24-32-2104 (8), C.R.S.

(II) Except as otherwise directed by executive order of the governor, the department shall exercise its powers and duties to control epidemic and communicable diseases and protect the public health as set out in this section.

(III) The department may accept and expend federal funds, gifts, grants, and donations for the purposes of an emergency epidemic or preparation for an emergency epidemic.

(IV) When a public safety worker, emergency medical service provider, peace officer, or staff member of a detention facility has been exposed to blood or other bodily fluid which there is a reason to believe may be infectious with hepatitis C, the state department and county, district, and municipal public health agencies within their respective jurisdictions shall assist in evaluation and treatment of any involved persons by:

(A) Accessing information on the incident and any persons involved to determine whether a potential exposure to hepatitis C occurred;

(B) Examining and testing such involved persons to determine hepatitis C infection when the fact of an exposure has been established by the state department or county, district, or municipal public health agency;

(C) Communicating relevant information and laboratory test results on the involved persons to such persons’ attending physicians or directly to the involved persons if the confidentiality of such information and test results is acknowledged by the recipients and adequately protected, as determined by the state department or county, district, or municipal public health agency; and

(D) Providing counseling to the involved persons on the potential health risks resulting from exposure and the available methods of treatment.

(V) The employer of an exposed person shall ensure that relevant information and laboratory test results on the involved person are kept confidential. Such information and laboratory results are considered medical information and protected from unauthorized disclosure.

(VI) For purposes of this paragraph (b), “public safety worker” includes, but is not limited to, law enforcement officers, peace officers, and firefighters.

(c) To establish, maintain, and enforce isolation and quarantine, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and the persons of the people within this state as the department may find necessary for the protection of the public health;

(d) To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health.

(2) Notwithstanding any other provision of law to the contrary, the department shall administer the provisions of this section regardless of an individual’s race, religion, gender, ethnicity, national origin, or immigration status.

Source: **L. 2003:** Entire article added with relocations, p. 680, § 2, effective July 1; IP(1)(b)(IV) amended, p. 1617, § 23, effective August 6. **L. 2006, 1st Ex. Sess.:** (2) added, p. 25, § 2, effective July 31. **L. 2010:** IP(1)(b)(IV), (1)(b)(IV)(B), and (1)(b)(IV)(C) amended, (HB 10-1422), ch. 419, p. 2091, § 86, effective August 11.

Editor’s note: (1) This section is similar to former § 25-1-107 (1)(a), (1)(a.5), (1)(b), and (1)(d) as they existed prior to 2003.

(2) Amendments to subsection (1)(b)(IV) by House Bill 03-1266 and Senate Bill 03-002 were harmonized.

ANNOTATION

Law reviews. For article, “2006 Immigration Legislation in Colorado”, see 35 Colo. Law. 79 (October 2006).

25-1.5-103. Health facilities - powers and duties of department - limitations on rules promulgated by department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) (I) (A) To annually license and to establish and enforce standards for the operation of general hospitals, hospital units as defined in section 25-3-101 (2), psychiatric hospitals, community clinics, rehabilitation hospitals, convalescent centers, community mental health centers, acute treatment units, facilities for persons with developmental disabilities, nursing care facilities, hospice care, assisted living residences, dialysis treatment clinics, ambulatory surgical centers, birthing centers, home care agencies, and other facilities of a like nature, except those wholly owned and operated by any governmental unit or agency.

(B) In establishing and enforcing such standards and in addition to the required announced inspections, the department shall, within available appropriations, make additional inspections without prior notice to the health facility, subject to sub-subparagraph (C) of this subparagraph (I). Such inspections shall be made only during the hours of 7 a.m. to 7 p.m.

(C) The department shall extend the survey cycle or conduct a tiered inspection or survey of a health facility licensed for at least three years and against which no enforcement activity has been taken, no patterns of deficient practices exist, as documented in the inspection and survey reports issued by the department, and no substantiated complaint resulting in the discovery of significant deficiencies that may negatively affect the life, health, or safety of consumers of the health facility has been received within the three years prior to the date of the inspection. The department may expand the scope of the inspection or survey to an extended or full survey if the department finds deficient practice during the tiered inspection or survey. The department, by rule, shall establish a schedule for an extended survey cycle or a tiered inspection or survey system designed, at a minimum, to: Reduce the time needed for and costs of licensure inspections for both the department and the licensed health facility; reduce the number, frequency, and duration of on-site inspections; reduce the scope of data and information that health facilities are required to submit or provide to the department in connection with the licensure inspection; reduce the amount and scope of duplicative data, reports, and information required to complete the licensure inspection; and be based on a sample of the facility size. Nothing in this sub-subparagraph (C) limits the ability of the department to conduct a periodic inspection or survey that is required to meet its obligations as a state survey agency on behalf of the centers for medicare and medicaid services or the department of health care policy and financing to assure that the health facility meets the requirements for participation in the medicare and medicaid programs.

(D) In connection with the renewal of licenses issued pursuant to this subparagraph (I), the department shall institute a performance incentive system pursuant to section 25-3-105 (1) (a) (I) (C).

(E) The department shall not cite as a deficiency in a report resulting from a survey or inspection of a licensed health facility any deficiency from an isolated event identified by the department that can be effectively remedied during the survey or inspection of the health facility, unless the deficiency caused harm or a potential for harm, created a life- or limb-threatening emergency, or was due to abuse or neglect.

(F) Sections 24-4-104, C.R.S., and 25-3-102 govern the issuance, suspension, renewal, revocation, annulment, or modification of licenses. All licenses issued by the department must contain the date of issue and cover a twelve-month period. Nothing contained in this

paragraph (a) prevents the department from adopting and enforcing, with respect to projects for which federal assistance has been obtained or is requested, higher standards as may be required by applicable federal laws or regulations of federal agencies responsible for the administration of applicable federal laws.

(II) To establish and enforce standards for the operation and maintenance of the health facilities named in subparagraph (I) of this paragraph (a), wholly owned and operated by the state or any of its political subdivisions, and no such facility shall be operated or maintained without an annual certificate of compliance;

(b) To suspend, revoke, or refuse to renew any license issued to a health facility pursuant to subparagraph (I) or (II) of paragraph (a) of this subsection (1) if such health facility has committed abuse of health insurance pursuant to section 18-13-119, C.R.S., or if such health facility has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that it will perform any act prohibited by section 18-13-119 (3), C.R.S., unless the health facility is exempted from section 18-13-119 (5), C.R.S.;

(c) (I) To establish and enforce standards for licensure of community mental health centers and acute treatment units.

(II) The department of public health and environment has primary responsibility for the licensure of community mental health centers and acute treatments units. The department of human services has primary responsibility for program approval at these facilities. In performing their respective responsibilities pursuant to this subparagraph (II), both departments shall take into account changes in health care policy and practice incorporating the concept and practice of integration of services and the development of a system that commingles and integrates health care services.

(2) For purposes of this section, unless the context otherwise requires:

(a) "Acute treatment unit" means a facility or a distinct part of a facility for short-term psychiatric care, which may include substance abuse treatment, and which provides a total, twenty-four-hour therapeutically planned and professionally staffed environment for persons who do not require inpatient hospitalization but need more intense and individual services than are available on an outpatient basis, such as crisis management and stabilization services.

(a.5) "Community clinic" has the same meaning as set forth in section 25-3-101 and does not include:

(I) A federally qualified health center, as defined in section 1861 (aa) (4) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa) (4);

(II) A rural health clinic, as defined in section 1861 (aa) (2) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa) (2).

(b) "Community mental health center" means either a physical plant or a group of services under unified administration and including at least the following: Inpatient services; outpatient services; day hospitalization; emergency services; and consultation and educational services, which services are provided principally for persons with mental illness residing in a particular community in or near which the facility is situated.

(b.5) "Enforcement activity" means the imposition of remedies such as civil money penalties; appointment of a receiver or temporary manager; conditional licensure; suspension or revocation of a license; a directed plan of correction; intermediate restrictions or conditions, including retaining a consultant, department monitoring, or providing additional training to employees, owners, or operators; or any other remedy provided by state or federal law or as authorized by federal survey, certification, and enforcement regulations and agreements for violations of federal or state law.

(c) "Facility for persons with developmental disabilities" means a facility specially designed for the active treatment and habilitation of persons with developmental disabilities or a community residential home, as defined in section 27-10.5-102 (4), C.R.S., which is licensed and certified pursuant to section 27-10.5-109, C.R.S.

(d) "Hospice care" means an entity that administers services to a terminally ill person utilizing palliative care or treatment.

(3) (a) In the exercise of its powers pursuant to this section, the department shall not promulgate any rule, regulation, or standard relating to nursing personnel for rural nursing

care facilities, rural intermediate care facilities, and other rural facilities of a like nature more stringent than the applicable federal standards and regulations.

(b) For purposes of this subsection (3), "rural" means:

- (I) A county of less than fifteen thousand population; or
- (II) A municipality of less than fifteen thousand population which is located ten miles or more from a municipality of over fifteen thousand population; or
- (III) The unincorporated part of a county ten miles or more from a municipality of fifteen thousand population or more.

(c) A nursing care facility which is not rural as defined in paragraph (b) of this subsection (3) shall meet the licensing requirements of the department for nursing care facilities. However, if a registered nurse hired pursuant to department regulations is temporarily unavailable, a nursing care facility may use a licensed practical nurse in place of a registered nurse if such licensed practical nurse is a current employee of the nursing care facility.

(3.5) (a) (I) The department of public health and environment may establish life safety code and physical plant requirements for an occupancy that is contiguous with an acute treatment unit if the occupancy is operated by the acute treatment unit licensee and the services provided by the occupancy are outpatient services certified in accordance with article 65 of title 27, C.R.S., to determine appropriate placement or detoxification services licensed by the department of human services. The services provided by the occupancy shall benefit acute treatment unit clients, although the occupancy may also provide such services to other populations. It shall be at the discretion of the acute treatment unit licensee to either construct the necessary fire safety separations between the occupancy and the acute treatment unit or to assume fiscal and administrative responsibility for assuring that the occupancy meets the life safety code requirements as specified and verified by the department of public health and environment.

(II) The state board of health may promulgate rules authorizing the department of public health and environment to assess a penalty of up to one hundred dollars per day if the department finds that an occupancy does not comply with life safety code requirements. The department shall only assess the penalty after the acute treatment unit licensee has had an opportunity to correct the noncompliance.

(III) Nothing in this subsection (3.5) shall be construed to extend the life safety code authority of the department of public health and environment to an occupancy that is not subject to licensure by the department and that has the appropriate fire safety separations between the occupancy and the acute treatment unit.

(b) A licensee that is subject to life safety code oversight of one or more occupancies pursuant to paragraph (a) of this subsection (3.5) shall pay a fee or fees in accordance with rules promulgated by the state board of health.

(c) Any moneys collected pursuant to this subsection (3.5) shall be transmitted to the state treasurer, who shall credit the same to the health facilities general licensure cash fund created in section 25-3-103.1.

(4) In the exercise of its powers, the department shall not promulgate any rule, regulation, or standard that limits or interferes with the ability of an individual to enter into a contract with a private pay facility concerning the programs or services provided at the private pay facility. For the purposes of this subsection (4), "private pay facility" means a skilled nursing facility or intermediate care facility subject to the requirements of section 25-1-120 or an assisted living residence licensed pursuant to section 25-27-105 that is not publicly funded or is not certified to provide services that are reimbursed from state or federal assistance funds.

(5) (a) This subsection (5) applies to construction, including substantial renovation, and ongoing compliance with article 33.5 of title 24, C.R.S., of a health care facility building or structure on or after July 1, 2013. All health facility buildings and structures shall be constructed in conformity with the standards adopted by the director of the division of fire prevention and control in the office of preparedness, security, and fire safety within the department of public safety.

(b) Except as provided in paragraph (c) of this subsection (5) but notwithstanding any other provision of law to the contrary, the department shall not issue or renew any license

under this article unless the department has received a certificate of compliance from the division of fire prevention and control certifying that the building or structure of the health facility is in conformity with the standards adopted by the director of the division of fire prevention and control.

(c) The department has no authority to establish or enforce standards relating to building or fire codes. All functions, personnel, and property of the department as of June 30, 2013, that are principally directed to the administration, inspection, and enforcement of any building or fire codes or standards shall be transferred to the health facility construction and inspection section of the division of fire prevention and control pursuant to section 24-33.5-1201 (5), C.R.S.

(d) Notwithstanding any provision of law to the contrary, all health facilities seeking certification pursuant to the federal insurance or assistance provided by title XIX of the federal "Social Security Act", as amended and commonly known as "medicaid", or the federal insurance or assistance provided by title XVIII of the federal "Social Security Act", as amended and commonly known as "medicare", or any successor code adopted or promulgated by the appropriate federal authorities, shall continue to meet such certification requirements.

(e) Nothing in this subsection (5) divests the department of the authority to perform health survey work or prevents the department from accessing related funds.

Editor's note: Subsection (5) is effective July 1, 2013, only if the revisor of statutes receives notification. (See the editor's note following this section.)

Source: **L. 2003:** Entire article added with relocations, p. 682, § 2, effective July 1. **L. 2006:** (1)(a)(I), (1)(c)(I), (2), and (2)(b) amended, pp. 1389, 1404, §§ 21, 63, effective August 7. **L. 2008:** (3.5) added, p. 1947, § 1, effective June 2; (1)(a)(I) amended, p. 2232, § 1, effective August 5. **L. 2010:** (3.5)(a)(I) amended, (SB 10-175), ch. 188, p. 798, § 59, effective April 29. **L. 2011:** (2)(a.5) added, (HB 11-1101), ch. 94, p. 277, § 1, effective April 8; (2)(a.5) amended, (HB 11-1323), ch. 265, p. 1198, § 1, effective June 2. **L. 2012:** (1)(a)(I), (1)(c), and IP(2)(a.5) amended and (2)(b.5) added, (HB 12-1294), ch. 252, p. 1251, § 2, effective June 4; (5) added, (HB 12-1268), ch. 234, p. 1024, § 1, effective July 1, 2013.

Editor's note: (1) This section is similar to former § 25-1-107 (1)(I), (3), and (4) as they existed prior to 2003.

(2) Amendments to subsection (2) in sections 21 and 63 of House Bill 06-1277 were harmonized. As a result of the harmonization, subsection (2)(a) in section 63 of House Bill 06-1277 was renumbered as subsection (2)(b).

(3) Section 15 of chapter 234, Session Laws of Colorado 2012, provides that subsection (5) is effective July 1, 2013, only if the division of fire prevention and control in the department of public safety notifies the revisor of statutes in writing, by June 30, 2013, that the secretary of the United States department of health and human services has granted a modification to the agreement entered into between said secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, which modification allows said division to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities.

Cross references: For the legislative declaration in the 2012 act amending subsections (1)(a)(I) and (1)(c) and the introductory portion to subsection (2)(a.5) and adding subsection (2)(b.5), see section 1 of chapter 252, Session Laws of Colorado 2012.

ANNOTATION

Annotator's note. Since § 25-1.5-103 is similar to § 25-1-107 as it existed prior to its 2003 repeal and relocation to this article 1.5, a relevant case construing that provision has been included in the annotations to this section.

This section is not a licensing statute, but rather one specifying the powers of the state

department of public health. *Adams v. Poudre Valley Hosp. Dist.*, 173 Colo. 98, 476 P.2d 565 (1970).

Thus, subsection (1)(I)(II), "certificate of compliance", is not a license. *Adams v. Poudre Valley Hosp. Dist.*, 173 Colo. 98, 476 P.2d 565 (1970).

25-1.5-104. Regulation of standards relating to food - powers and duties of department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) To impound any vegetables and other edible crops and meat and animal products intended for and unfit for human consumption, and, upon five days' notice and after affording reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health;

(b) (I) To promulgate and enforce rules, regulations, and standards for the grading, labeling, classification, and composition of milk, milk products, and dairy products, including imitation dairy products; to establish minimum general sanitary standards of quality of all milk, milk products, dairy products, and imitation dairy products sold for human consumption in this state; to inspect and supervise, in dairy plants or dairy farms and in other establishments handling any milk, milk products, dairy products, or imitation dairy products, the sanitation of production, processing, and distribution of all milk, milk products, dairy products, and imitation dairy products sold for human consumption in this state and, to this end, to take samples of milk, milk products, dairy products, and imitation dairy products for bacteriological, chemical, and other analyses; and to enforce the standards for milk, milk products, dairy products, and imitation dairy products in processing plants, dairy farms, and other facilities and establishments handling, transporting, or selling such products; to certify persons licensed by the department under the provisions of section 25-5.5-107 as duly qualified persons for the purpose of collecting raw milk samples for official analyses in accordance with minimum qualifications established by the department; to issue, for the fees established by law, licenses and temporary permits to operate milk plants, dairy plants, receiving stations, dairy farms, and other facilities manufacturing any milk, milk products, dairy products, or imitation dairy products for human consumption.

(II) The phrase "minimum general sanitary standards" as used in this section means the minimum standards reasonably consistent with assuring adequate protection of the public health. The word "standards" as used in this section means standards reasonably designed to promote and protect the public health.

(c) To promulgate and enforce rules and regulations for the labeling and sale of oleomargarine and for the governing of milk- or cream-weighing-and-testing operations;

(d) To approve all oils used in reading tests of samples of cream and milk;

(e) To examine and license persons to sample or test milk, cream, or other dairy products for the purpose of determining the value of such products or to instruct other persons in the sampling and testing of such products and to cancel licenses issued by the department on account of incompetency or any violation of the provisions of the dairy laws or the rules and regulations promulgated by the board;

(f) To license manufacturers of oleomargarine;

(g) To establish and enforce sanitary standards for the operation of slaughtering, packing, canning, and rendering establishments and stores, shops, and vehicles wherein meat and animal products intended for human consumption may be offered for sale or transported, but this shall not be construed to authorize any state officer or employee to interfere with regulations or inspections made by anyone acting under the laws of the United States.

Source: L. 2003: Entire article added with relocations, p. 684, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1.5-107 (1)(k), (1)(o), and (1)(p) as they existed prior to 2003.

25-1.5-105. Detection of diseases - powers and duties of department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) To establish and operate programs which the department determines are important in promoting, protecting, and maintaining the public's health by preventing, delaying, or detecting the onset of environmental and chronic diseases;

(b) To develop and maintain a system for detecting and monitoring environmental and chronic diseases within the state and to investigate and determine the epidemiology of those conditions which contribute to preventable or premature sickness and to death and disability;

(c) To establish programs of community and professional education relevant to the detection, prevention, and control of environmental and chronic diseases.

(2) For purposes of this section, "chronic disease" means impairment or deviation from the normal functioning of the human body which:

(a) Is permanent;

(b) Leaves residual disability;

(c) Is caused by nonreversible pathological alterations;

(d) Requires special patient education and instruction for rehabilitation; or

(e) May require a long period of supervision, observation, and care.

(3) For the purposes of this section, "environmental disease" means an impairment or deviation from the normal functioning of the human body which:

(a) May be either temporary or permanent;

(b) May leave residual disability;

(c) May result in birth defects, damage to tissues and organs, and chronic illness; and

(d) Is caused by exposure to hazardous chemical or radiological materials present in the environment.

(4) For the purposes of this section, the board shall determine, by rule and regulation, those environmental and chronic diseases that are dangerous to the public health. The board is authorized to require reports relating to such designated diseases in accordance with the provisions of section 25-1-122 and to have access to medical records relating to such designated diseases in accordance with the provisions of section 25-1-122.

Source: L. 2003: Entire article added with relocations, p. 685, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (1)(dd) as it existed prior to 2003.

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - created - repeal. (1) **Legislative declaration.** (a) The general assembly hereby declares that it is necessary to implement rules to ensure that patients suffering from legitimate debilitating medical conditions are able to safely gain access to medical marijuana and to ensure that these patients:

(I) Are not subject to criminal prosecution for their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency; and

(II) Are able to establish an affirmative defense to their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) The general assembly hereby declares that it is necessary to implement rules to prevent persons who do not suffer from legitimate debilitating medical conditions from using section 14 of article XVIII of the state constitution as a means to sell, acquire, possess, produce, use, or transport marijuana in violation of state and federal laws.

(2) **Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(I) A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;

(II) The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and

(III) The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

(b) "Executive director" means the executive director of the state health agency.

(c) "In good standing", with respect to a physician's license, means:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school;

(II) The physician holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned license; and

(III) The physician has a valid and unrestricted United States department of justice federal drug enforcement administration controlled substances registration.

(d) "Medical marijuana program" means the program established by section 14 of article XVIII of the state constitution and this section.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

(e) "Registry identification card" means the nontransferable confidential registry identification card issued by the state health agency to patients and primary caregivers pursuant to this section.

(f) "State health agency" means the public health-related entity of state government designated by the governor by executive order pursuant to section 14 of article XVIII of the state constitution.

(3) **Rule-making.** (a) The state health agency shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program that specifically govern the following:

(I) The establishment and maintenance of a confidential registry of patients who have applied for and are entitled to receive a registry identification card. The confidential registry of patients may be used to determine whether a physician should be referred to the Colorado board of medical examiners for a suspected violation of section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to this subsection (3).

(II) The development by the state health agency of an application form and the process for making the form available to residents of this state seeking to be listed on the confidential registry of patients who are entitled to receive a registry identification card;

(III) The verification by the state health agency of medical information concerning patients who have applied for a registry identification card or for renewal of a registry identification card;

(IV) The development by the state health agency of a form that constitutes "written documentation" as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient;

(V) The conditions for issuance and renewal, and the form, of the registry identification cards issued to patients, including but not limited to standards for ensuring that the state health agency issues a registry identification card to a patient only if he or she has a bona fide physician-patient relationship with a physician in good standing and licensed to practice medicine in the state of Colorado;

(VI) Communications with law enforcement officials about registry identification cards that have been suspended when a patient is no longer diagnosed as having a debilitating medical condition;

(VII) The manner in which the state health agency may consider adding debilitating medical conditions to the list of debilitating medical conditions contained in section 14 of article XVIII of the state constitution; and

(VIII) A waiver process to allow a homebound patient who is on the registry to have a primary caregiver transport the patient's medical marijuana from a licensed medical marijuana center to the patient.

(b) The state health agency may promulgate rules regarding the following:

(I) What constitutes “significant responsibility for managing the well-being of a patient”; except that the act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute “significant responsibility for managing the well-being of a patient”;

(II) The development of a form for a primary caregiver to use in applying to the registry, which form shall require, at a minimum, that the applicant provide his or her full name, home address, date of birth, and an attestation that the applicant has a significant responsibility for managing the well-being of the patient for whom he or she is designated as the primary caregiver and that he or she understands and will abide by section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state health agency pursuant to this section;

(III) The development of a form that constitutes “written documentation”, as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient; and

(IV) The grounds and procedure for a patient to change his or her designated primary caregiver.

(c) Repealed.

(4) Notwithstanding any other requirements to the contrary, notice issued by the state health agency for a rule-making hearing pursuant to section 24-4-103, C.R.S., for rules concerning the medical marijuana program shall be sufficient if the state health agency provides the notice no later than forty-five days in advance of the rule-making hearing in at least one publication in a newspaper of general distribution in the state and posts the notice on the state health agency’s web site; except that emergency rules pursuant to section 24-4-103 (6), C.R.S., shall not require advance notice.

(5) **Physicians.** A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

(a) The physician shall have a valid and active license to practice medicine, which license is in good standing.

(b) After a physician, who has a bona fide physician-patient relationship with the patient applying for the medical marijuana program, determines, for the purposes of making a recommendation, that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana, the physician shall certify to the state health agency that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition, the physician shall specify the chronic or debilitating disease or medical condition and, if known, the cause or source of the chronic or debilitating disease or medical condition.

(c) The physician shall maintain a record-keeping system for all patients for whom the physician has recommended the medical use of marijuana, and, pursuant to an investigation initiated pursuant to section 12-36-118, C.R.S., the physician shall produce such medical records to the Colorado state board of medical examiners after redacting any patient or primary caregiver identifying information.

(d) A physician shall not:

(I) Accept, solicit, or offer any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana;

(II) Offer a discount or any other thing of value to a patient who uses or agrees to use a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;

(III) Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or

(IV) Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a patient for participation in the medical marijuana program.

(6) **Enforcement.** (a) If the state health agency has reasonable cause to believe that a physician has violated section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to subsection (2) of this section, the state health agency may refer the matter to the state board of medical examiners created in section 12-36-103, C.R.S., for an investigation and determination.

(b) If the state health agency has reasonable cause to believe that a physician has violated paragraph (d) of subsection (5) of this section, the state health agency shall conduct a hearing pursuant to section 24-4-104, C.R.S., to determine whether a violation has occurred.

(c) Upon a finding of unprofessional conduct pursuant to section 12-36-117 (1) (mm), C.R.S., by the state board of medical examiners or a finding of a violation of paragraph (d) of subsection (5) of this section by the state health agency, the state health agency shall restrict a physician's authority to recommend the use of medical marijuana, which restrictions may include the revocation or suspension of a physician's privilege to recommend medical marijuana. The restriction shall be in addition to any sanction imposed by the state board of medical examiners.

(d) When the state health agency has objective and reasonable grounds to believe and finds, upon a full investigation, that a physician has deliberately and willfully violated section 14 of article XVIII of the state constitution or this section and that the public health, safety, or welfare imperatively requires emergency action, and the state health agency incorporates those findings into an order, the state health agency may summarily suspend the physician's authority to recommend the use of medical marijuana pending the proceedings set forth in paragraphs (a) and (b) of this subsection (6). A hearing on the order of summary suspension shall be held no later than thirty days after the issuance of the order of summary suspension, unless a longer time is agreed to by the parties, and an initial decision in accordance with section 24-4-105 (14), C.R.S., shall be rendered no later than thirty days after the conclusion of the hearing concerning the order of summary suspension.

(7) **Primary caregivers.** (a) A primary caregiver may not delegate to any other person his or her authority to provide medical marijuana to a patient nor may a primary caregiver engage others to assist in providing medical marijuana to a patient.

(b) Two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana.

(c) Only a medical marijuana center with an optional premises cultivation license, a medical marijuana-infused products manufacturing operation with an optional premises cultivation license, or a primary caregiver for his or her patients or a patient for himself or herself may cultivate or provide marijuana and only for medical use.

(d) A primary caregiver shall provide to a law enforcement agency, upon inquiry, the registry identification card number of each of his or her patients. The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days a week to law enforcement for verification purposes. Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may provide that response to law enforcement. If the person is a registered patient or primary caregiver, the state health agency may not release information unless consistent with section 14 of article XVIII of the state constitution. The state health agency may promulgate rules to provide for the efficient administration of this paragraph (d).

(e) A primary caregiver who cultivates medical marijuana for his or her patients shall register the location of his or her cultivation operation with the state medical marijuana licensing authority and provide the registration identification number of each patient to the state licensing authority. The information provided to the state medical marijuana licensing authority pursuant to this paragraph (e) shall not be provided to the public and shall be confidential. The state licensing authority shall verify the location of a primary caregiver cultivation operation to a local government or law enforcement agency upon receiving an address-specific request for verification. The location of the cultivation operation shall comply with all applicable local laws, rules, or regulations.

(8) **Patient - primary caregiver relationship.** (a) A person shall be listed as a primary caregiver for no more than five patients on the medical marijuana program registry at any given time; except that the state health agency may allow a primary caregiver to serve more than five patients in exceptional circumstances. In determining whether exceptional circumstances exist, the state health agency may consider the proximity of medical marijuana centers to the patient. A primary caregiver shall maintain a list of his or her patients including the registry identification card number of each patient at all times.

(b) A patient shall have only one primary caregiver at any given time.

(c) A patient who has designated a primary caregiver for himself or herself may not be designated as a primary caregiver for another patient.

(d) A primary caregiver may not charge a patient more than the cost of cultivating or purchasing the medical marijuana, but may charge for caregiver services.

(e) (I) The state health agency shall maintain a secure and confidential registry of available primary caregivers for those patients who are unable to secure the services of a primary caregiver.

(II) An existing primary caregiver may indicate at the time of registration whether he or she would be willing to handle additional patients and waive confidentiality to allow release of his or her contact information to physicians or registered patients only.

(III) An individual who is not registered but is willing to provide primary caregiving services may submit his or her contact information to be placed on the primary caregiver registry.

(IV) A patient-primary caregiver arrangement secured pursuant to this paragraph (e) shall be strictly between the patient and the potential primary caregiver. The state health agency, by providing the information required by this paragraph (e), shall not endorse or vouch for a primary caregiver.

(V) The state health agency may make an exception, based on a request from a patient, to paragraph (a) of this subsection (8) limiting primary caregivers to five patients. If the state health agency makes an exception to the limit, the state health agency shall note the exception on the primary caregiver's record in the registry.

(f) At the time a patient applies for inclusion on the confidential registry, the patient shall indicate whether the patient intends to cultivate his or her own medical marijuana, both cultivate his or her own medical marijuana and obtain it from either a primary caregiver or licensed medical marijuana center, or obtain it from either a primary caregiver or a licensed medical marijuana center. If the patient elects to use a licensed medical marijuana center, the patient shall register the primary center he or she intends to use.

(9) **Registry identification card required - denial - revocation - renewal.** (a) To be considered in compliance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency, a patient or primary caregiver shall have his or her registry identification card in his or her possession at all times that he or she is in possession of any form of medical marijuana and produce the same upon request of a law enforcement officer to demonstrate that the patient or primary caregiver is not in violation of the law; except that, if more than thirty-five days have passed since the date the patient or primary caregiver filed his or her medical marijuana program application and the state health agency has not yet issued or denied a registry identification card, a copy of the patient's or primary caregiver's application along with proof of the date of submission shall be in the patient's or primary caregiver's possession at all times that he or she is in possession of any form of medical marijuana until the state health agency issues or denies the registry identification card. A person who violates section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency may be subject to criminal prosecution for violations of section 18-18-406, C.R.S.

(b) The state health agency may deny a patient's or primary caregiver's application for a registry identification card or revoke the card if the state health agency, in accordance with article 4 of title 24, C.R.S., determines that the physician who diagnosed the patient's debilitating medical condition, the patient, or the primary caregiver violated section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency pursuant to this section; except that, when a physician's violation is the basis for adverse action, the state health agency may only deny or revoke a patient's application

or registry identification card when the physician's violation is related to the issuance of a medical marijuana recommendation.

(c) A patient or primary caregiver registry identification card shall be valid for one year and shall contain a unique identification number. It shall be the responsibility of the patient or primary caregiver to apply to renew his or her registry identification card prior to the date on which the card expires. The state health agency shall develop a form for a patient or primary caregiver to use in renewing his or her registry identification card.

(d) If the state health agency grants a patient a waiver to allow a primary caregiver to transport the patient's medical marijuana from a medical marijuana center to the patient, the state health agency shall designate the waiver on the patient's registry identification card.

(e) A homebound patient who receives a waiver from the state health agency to allow a primary caregiver to transport the patient's medical marijuana to the patient from a medical marijuana center shall provide the primary caregiver with the patient's registry identification card, which the primary caregiver shall carry when the primary caregiver is transporting the medical marijuana. A medical marijuana center may provide the medical marijuana to the primary caregiver for transport to the patient if the primary caregiver produces the patient's registry identification card.

(10) **Renewal of patient identification card upon criminal conviction.** Any patient who is convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections, shall be subject to immediate renewal of his or her patient registry identification card, and the patient shall apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

(11) A parent who submits a medical marijuana registry application for his or her child shall have his or her signature notarized on the application.

(12) **Use of medical marijuana.** (a) The use of medical marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) A patient or primary caregiver shall not:

(I) Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;

(II) Engage in the medical use of marijuana in plain view of or in a place open to the general public;

(III) Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;

(IV) Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;

(V) Engage in the use of medical marijuana while:

(A) In a correctional facility or a community corrections facility;

(B) Subject to a sentence to incarceration; or

(C) In a vehicle, aircraft, or motorboat;

(VI) Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

(VII) Use medical marijuana if the person does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

(c) A person shall not establish a business to permit patients to congregate and smoke or otherwise consume medical marijuana.

(13) **Limit on cultivation of medical marijuana.** Only registered patients, licensed primary caregivers, medical marijuana-infused products manufacturing operations with an optional premises cultivation license, and licensed medical marijuana centers with optional premises cultivation licenses may cultivate medical marijuana.

(14) **Affirmative defense.** If a patient or primary caregiver raises an affirmative defense as provided in section 14 (4) (b) of article XVIII of the state constitution, the patient's physician shall certify the specific amounts in excess of two ounces that are necessary to

address the patient's debilitating medical condition and why such amounts are necessary. A patient who asserts this affirmative defense shall waive confidentiality privileges related to the condition or conditions that were the basis for the recommendation. If a patient, primary caregiver, or physician raises an exception to the state criminal laws as provided in section 14 (2) (b) or (2) (c) of article XVIII of the state constitution, the patient, primary caregiver, or physician waives the confidentiality of his or her records related to the condition or conditions that were the basis for the recommendation maintained by the state health agency for the medical marijuana program. Upon request of a law enforcement agency for such records, the state health agency shall only provide records pertaining to the individual raising the exception, and shall redact all other patient, primary caregiver, or physician identifying information.

(15) (a) Except as provided in paragraph (b) of this subsection (15), the state health agency shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state health agency, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state health agency for each day of attendance to cover the expenses of the person named in the subpoena.

(b) The subpoena fee established pursuant to paragraph (a) of this subsection (15) shall not be applicable to any federal, state, or local governmental agency.

(16) **Fees.** (a) The state health agency may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution, apply to the medical marijuana program for a registry identification card for the purpose of offsetting the state health agency's direct and indirect costs of administering the program. The amount of the fees shall be set by rule of the state health agency. The amount of the fees set pursuant to this section shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3), C.R.S. The state health agency shall not assess a medical marijuana registry application fee to an applicant who demonstrates, pursuant to a copy of the applicant's state tax return certified by the department of revenue, that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size. All fees collected by the state health agency through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

(b) Repealed.

(17) **Cash fund.** (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the state health agency for the purpose of establishing, operating, and maintaining the medical marijuana program. All moneys credited to the medical marijuana program cash fund and all interest derived from the deposit of such moneys that are not expended during the fiscal year shall be retained in the fund for future use and shall not be credited or transferred to the general fund or any other fund.

(b) (Deleted by amendment, L. 2010, (HB 10-1284), ch. 355, p. 1677, § 2, effective July 1, 2010.)

(b.5) Notwithstanding any provision of paragraph (a) of this subsection (17) to the contrary, on June 30, 2011, the state treasurer shall deduct three million dollars from the medical marijuana program cash fund and transfer such sum to the general fund.

(c) Repealed.

(18) This section is repealed, effective July 1, 2019.

Source: L. 2003: Entire article added with relocations, p. 686, § 2, effective July 1. L. 2009: (3) amended, (SB 09-208), ch. 149, p. 624, § 20, effective April 20. L. 2010: Entire section amended, (SB 10-109), ch. 356, p. 1691, § 1, effective June 7; (17)(b.5) added, (HB 10-1388), ch. 362, p. 1716, § 1, effective June 7; entire section amended, (HB

10-1284), ch. 355, p. 1677, § 2, effective July 1. **L. 2011:** (2)(c)(II), (5)(a), and (16)(a) amended and (7)(e) added, (HB 11-1043), ch. 266, pp. 1211, 1212, §§ 19, 20, 22, 21, effective July 1.

Editor's note: (1) This section is similar to former § 25-1-107 (1)(jj) as it existed prior to 2003. (2) Amendments to this section by Senate Bill 10-109 and House Bill 10-1284 were harmonized. (3) Subsection (17)(b.5) was added as subsection (3)(c) by House Bill 10-1388. That provision was harmonized with Senate Bill 10-109 and House Bill 10-1284 resulting in its relocation. (4) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2011. (See L. 2010, p. 1677.) Subsections (16)(b)(II) and (17)(c)(II) provided for the repeal of subsections (16)(b) and (17)(c), respectively, effective July 1, 2012. (See L. 2010, p. 1691.)

25-1.5-107. Pandemic influenza - purchase of antiviral therapy - definitions.

(1) The department may enter into partnerships with one or more authorized purchasers to purchase antiviral therapy in order to acquire a ready supply or stockpile of antiviral drugs in the event of an epidemic emergency, including pandemic influenza. If an entity wishes to purchase antiviral therapy through the department, the entity shall notify the department of its intent and shall demonstrate to the department, in a form and manner determined by the department, that the entity satisfies the criteria of an authorized purchaser. Upon a determination that an entity is an authorized purchaser, the department shall seek approval from the United States department of health and human services for the purchase of antiviral therapy by the authorized purchaser. Any purchase of antiviral therapy shall be approved by the United States department of health and human services, and antiviral therapy shall be stored and used in accordance with state and federal requirements.

(2) As used in this section, unless the context otherwise requires:

(a) "Authorized purchaser" means an entity licensed by the department pursuant to section 25-1.5-103 (1) (a), a local public health agency, or a health maintenance organization, as defined in section 10-16-102 (23), C.R.S., authorized to operate in this state pursuant to part 4 of article 16 of title 10, C.R.S., that:

(I) Is part of the state pandemic preparedness and response plan;

(II) Will purchase antiviral therapy with its own funds; and

(III) Agrees to stockpile the antiviral therapy for use in an epidemic emergency declared a disaster emergency pursuant to section 24-32-2104, C.R.S., and to use the antiviral therapy only in accordance with state and federal requirements and for no other purpose.

(b) "Bioterrorism" means the intentional use of microorganisms or toxins of biological origin to cause death or disease among humans or animals.

(c) "Emergency epidemic" means cases of an illness or condition, communicable or noncommunicable, caused by bioterrorism, pandemic influenza, or novel and highly fatal infectious agents or biological toxins.

(d) "Pandemic influenza" means a widespread epidemic of influenza caused by a highly virulent strain of the influenza virus.

Source: **L. 2007:** Entire section added with relocations, p. 1290, § 2, effective May 25.

25-1.5-108. Regulation of dialysis treatment clinics - training for hemodialysis technicians - state board of health rules - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Dialysis treatment clinic" means a health facility or a department or unit of a licensed hospital that is planned, organized, operated, and maintained to provide outpatient hemodialysis treatment to, or hemodialysis training for home use of hemodialysis equipment by, end-stage renal disease patients.

(b) "End-stage renal disease" means the stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or a kidney transplant to maintain life.

(c) "Hemodialysis technician" means a person who is not a physician or a registered nurse and who provides dialysis care.

(d) “National credentialing program” means any national program for credentialing or determining the competency of hemodialysis technicians that is recognized by the national association of nephrology technicians/technologists (NANT), or a successor association.

(2) By January 1, 2008, the state board of health shall adopt rules to establish a process to verify that persons performing the duties and functions of a hemodialysis technician at or for a dialysis treatment clinic have been credentialed by a national credentialing program. The verification process shall be part of the department of public health and environment’s licensing of dialysis treatment clinics and part of each routine survey of licensed dialysis clinics conducted by the department. As part of the rules adopted pursuant to this section, the state board shall establish fees consistent with section 25-3-105 to be assessed by the department against dialysis treatment clinics to cover the department’s administrative costs in implementing this section.

(3) (a) On and after January 1, 2009, a person shall not act as, or perform the duties and functions of, a hemodialysis technician unless the person has been credentialed by a national credentialing program and is under the supervision of a licensed physician or licensed professional nurse experienced or trained in dialysis treatment.

(b) On and after January 1, 2009, a dialysis treatment clinic licensed by the department shall not allow a person to perform the duties and functions of a hemodialysis technician at or for the dialysis treatment clinic if the person has not been credentialed by a national credentialing program.

(c) Nothing in this subsection (3) shall prohibit:

(I) A person from providing dialysis care to himself or herself or in-home, gratuitous dialysis care provided to a person by a friend or family member who does not represent himself or herself to be a hemodialysis technician;

(II) A person participating in a hemodialysis technician training program from performing the duties and functions of a hemodialysis technician if:

(A) The person is under the direct supervision of a physician, or a registered nurse experienced or trained in dialysis treatment, who is on the premises and available for prompt consultation or treatment; and

(B) The person receives his or her credentials from a national credentialing program within eighteen months after the date the person enrolled in the training program.

(4) In connection with its regulation of dialysis treatment clinics pursuant to section 25-1.5-103 (1) (a) (I) and 25-3-101 (1) and rules adopted by the state board of health pursuant to subsection (2) of this section, on and after January 1, 2009, the department shall verify that a dialysis treatment clinic only employs hemodialysis technicians who have been credentialed by a national credentialing program. Compliance by a dialysis treatment clinic with this section shall be a condition of licensure by the department.

(5) Each dialysis treatment clinic licensed by the department and operating in this state shall post a clear and unambiguous notice in a public location in the clinic specifying that the clinic is licensed, regulated, and subject to inspection by the Colorado department of public health and environment. The dialysis treatment clinic shall also inform consumers, either in the public notice required by this subsection (5) or in written materials provided to consumers, about the ability to provide feedback to the clinic and to the department, including the method by which consumers can provide feedback. The state board may adopt rules, as necessary, to specify the contents of the notice or written materials required by this subsection (5).

(6) This section is repealed, effective September 1, 2019. Prior to this repeal, the department of regulatory agencies shall review the functions of the state board of health and the department regarding hemodialysis technicians as provided in section 24-34-104, C.R.S.

Source: L. 2007: Entire section added with relocations, p. 1623, § 1, effective July 1. L. 2012: (2), (3)(a), and (6) amended, (HB 12-1204), ch. 103, p. 348, § 1, effective July 1.

25-1.5-109. Food allergies and anaphylaxis form for schools - powers and duties of department. The department has, in addition to all other powers and duties imposed upon it by law, the duty to develop, maintain, and make available to school districts and institute

charter schools a standard form to be used by school districts and institute charter schools to gather information from physicians and parents and guardians of students concerning students' risks of food allergies and anaphylaxis and the treatment thereof. The standard form shall include, at a minimum, fields for gathering the information described in section 22-2-135 (3) (b), C.R.S.

Source: L. 2009: Entire section added with relocations, (SB 09-226), ch. 245, p. 1106, § 6, effective August 5.

Cross references: For the legislative declaration contained in the 2009 act adding this section, see section 1 of chapter 245, Session Laws of Colorado 2009.

PART 2

POWERS AND DUTIES OF THE DEPARTMENT WITH RESPECT TO WATER

25-1.5-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Public water systems" means systems for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(2) "Supplier of water" means any person who owns or operates a public water system.

Source: L. 2003: Entire article added with relocations, p. 687, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (1)(x)(V) and (1)(x)(VI) as they existed prior to 2003.

25-1.5-202. Water - minimum general sanitary standards. (1) The phrase "minimum general sanitary standards" as used in this part 2 and section 25-1-109 (1) (h) means the minimum standards reasonably consistent with assuring adequate protection of the public health, and, in the case of minimum general sanitary standards as to the quality of water supplied to the public, the same shall be established by rule and regulation and shall be appropriate to promote and protect the public health from endangerment presented by carcinogenic, mutagenic, teratogenic, pathogenic, or toxic contaminants or substances. Such standards shall be based on the best available endangerment assessment evidence and the best available treatment technology or methodology. The word "standards" as used in this part 2 and section 25-1-109 (1) (h) means standards reasonably designed to promote and protect the public health.

(2) Minimum general sanitary standards for the quality of water supplied to the public shall be no more stringent than the drinking water standards promulgated pursuant to the federal "Safe Drinking Water Act", if such standards exist. If no standards have been promulgated pursuant to the federal "Safe Drinking Water Act" regarding the permissible concentration of any contaminant or any substance in drinking water, the department may recommend to the water quality control commission for promulgation minimum general sanitary standards regarding such contaminant or substance.

(3) (a) The department shall annually establish and revise a priority list of contaminants or substances for which standards may be considered and shall submit said list to the water quality control commission for review and approval.

(b) The priority list of contaminants or substances, together with the department's evaluation of the considerations listed in this paragraph (b), shall be submitted to the water quality control commission for review and approval. The priority list shall be prepared according to a ranking process that incorporates the following considerations:

(I) The actual presence of a contaminant or substance in a drinking water supply system or the relative imminence of threat of contamination of a drinking water supply source;

(II) The identifiability of a potential pathway or continued pathway of contamination;

(III) The availability of analytical techniques for measuring and identifying the contaminant or substance in a reasonable manner;

(IV) Sufficient available information concerning the contaminant or substance to allow an appropriate standard to be developed, including information on the health effects of the contaminant or substance as well as available treatment technology;

(V) The magnitude of potential health risks of the contaminant or substance at reasonably anticipated exposure levels, utilizing the same exposure considerations, criteria for health risk, and criteria for data availability which are used by the criteria and standards division of the office of drinking water, United States environmental protection agency, in establishing the federal drinking water priority list;

(VI) The fact that the contaminant or substance will be the subject of a national primary drinking water regulation in the near future;

(VII) An analysis of the environmental fate and transport mechanisms within relevant environmental media;

(VIII) Identification, characterization, and analysis of the populations and drinking water supplies at risk; and

(IX) The level of effort and scope of work that will be necessary to develop sufficient data for the purpose of supporting an appropriate standard.

(4) (a) Following the department's submission of recommended standards to the water quality control commission, the commission may promulgate standards for contaminants or substances that are not the subject of a standard set pursuant to the federal "Safe Drinking Water Act".

(b) In the promulgation of such standards, the water quality control commission shall find that the standards are necessary to protect public health and have a demonstrated medical, technological, and scientific basis and that:

(I) Based on credible medical and toxicological evidence that has been subjected to peer review, there exists a substantial risk to the public health;

(II) The analytical techniques for measuring and identifying the contaminant or substance are reasonably available;

(III) The adverse health effects posed by the contaminant or substance are known to a reasonable degree of scientific certainty; and

(IV) Compliance with such standard is feasible utilizing the best technology or methodology which is generally available.

(5) All acts, orders, and rules adopted by the state board of health under the authority of this part 2 prior to July 1, 2006, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with said provisions, be deemed and held to be legal and valid in all respects, as though issued by the water quality control commission under the authority of this part 2. No provision of this part 2 shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

Source: L. 2003: Entire article added with relocations, p. 687, § 2, effective July 1. L. 2006: (2), (3)(a), IP(3)(b), (4)(a), and IP(4)(b) amended and (5) added, p. 1127, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (2) as it existed prior to 2003.

25-1.5-203. Water - powers and duties of department. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) **Construction of community water facilities.** To examine plans, specifications, and other related data pertaining to the proposed construction of any publicly or privately owned community water facilities submitted for review of sanitary engineering features prior to construction of such facilities;

(b) **Quality of drinking water.** (I) To adopt and enforce minimum general sanitary standards and regulations to protect the quality of drinking water supplied to the public, including the authority to require disinfection and treatment of such water.

(II) Standards and regulations adopted pursuant to this paragraph (b) may also include such minimum standards and regulations as are necessary to assure enforcement of the federal "Safe Drinking Water Act" with regard to public water systems, including, but not limited to, requirements for:

(A) Review and approval by the department, prior to initiation of construction, of the technical plans and specifications, long-term financial plans, and operations and management plans for any new waterworks or technical plans and specifications for substantial modifications to existing waterworks. For the purposes of this subparagraph (II), "waterworks" means the facilities that are directly involved in the production, treatment, or distribution of water for public water systems, as defined in section 141.2 of the national primary drinking water regulations. The department shall approve those new or substantially modified waterworks it determines are capable of complying with the Colorado primary drinking water regulations.

(B) Maintenance of records by the supplier of water relating to the results of tests and procedures required by the standards and regulations, including filing periodic reports with the department;

(C) Public notification by the supplier of water, pursuant to the provisions of the federal "Safe Drinking Water Act";

(D) Granting exemptions and variances from the minimum general sanitary standards to allow appropriate time for compliance, when such procedure can be effected without seriously jeopardizing the public health.

(c) **Exemption of public water systems.** (I) To exempt a water supplier from any further documentation requirements for purposes of establishing that it does not meet the definition of a public water system and is not subject to the requirements of the federal "Safe Drinking Water Act", where such water supplier has provided to the department evidence of the following:

(A) An ordinance, resolution, contractual provision, or other similarly enforceable enactment that prohibits connection to the system for the purpose of obtaining water for human consumption; and

(B) Either an annual visual inspection of the water supply system for the purpose of determining the presence of any unauthorized connections to the water supply system, or an annual written survey of those individuals or entities with whom the supplier has a contractual relationship governing the uses to which such water is placed by the contracting parties.

(II) Nothing in subparagraph (I) of this paragraph (c) shall be construed to eliminate from the provisions of the federal "Safe Drinking Water Act" any exclusion that may otherwise be available under federal law or regulation.

(d) **Lab certification program for testing drinking water.** (I) To establish and maintain a laboratory certification program for the purpose of ensuring competent testing of drinking water as required by the federal "Safe Drinking Water Act" and minimum general sanitary standards as set forth in section 25-1.5-202. Certification procedures shall, at a minimum, include water supply evaluation verification and on-site inspections. The laboratory certification program shall consist of certification levels which correspond to the testing capability and capacity of each laboratory. In addition to certifying laboratories for contaminants regulated as of May 11, 1988, the department shall adopt and implement a schedule for certifying sufficient laboratory capacity for the testing and analysis of contaminants for which reference methods are available and which are scheduled to be regulated under the federal "Safe Drinking Water Act".

(II) Upon request, the department shall refer a public water supplier to a laboratory, either the department's or one certified by the department, which is determined to be equipped to perform the required testing and analysis on a timely basis.

(III) To facilitate an effective laboratory certification program, the department shall work with local public water suppliers toward creating and maintaining a centralized data base which:

(A) Quantifies the current and expected demands for the monitoring, testing, and analysis of each supplier, grouped according to the size of the supply system, the source of its supply, and the requirements imposed on each supplier;

(B) Includes an updated list of laboratories certified and available for the testing and analysis of specific contaminants; and

(C) Tracks violations of drinking water standards for the purpose of facilitating an exchange among public water suppliers in addressing similar problems posed by specific contaminants.

(e) **Drinking water list.** To cooperate with and assist the Colorado water resources and power development authority in the administration of the drinking water revolving fund created by section 37-95-107.8, C.R.S., including adopting rules governing the drinking water project eligibility list provided by said section and modifications to the eligibility list for submission to the general assembly, and to take any other actions necessary to assist the authority in complying with the requirements of the federal “Safe Drinking Water Act”.

Source: L. 2003: Entire article added with relocations, p. 689, § 2, effective July 1.

Editor’s note: This section is similar to former § 25-1-107 (1)(r), (1)(x)(I), (1)(x)(II), (1)(x.2), (1)(x.5), and (1)(gg) as they existed prior to 2003.

25-1.5-204. Inspection for violations of minimum general sanitary standards relating to quality of drinking water. (1) Upon presentation of proper credentials, authorized inspectors of the department may enter and inspect, at any reasonable time and in a reasonable manner, any property, premises, or place for the purpose of investigating any actual, suspected, or potential violations of minimum general sanitary standards adopted pursuant to section 25-1.5-202. Samples of drinking water may be obtained by such inspectors, and a portion of any samples to be used as evidence in an enforcement action shall be left with the owner, operator, or person in charge of the premises. A copy of the results of any analysis of such sample shall be furnished promptly to the owner, operator, or person in charge.

(2) If such entry or inspection is denied or not consented to, the department is empowered to and shall obtain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect said property, premises, or place. The said district and county courts of the state are empowered to issue such warrants upon a proper showing of the need for such entry and inspection, and a copy of any inspection report shall be provided the court within a reasonable time after making the inspection.

Source: L. 2003: Entire article added with relocations, p. 691, § 2, effective July 1.

Editor’s note: This section is similar to former § 25-1-107 (1)(x)(III) as it existed prior to 2003.

25-1.5-205. Advice to other entities. The department may advise municipalities, utilities, institutions, organizations, and individuals concerning the methods or processes believed best suited to provide the protection or purification of water to meet minimum general sanitary standards adopted pursuant to section 25-1.5-202.

Source: L. 2003: Entire article added with relocations, p. 691, § 2, effective July 1.

Editor’s note: This section is similar to former § 25-1-107 (1)(x)(IV) as it existed prior to 2003.

25-1.5-206. Applicability. (1) Except as otherwise provided in the federal “Safe Drinking Water Act”, the provisions of this part 2 shall apply to each public water system in this state; except that the provisions of this part 2 shall not apply to a public water system that:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
- (c) Does not sell water to any person;
- (d) Does not authorize incidental use of untreated water; and
- (e) Is not a carrier that conveys passengers in interstate commerce; or
- (f) Prohibits, through ordinance, resolution, or other enforceable enactment, the use of its system, or connections thereto, for the delivery of water to the public for human consumption, except to the extent that such user is a public water system subject to the provisions of this part 2.

Source: L. 2003: Entire article added with relocations, p. 691, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (1)(x)(VII) as it existed prior to 2003.

25-1.5-207. Damages and injunctive relief to prevent or abate release of contaminants in water. (1) (a) Except as provided in section 25-1-114.1 (3), any political subdivision or public water system which stores, releases, carries, conveys, supplies, or treats water for human consumption may bring suit to collect damages and for injunctive relief, in addition to all remedies otherwise available to prevent or abate any release or imminent release of contaminants or substances which, in water withdrawn for use, results or would likely result in:

(I) A violation, at the point where the contaminant or substance enters or would enter the intake of the water treatment system of the same or another political subdivision or public water system, of any minimum general sanitary standard or regulation adopted pursuant to this part 2, and the existing treatment system cannot effectively treat the contaminant or substance in question so as to assure that treated water complies with such standard or regulation; or

(II) Significant impairment of the normal operational capability of a water treatment system which meets the applicable specifications of the department for water treatment; or

(III) Rendering the system's drinking water supply unfit for human consumption. Where there are no minimum general sanitary standards, water shall be deemed unfit for human consumption where it is shown that the risk of adverse human health effects from exposure to carcinogens in that water is greater than one times ten to the minus sixth power or greater than the acceptable levels of exposure to noncarcinogens as determined by the reference dose method.

(b) Such an action may be maintained against any person who owns or operates the source or sources of the release of the contaminants, but no such action may be maintained with regard to surface or underground agricultural return flows except as otherwise provided in the "Colorado Chemigation Act", article 11 of title 35, C.R.S. Damages, including the costs of any remedy ordered or approved by the court shall include, as appropriate, those incurred in providing an interim substitute drinking water supply and monitoring and responding to the release or imminent release of contaminants or substances.

(2) **Other remedies.** Except as provided in this subsection (2), nothing in this section shall be construed to restrict or preempt any right which the state, the department, any public water system, or any other person may have under any other law to seek enforcement, in any court or in any administrative proceeding, of any provision of this section or any other relief regarding contamination of any drinking water supply. In addition, nothing in this section shall be construed to condition, restrict, or prevent any other civil or criminal actions which may be brought by the state or any political subdivision pursuant to any other state or federal statute or regulation or any local ordinance or regulation; except that, with respect to any release or substantial threat of release of a hazardous substance, pollutant, or contaminant addressed in pleadings or otherwise in a lawsuit brought pursuant to the federal "Comprehensive Environmental Response, Compensation and Liability Act", 42 U.S.C. sec. 9601 et seq., or by the terms and conditions of a remedial action plan, removal order,

consent decree, or other order or decree entered or issued by a court or administrative body of competent jurisdiction pursuant to such federal act, any person or entity which is a defendant in such a lawsuit or is subject to the terms and conditions of such a remedial action plan, removal order, consent decree, or other order or decree, shall not be subjected with respect to the same release or substantial threat of release of a hazardous substance, pollutant, or contaminant to any suit, action, or liability pursuant to section 25-1-114.1 (3); nor shall such person or entity be subject to any suit, action, or liability initiated or prosecuted by a political subdivision or a public water system pursuant to this section with respect to any release or substantial threat of release of a hazardous substance, pollutant, or contaminant which has been addressed by relief granted, or by measures implemented or legally required to be implemented, pursuant to a lawsuit brought pursuant to such federal act or the terms and conditions of a remedial action plan, removal order, consent decree, or other order or decree entered or issued by a court or administrative body of competent jurisdiction pursuant to such federal act. Nothing in this section shall be construed to bar a political subdivision or public water system from seeking to recover pursuant to applicable law its damages which have been reasonably incurred for the protection of the human health if enforceable arrangements to pay such damages have not otherwise been made.

Source: L. 2003: Entire article added with relocations, p. 692, § 2, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (1)(x)(VIII) as it existed prior to 2003.

25-1.5-208. Grant program for drinking water and water treatment systems - small communities water and wastewater grant fund - rules. (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) To assist suppliers of water in the state with meeting their responsibilities with respect to protection of public health, the department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with both governmental and not-for-profit public water systems, as defined in section 25-1.5-201 (1), or with counties representing unincorporated areas that serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of drinking water or water treatment systems.

(b) The department may use up to five percent of the appropriated funds for the administration and management of such project grants.

(2) The water quality control commission shall promulgate rules for the administration of any appropriated grant moneys pursuant to this section and for prioritizing proposed drinking water and water treatment system projects based upon public health impact and compliance with applicable rules.

(3) During the grant application process, the department shall seek from the division of local government in the department of local affairs a fiscal analysis of the applying entity to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the department may authorize a state grant to the project in accordance with the project prioritization adopted by the department.

(4) (a) There is hereby created in the state treasury the small communities water and wastewater grant fund, referred to in this subsection (4) as the "fund". The fund shall consist of moneys transferred pursuant to section 39-29-109 (2) (a) (III), C.R.S., and any other moneys transferred to the fund by the general assembly. The fund shall be used only for grants made pursuant to this section. All income derived from the deposit and investment of the moneys in the fund shall be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not revert to the general fund or to any other fund.

(b) The revenues in the fund are continuously appropriated to the department for the purposes of this section.

Source: L. 2003: Entire article added with relocations, p. 693, § 2, effective July 1. **L. 2006:** (2) amended, p. 1128, § 3, effective July 1. **L. 2009:** (1)(a) and (2) amended and (4) added, (SB 09-165), ch. 183, p. 803, § 1, effective April 22.

Editor's note: This section is similar to former § 25-1-107 (1)(x)(IX) as it existed prior to 2003.

25-1.5-209. Drinking water fee - drinking water cash fund. (1) Effective July 1, 2007, the division may assess an annual fee upon public water systems, and all such fees shall be in accordance with the following schedule:

Facility Categories and Subcategories for Drinking Water Fees		Annual Fees
(a) Category 01 Community surface water systems		
Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 310
Subcategory 4	Population from 1,001 - 3,300	\$ 465
Subcategory 5	Population from 3,301 - 10,000	\$ 865
Subcategory 6	Population from 10,001 - 30,000	\$ 1,850
Subcategory 7	Population from 30,001 - 100,000	\$ 4,940
Subcategory 8	Population from 100,001 - 200,000	\$ 9,270
Subcategory 9	Population from 200,001 - 500,000	\$ 15,450
Subcategory 10	Population greater than 500,000	\$ 21,630
(b) Category 02 Community groundwater systems		
Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 220
Subcategory 4	Population from 1,001 - 3,300	\$ 310
Subcategory 5	Population from 3,301 - 10,000	\$ 680
Subcategory 6	Population from 10,001 - 30,000	\$ 1,545
Subcategory 7	Population greater than 30,001	\$ 4,450
(c) Category 03 Community-purchased surface water or groundwater systems		
Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 155
Subcategory 4	Population from 1,001 - 3,300	\$ 250
Subcategory 5	Population from 3,301 - 10,000	\$ 490
Subcategory 6	Population from 10,001 - 30,000	\$ 865
Subcategory 7	Population greater than 30,001	\$ 2,470
(d) Category 04 Nontransient, noncommunity surface water systems		
Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 280
Subcategory 4	Population from 1,001 - 3,300	\$ 400
Subcategory 5	Population from 3,301 - 10,000	\$ 620
Subcategory 6	Population from 10,001 - 30,000	\$ 1,670
Subcategory 7	Population greater than 30,001	\$ 4,450
(e) Category 05 Nontransient, noncommunity groundwater systems		
Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 155
Subcategory 4	Population from 1,001 - 3,300	\$ 245
Subcategory 5	Population from 3,301 - 10,000	\$ 495

Subcategory 6	Population from 10,001 - 30,000	\$ 1,360
Subcategory 7	Population greater than 30,001	\$ 3,650

(f) Category 06 Nontransient, noncommunity-purchased surface water or groundwater systems

Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 125
Subcategory 4	Population from 1,001 - 3,300	\$ 185
Subcategory 5	Population from 3,301 - 10,000	\$ 325
Subcategory 6	Population from 10,001 - 30,000	\$ 805
Subcategory 7	Population greater than 30,001	\$ 1,980

(g) Category 07 Transient, noncommunity surface water systems

Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 245
Subcategory 4	Population from 1,001 - 3,300	\$ 310
Subcategory 5	Population from 3,301 - 10,000	\$ 555
Subcategory 6	Population from 10,001 - 30,000	\$ 620
Subcategory 7	Population greater than 30,001	\$ 3,960

(h) Category 08 Transient, noncommunity groundwater systems

Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 125
Subcategory 4	Population from 1,001 - 3,300	\$ 185
Subcategory 5	Population from 3,301 - 10,000	\$ 495
Subcategory 6	Population from 10,001 - 30,000	\$ 535
Subcategory 7	Population greater than 30,001	\$ 2,970

(i) Category 09 Transient, noncommunity-purchased surface water or groundwater systems

Subcategory 1	Population from 25 - 250	\$ 75
Subcategory 2	Population from 251 - 500	\$ 100
Subcategory 3	Population from 501 - 1,000	\$ 110
Subcategory 4	Population from 1,001 - 3,300	\$ 125
Subcategory 5	Population from 3,301 - 10,000	\$ 310
Subcategory 6	Population from 10,001 - 30,000	\$ 435
Subcategory 7	Population greater than 30,001	\$ 1,490

(2) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the drinking water cash fund, which fund is hereby created in the state treasury. Moneys so collected shall be annually appropriated by the general assembly to the department for allocation to the division of administration to operate the drinking water program established in this part 2. The general assembly shall review expenditures of such moneys to assure that they are used only for such purposes. All interest earned on the investment or deposit of moneys in the cash fund and all unappropriated or unencumbered moneys in the cash fund shall remain in the cash fund and shall not revert to the general fund or any other fund at the end of any fiscal year or any other time. Any funds remaining from fees collected prior to the repeal of former section 25-1.5-209, as it existed prior to July 1, 2005, shall be transmitted to the state treasurer, who shall credit the same to the cash fund.

Source: L. 2003: Entire section added with relocations, p. 1502, § 2, effective May 1. L. 2007: Entire section RC&RE, p. 1455, § 3, effective July 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2005. (See L. 2003, p. 1502.)

PART 3

ADMINISTRATION OF MEDICATIONS

25-1.5-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Administration" means assisting a person in the ingestion, application, inhalation, or, using universal precautions, rectal or vaginal insertion of medication, including prescription drugs, according to the legibly written or printed directions of the attending physician or other authorized practitioner or as written on the prescription label and making a written record thereof with regard to each medication administered, including the time and the amount taken, but "administration" does not include judgment, evaluation, or assessments or the injections of medication, the monitoring of medication, or the self-administration of medication, including prescription drugs and including the self-injection of medication by the resident. "Administration" also means ingestion through gastrostomy tubes or naso-gastric tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k), C.R.S., as part of residential or day program services provided through service agencies approved by the department of human services and supervised by a licensed physician or nurse.

(2) "Facility" means:

(a) The correctional facilities under the supervision of the executive director of the department of corrections including, but not limited to:

(I) Those facilities provided for in article 20 of title 17, C.R.S.;

(II) Minimum security facilities provided for in article 25 of title 17, C.R.S.;

(III) Jails provided for in article 26 of title 17, C.R.S.;

(IV) Community correctional facilities and programs provided for in article 27 of title 17, C.R.S.;

(V) The regimented inmate discipline and treatment program provided for in article 27.7 of title 17, C.R.S.; and

(VI) The Denver regional diagnostic center provided for in article 40 of title 17, C.R.S.;

(b) Institutions for juveniles provided for in part 4 of article 2 of title 19, C.R.S.;

(b.5) Assisted living residences as defined in section 25-27-102 (1.3);

(c) Adult foster care facilities provided for in section 26-2-122.3, C.R.S.;

(d) Alternate care facilities provided for in section 25.5-6-303 (3), C.R.S.;

(e) Residential child care facilities for children as defined in section 26-6-102 (8), C.R.S.;

(f) Secure residential treatment centers as defined in section 26-6-102 (9), C.R.S.;

(g) Facilities that provide treatment for persons with mental illness as defined in section 27-65-102 (7), C.R.S., except for those facilities which are publicly or privately licensed hospitals;

(h) All services funded through and regulated by the department of human services pursuant to article 10.5 of title 27, C.R.S., in support of persons with developmental disabilities; and

(i) Adult day care facilities providing services in support of persons as defined in section 25.5-6-303 (1), C.R.S.

(3) "Monitoring" means:

(a) Reminding the resident to take medication or medications at the time ordered by the physician or other authorized licensed practitioner;

(b) Handing a resident a container or package of medication lawfully labeled previously for the individual resident by a licensed physician or other authorized licensed practitioner;

(c) Visual observation of the resident to ensure compliance;

(d) Making a written record of the resident's compliance with regard to each medication, including the time taken; and

(e) Notification to the physician or other authorized practitioner if the resident refuses to or is not able to comply with the physician's or other practitioner's instructions with regard to the medication.

(4) "Qualified manager" means a person who:

(a) Is the owner or operator of the facility or a supervisor designated by the owner or operator of the facility for the purpose of implementing section 25-1.5-303; and

(b) Has completed training in the administration of medications pursuant to section 25-1.5-303 or is a licensed nurse pursuant to article 38 of title 12, C.R.S., a licensed physician pursuant to article 36 of title 12, C.R.S., or a licensed pharmacist pursuant to article 42.5 of title 12, C.R.S. Every unlicensed person who is a “qualified manager” within the meaning of this subsection (4) shall, every four years, successfully complete a test approved by the department pertaining to the administration of medications.

(5) “Self-administration” means the ability of a person to take medication independently without any assistance from another person.

Source: **L. 2003:** Entire article added with relocations, p. 694, § 2, effective July 1. **L. 2006:** (2)(d) and (2)(i) amended, p. 2014, § 86, effective July 1; (2)(g) amended, p. 1405, § 64, effective August 7. **L. 2010:** (2)(g) amended, (SB 10-175), ch. 188, p. 798, § 60, effective April 29. **L. 2012:** (4)(b) amended, (SB 12-1311), ch. 281, p. 1627, § 70, effective July 1.

Editor’s note: This section is similar to former § 25-1-107 (1)(ee)(I.5)(A), (1)(ee)(I.5)(B), (1)(ee)(II), (1)(ee)(II.5), and (1)(ee)(III)(A) as it existed prior to 2003.

25-1.5-302. Administration of medications - powers and duties of department - criminal history record checks. (1) The department has, in addition to all other powers and duties imposed upon it by law, the power and duty to establish and maintain by rule and regulation a program for the administration of medications in facilities, which program shall be developed and conducted by the department of human services and the department of corrections, as provided in this part 3, within the following guidelines:

(a) As a condition to authorizing or renewing the authorization to operate any facility that administers medications to persons under its care, the authorizing agency shall require that the facility have a staff member qualified pursuant to paragraph (b) of this subsection (1) on duty at any time that the facility administers such medications and that the facility maintain a written record of each medication administered to each resident, including the time and the amount of the medication. Such record will be subject to review by the authorizing agency as a part of its procedure in authorizing the continued operation of the facility. Notwithstanding any exemption enumerated in paragraph (b) of this subsection (1), any facility may establish a policy which requires a person authorized to administer medication to report to, be supervised by, or to be otherwise accountable for the performance of such administration to a registered nurse as defined in section 12-38-103, C.R.S.

(b) Any individual who is not otherwise authorized by law to administer medication in a facility shall be allowed to perform such duties only after passing a competency evaluation. An individual who administers medications in facilities in compliance with the provisions of this part 3 shall be exempt from the licensing requirements of the “Colorado Medical Practice Act”, the “Nurse Practice Act”, and the laws of this state pertaining to possession of controlled substances as contained in article 42.5 of title 12, C.R.S., part 2 of article 80 of title 27, C.R.S., or the “Uniform Controlled Substances Act of 1992”, article 18 of title 18, C.R.S.

(2) The department, in cooperation with appropriate agencies or advisory bodies, shall develop or approve training curricula and competency evaluation procedures for those who administer medications in facilities.

(3) If either the department of human services or the department of corrections wishes to use a different training curriculum and competency evaluation procedure for those who administer medications in the facilities whose operation is authorized by those departments, such department shall ensure that such training curriculum and competency evaluation procedure are first submitted to the department of public health and environment for its review. If, after such review, the department of public health and environment has no objection, the submitting department shall assume responsibility for the cost and implementation of such curriculum and evaluation in keeping with the other provisions of this medications administration program for those facilities whose operation is authorized by

such department. Any department that administers competency evaluations shall maintain a list of those who have successfully completed such competency evaluation and shall forward a copy of such list to the department of public health and environment within forty-five days after administration of such evaluation.

(4) The department shall assure that training sessions, each followed by a competency evaluation set to measure basic competency only, are offered at various geographic locations in the state. An individual who does not pass the competency evaluation may apply to retake it. An appropriate fee must be paid each time the competency evaluation is taken. An individual may apply for and take the competency evaluation only once without having first attended a training session approved by the department. If such individual fails to meet a minimum competency level on such first evaluation, the applicant must attend an approved training session before again taking the competency evaluation.

(5) The department shall set and collect a uniform fee for any training session given and a uniform fee for any competency evaluation administered under the provisions of this section whether the department administers such training or testing or contracts with a private provider pursuant to subsection (7) of this section, so that the revenue generated from such fees approximates the direct and indirect costs incurred by the department in the performance of its duties under this section. No person shall enroll in a training session or take the competency evaluation test until such person applies and makes payment of the appropriate fees to the department.

(6) If the individual authorized to administer medication pursuant to subsection (1) of this section is found, during the course of any review by the authorizing agency as part of its procedure in authorizing the continued operation of the facility, to be unable or unwilling to comply with the training regimen established for medication administration, the department may order retraining as a remedial measure.

(7) (a) If the department determines that it is not able to provide the training and administer competency evaluations pursuant to this section, the department may contract with a private provider or instructor to provide such training and administer such competency evaluations.

(b) Before any private contractor may offer training pursuant to this subsection (7), such private contractor shall be reviewed by the department. Only those private contractors approved by the department may offer training. Any such approved private contractor shall offer only a medication administration training program which has been approved by the department. The department shall maintain a list of approved medication administration contractors. The department shall compensate contractors from the fees collected from each trainee in attendance at any such privately contracted training session or competency evaluation.

(c) All private contractors shall provide the department with a list of all persons who have taken such contractor's approved training sessions or have passed the competency evaluation or both. Such contractors shall also provide the department with any other pertinent information reasonably requested by the department pursuant to its obligations and authority under this section. The department shall maintain a listing of all persons who have passed the competency evaluation on its web site.

(8) Each owner, operator, or supervisor of a facility who employs a person who is not licensed to administer medications shall conduct a drug-related criminal background check on each employee prior to employment.

Source: L. 2003: Entire article added with relocations, p. 696, § 2, effective July 1. L. 2009: (7)(c) amended and (8) added, (SB 09-128), ch. 365, p. 1915, § 6, effective July 1. L. 2012: (1)(b) amended, (HB 12-1311), ch. 281, p. 1627, § 71, effective July 1.

Editor's note: This section is similar to former § 25-1-107 (1)(ee)(I) and (1)(ee)(I.3) as they existed prior to 2003.

Cross references: For the "Colorado Medical Practice Act", see article 36 of title 12; for the "Nurse Practice Act", see article 38 of title 12.

25-1.5-303. Medication reminder boxes or systems - medication cash fund.

(1) Medication reminder boxes or systems may be used if such containers have been filled and properly labeled by a pharmacist licensed pursuant to article 42.5 of title 12, C.R.S., a nurse licensed pursuant to article 38 of title 12, C.R.S., or an unlicensed person trained pursuant to this section or filled and properly labeled through the gratuitous care by members of one's family or friends. Nothing in this section authorizes or shall be construed to authorize the practice of pharmacy, as defined in section 12-42.5-102 (31), C.R.S. No unlicensed person shall fill and label medication reminder boxes pursuant to this section until such person has completed appropriate training approved by the department, and no facility shall use an unlicensed person to perform such services unless such facility has a qualified manager to oversee the work of such unlicensed person or persons. Every unlicensed person and qualified manager described in this section shall sign a disclosure statement under penalty of perjury stating that he or she never had a professional license to practice nursing, medicine, or pharmacy revoked in this or any other state for reasons directly related to the administration of medications.

(2) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section to develop and implement policies and procedures with respect to the provisions in subsection (1) of this section concerning the administration of medication reminder boxes.

(3) The executive directors of the departments that control the "facilities" defined in section 25-1.5-301 (2) (a) and (2) (b) may direct the unlicensed staff of any such facility to monitor medications in any part of any such facility. Administration of medications in any such facility shall be allowed only in those areas of any such facility that have a licensed physician or other licensed practitioner on duty. Notwithstanding other training requirements established in this section, the operator or administrator of every facility that hires an unlicensed person to administer medications pursuant to this section shall provide on-the-job training for such person, and all such unlicensed persons hired on or after July 1, 1998, shall be adequately supervised until they have completed such training. Such on-the-job training shall be appropriate to the job responsibilities of each trainee. Facility operators and administrators shall require each unlicensed person who administers medication in the facility to pass the competency evaluation developed or approved by the department pursuant to section 25-1.5-302 (2) as a condition of employment in that facility at least once every five years. Facility operators and administrators shall document each unlicensed person's satisfactory completion of on-the-job training and passage of the competency evaluation in his or her permanent personnel file.

(4) A person who self-administers medication is personally responsible for medication administration. No facility shall be responsible for observing or documenting the self-administration of medication. Compliance with the requirements for the training of unlicensed persons in medication administration pursuant to this section is not required when persons being cared for are self-administering.

(5) (a) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the medication administration cash fund, which fund is hereby created.

(b) The general assembly shall make annual appropriations from the medication administration cash fund for expenditures of the department incurred in the performance of its duties under this section.

(c) Any moneys collected by the department from persons taking a training program or a competency examination from a private contractor approved pursuant to section 25-1.5-302 (7) shall be transmitted to the state treasurer, who shall credit the same to the medication administration cash fund created in paragraph (a) of this subsection (5). Such moneys collected from the fees charged for any such training program or competency examination shall be annually appropriated by the general assembly to the department for the purpose of paying private contractors for services rendered and for paying the department's direct and indirect costs incurred pursuant to section 25-1.5-302 (7).

(d) In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of the medication administration cash fund created in paragraph (a) of this subsection (5) shall be credited to the general fund.

Source: **L. 2003:** Entire article added with relocations, p. 697, § 2, effective July 1. **L. 2009:** (3) amended, (SB 09-128), ch. 365, p. 1914, § 5, effective July 1. **L. 2012:** (1) amended, (HB 12-1311), ch. 281, p. 1628, § 72, effective July 1.

Editor's note: This section is similar to former § 25-1-107 IP(1)(ee)(I.5), (1)(ee)(I.6), (1)(ee)(III)(B), (1)(ee)(IV), (1)(ee)(IV.5), and (1)(ee)(V) as they existed prior to 2003.

25-1.5-304. Repeal of part. (Repealed)

Source: **L. 2003:** Entire article added with relocations, p. 699, § 2, effective July 1. **L. 2009:** Entire section repealed, (SB 09-128), ch. 365, p. 1913, § 1, effective July 1.

Editor's note: Prior to its repeal in 2009, this section was similar to former § 25-1-107 (1)(ee)(VI) and (1)(ee)(VII) as they existed prior to 2003.

VITAL STATISTICS

ARTICLE 2

Vital Statistics

Editor's note: This article was numbered as article 8 of chapter 66, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1967, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1967, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

25-2-101.	Short title.		nancy - legislative declaration.
25-2-102.	Definitions.		
25-2-103.	Centralized registration system for all vital statistics - appointment of registrar - rules.	25-2-112.	Certificates of birth - filing - establishment of paternity.
		25-2-112.3.	Certificates of stillbirth - filing - delayed registration - rules.
25-2-104.	Registration of vital statistics.		
25-2-105.	Vital statistics, reports, and certificates - forms and information to be included.	25-2-112.5.	Social security account numbers - acknowledgments of paternity - to be furnished.
25-2-106.	Reports of marriage.	25-2-113.	New certificates of birth following adoption - legitimation - parentage determination.
25-2-107.	Reports of adoption, dissolution of marriage, parentage, and other court proceedings affecting vital statistics - tax on court action affecting vital statistics.	25-2-113.5.	Limited access to information upon consent of all parties - voluntary adoption registry.
25-2-108.	Reports and certificates as to births and deaths. (Repealed)	25-2-114.	Delayed registration of births and deaths.
25-2-109.	Local registration districts for processing of birth and death certificates. (Repealed)	25-2-115.	Alteration of reports and certificates - amended reports and certificates.
25-2-110.	Certificates of death - repeal.	25-2-116.	Institutions to keep records - persons to furnish information.
25-2-110.5.	Fetal deaths - treatment of remains.	25-2-117.	Certified copies furnished - fee.
25-2-111.	Dead bodies - disposition - removal from state - records.	25-2-118.	Penalties.
		25-2-119.	Tax on court action affecting vital statistics. (Repealed)
25-2-111.5.	Transfer of fetal tissue from induced termination of preg-	25-2-120.	Reports of electroconvulsive treatment.

25-2-121. Fee adjustments - vital statistics records cash fund created.

25-2-122. Heirloom birth and marriage certificates - funds created - report - rules - definitions.

25-2-101. Short title. This article shall be known and may be cited as the “Vital Statistics Act of 1984”.

Source: L. 67: R&RE, p. 1056, § 1. C.R.S. 1963: § 66-8-1. L. 84: Entire section amended, p. 742, § 2, effective July 1.

ANNOTATION

Law reviews. For article, “Curative Statutes of Colorado Respecting Titles to Real Estate”, see 16 Dicta 35 (1939). For article, “Transsexuals — Their Legal Sex”, see 40 U. Colo. L. Rev. 282 (1968).

This article is a valid exercise of the police power of the state, and it operates in all parts of the state, including Denver and other home-rule cities. *People ex rel. Hershey v. McNichols*, 91 Colo. 141, 13 P.2d 266 (1932).

25-2-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Dead body” means a lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.

(2) “Fetal death” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(2.5) “Final disposition” means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(2.7) “Induced termination of pregnancy” means the purposeful interruption of a pregnancy with an intention other than producing a live-born infant or removing a dead fetus and that does not result in a live birth.

(3) “Institution” means any establishment which provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care to two or more unrelated individuals or to which persons are committed by law.

(3.5) “Physician” means a person licensed to practice medicine in Colorado pursuant to article 36 of title 12, C.R.S.

(4) “Regulations” means regulations duly adopted pursuant to section 25-2-103.

(4.5) “Stillborn death” or “stillbirth” means death prior to the complete expulsion or extraction from its mother of a product of human conception, occurring after the twentieth week of pregnancy, and does not include “induced termination of pregnancy”, as defined by subsection (2.7) of this section. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(5) “Vital statistics certificate” means any certificate required by section 25-2-110, 25-2-112, or 25-2-112.3.

(6) “Vital statistics report” means any report required by section 25-2-106 or 25-2-107.

Source: L. 67: R&RE, p. 1056, § 1. C.R.S. 1963: § 66-8-2. L. 84: (2.5) and (3.5) added and (6) amended, p. 742, § 3, effective July 1. L. 2000: (2.7) added, p. 1073, § 1, effective August 2. L. 2001: (4.5) added, p. 439, § 1, effective August 8. L. 2004: (4.5) and (5) amended, p. 473, § 1, effective July 1.

Editor’s note: Subsection (4.5) was originally numbered as (3.7) in House Bill 01-1325 but has been renumbered on revision for ease of location.

ANNOTATION

Limitation on definition of “fetal death”. The definition of “fetal death” in this section does not indicate an intent on the part of the general assembly generally to recognize somatic

expiration as the only form of death. It is solely a definition of fetal death. *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979).

25-2-103. Centralized registration system for all vital statistics - appointment of registrar - rules. (1) In order to provide for the maintenance of a centralized registry of the vital statistics of this state, the office of state registrar of vital statistics, referred to in this article as the “state registrar”, is hereby created in the department of public health and environment. The state registrar shall be appointed by the state board of health and shall have such staff and clerical help as reasonably may be required in the performance of the state registrar’s duties. The state registrar and the staff and clerical help of the state registrar shall be subject to the state constitution and state personnel system laws.

(2) The state board of health shall adopt, promulgate, amend, and repeal such rules and orders in accordance with the provisions of section 24-4-103, C.R.S., as are necessary and proper for carrying out the provisions of this article.

(3) (a) The state registrar shall direct and supervise the operation of the vital statistics system, prepare and publish annual reports of vital statistics, and administer and enforce the provisions of this article and all rules issued under this article.

(b) In conjunction with the requirements of paragraph (a) of this subsection (3), the state registrar shall collect the name of the provider of prenatal care, if any, and the name of the provider of initial delivery services and shall require that such information be reported on all birth certificates. In addition, whenever an investigation or inquest is conducted pursuant to section 30-10-606, C.R.S., concerning the death of a child under one year of age, the coroner shall forward the information described in this paragraph (b) to the state registrar for inclusion on the death certificate of the subject of the inquest or investigation.

(4) Federal, state, local, and other public or private agencies may, upon request, be furnished copies of records of data for statistical purposes upon such terms and conditions as may be prescribed by regulation.

(5) The state registrar shall designate organized county, district, or municipal public health agencies established pursuant to part 5 of article 1 of this title and may establish or designate additional offices throughout Colorado to aid in the efficient administration of the system of vital statistics.

(6) The state registrar may:

(a) Require departments or offices so designated or established to comply with performance and accounting standards as set forth in rules promulgated by the state board of health;

(b) Delegate such functions and duties to the staff and clerical help and to any offices established or designated by the state registrar pursuant to this section as deemed necessary or expedient;

(c) Conduct training programs to promote the uniformity of the administration of this article throughout Colorado.

Source: L. 67: R&RE, p. 1057, § 1. C.R.S. 1963: § 66-8-3. L. 76: Entire section amended, p. 309, § 48, effective May 20. L. 84: Entire section amended, p. 743, § 4, effective July 1. L. 94: Entire section amended, p. 2748, § 398, effective July 1. L. 96: Entire section amended, p. 401, § 13, effective April 17. L. 2010: (5) amended, (HB 10-1422), ch. 419, p. 2092, § 87, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Annotator's note. Since provisions similar to those in repealed § 25-2-109 were included in this section when it was amended in 1984, the applicable annotations under the repealed section have been included in the annotations to this section.

Purpose of this section is to place the state system of registration of births and deaths in charge of the state board of health with power to appoint local registrars. *McNichols v. People ex rel. Hershey*, 92 Colo. 469, 22 P.2d 131 (1933).

Section supersedes municipal ordinances. And so far as local registrars of vital statistics are concerned, municipal ordinances are superseded by this section. *McNichols v. People ex rel. Hershey*, 92 Colo. 469, 22 P.2d 131 (1933).

Birth certificate certified by the local registrar is as dependable as one certified by the state registrar, since it is the former who furnishes the information to the latter. *Trujillo v. People*, 122 Colo. 436, 222 P.2d 775 (1950).

Effect of failure to appoint local registrar. Under former provision, failure of the state board of health to appoint a local registrar of vital statistics for Denver for a number of years did not deprive it of its statutory power to appoint, nor relieve it of the necessity of performing a plain statutory duty. *McNichols v. People ex rel. Hershey*, 92 Colo. 469, 22 P.2d 131 (1933).

25-2-104. Registration of vital statistics. Promptly upon receipt of each vital statistics report or certificate, the state registrar shall examine it to determine that it has been properly completed. If the report has been properly completed, the state registrar shall register the statistical event described therein and shall note the date the report has been accepted as having been properly completed and shall place the same, or a reproduction thereof, made in accordance with section 25-2-117 (3), in the permanent files of the office. If not properly completed, the state registrar shall take such action with respect thereto as may be required by applicable regulations.

Source: L. 67: R&RE, p. 1057, § 1. C.R.S. 1963: § 66-8-4. L. 84: Entire section amended, p. 743, § 5, effective July 1.

25-2-105. Vital statistics, reports, and certificates - forms and information to be included. The state registrar shall prescribe, furnish, and distribute such forms as are required by this article and shall furnish and distribute such rules and regulations as are promulgated pursuant to section 25-2-103. The state registrar may also prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.

Source: L. 67: R&RE, p. 1057, § 1. C.R.S. 1963: § 66-8-5. L. 84: Entire section R&RE, p. 744, § 6, effective July 1.

ANNOTATION

Law reviews. For article, "Transsexuals — Their Legal Sex", see 40 U. Colo. L. Rev. 282 (1968).

25-2-106. Reports of marriage. Each county clerk and recorder shall prepare a report containing such information and using such form as may be prescribed and furnished by the state registrar with respect to every duly executed marriage certificate that is returned in accordance with section 14-2-109, C.R.S. On or before the tenth day of each month, or more frequently if so requested by the state registrar, such clerk and recorder shall forward to the state registrar all such marriage reports for all marriage certificates returned in the preceding period. Certified copies of marriage certificates may be issued by any clerk and recorder.

Source: L. 67: R&RE, p. 1057, § 1. C.R.S. 1963: § 66-8-6.

25-2-107. Reports of adoption, dissolution of marriage, parentage, and other court proceedings affecting vital statistics - tax on court action affecting vital statistics.

(1) The clerk of each court or, for parentage proceedings, the clerk of the court or a delegate child support enforcement unit shall prepare a report containing such information and using such form as may be prescribed and furnished by the state registrar with respect to every decree entered by the court with respect to parentage, legitimacy, adoption, change of name, dissolution of marriage, legal separation, or declaration of invalidity of marriage and every decree amending or nullifying such a decree and also with respect to every decree entered pursuant to section 25-2-114. On or before the tenth day of each month, or more frequently if so requested by the state registrar, such clerk shall forward to the state registrar the reports for all such decrees entered during the preceding period.

(2) In order to help defray the maintenance of vital statistics records, there shall be levied, in addition to the tax levied under section 2-5-119, C.R.S., a tax of three dollars upon each action with respect to parentage, legitimacy, adoption, change of name, dissolution of marriage, legal separation, or declaration of invalidity of marriage that is filed in the office of each clerk of a court of record in this state on or after July 1, 1985. The tax shall be paid at the time of the filing of such action, and the clerk shall keep such tax in a separate fund and shall transmit such tax monthly to the state treasurer, who shall credit the same to the vital statistics records cash fund pursuant to section 25-2-121. A delegate child support enforcement unit acting pursuant to article 13 of title 26, C.R.S., shall be exempt from paying the tax authorized in this subsection (2).

Source: L. 67: R&RE, p. 1058, § 1. C.R.S. 1963: § 66-8-7. L. 72: Entire section amended, p. 600, § 90, effective May 23. L. 78: Entire section amended, p. 269, § 80, effective May 23. L. 84: Entire section amended, p. 744, § 7, effective July 1. L. 85: Entire section amended, p. 879, § 1, effective May 24. L. 89: (2) amended, p. 796, § 28, effective July 1. L. 96: (1) amended, p. 614, § 19, effective July 1.

25-2-108. Reports and certificates as to births and deaths. (Repealed)

Source: L. 67: R&RE, p. 1058, § 1. C.R.S. 1963: § 66-8-8. L. 84: Entire section repealed, p. 751, § 16, effective July 1.

25-2-109. Local registration districts for processing of birth and death certificates. (Repealed)

Source: L. 67: R&RE, p. 1058, § 1. C.R.S. 1963: § 66-8-9. L. 83: (1) amended, p. 1039, § 18, effective May 20. L. 84: Entire section repealed, p. 751, § 16, effective July 1.

25-2-110. Certificates of death - repeal. (1) (a) A certificate of death for each death, including a stillborn death, that occurs in Colorado must be filed with the state registrar or as otherwise directed by the state registrar, within five days after the death occurs and prior to final disposition. The state registrar shall register the certificate if it has been completed in accordance with this section. Every certificate of death must identify the decedent's social security number, if available. If the place of death is unknown but the dead body is found in Colorado, the certificate of death must be completed and filed in accordance with this section. The place where the body is found must be shown as the place of death. If the date of death is unknown, the date must be determined by approximation.

(b) (I) The department of public health and environment shall create and the state registrar shall use an electronic death registration system for the purpose of collecting death information from funeral directors, coroners, physicians, local registrars, health facilities, and other authorized individuals, as determined by the department. Death information submitted electronically by a funeral director, coroner, physician, local registrar, health facility, or authorized individual, as determined by the department, to the electronic death

registration system for purposes of fulfilling the requirements of this section satisfies the signature and filing requirements of this section and section 30-10-606, C.R.S.

(II) No later than two years after August 8, 2012, the department shall report to the health and human services committee of the senate and the health and environment committee of the house of representatives, or their successor committees, on the development and implementation of the electronic death registration system. The department shall include in the report information regarding whether the department has modified staffing levels and fees since the implementation of the system. This subparagraph (II) is repealed, effective September 1, 2014.

(2) When a death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in Colorado, the death shall be registered in Colorado, and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international air space or in a foreign country or its air space and the body is first removed from the conveyance in Colorado, the death shall be registered in Colorado, but the certificate shall show the actual place of death insofar as can be determined.

(3) (a) The funeral director or person acting as such who first assumes custody of a dead body, stillborn fetus, or dead fetus shall be responsible for the filing of the death certificate required by subsection (1) of this section. He or she shall obtain the personal data required by the certificate from the next of kin or the best qualified person or source available. He or she shall obtain the medical certification necessary to complete the portion of the certificate pertaining to the cause of death from the best qualified person or source available, pursuant to subsection (4) of this section.

(b) In the case of a stillborn fetus, notwithstanding the provisions of paragraph (a) of this subsection (3), the physician, nurse, or other medical personnel attending to the stillborn death may assume responsibility for filing the death certificate required by paragraph (a) of this subsection (3). The person filing the death certificate in the case of a stillborn fetus shall obtain the personal data required by the certificate from a parent and shall include a name on the death certificate if a parent desires to identify a name.

(c) If a death certificate is not filed in the case of a stillborn death as required by paragraph (a) of this subsection (3), a parent may inform the state registrar of the information necessary to complete the death certificate. The state registrar shall confirm such information and complete the death certificate accordingly.

(4) Except when inquiry is required by section 30-10-606, C.R.S., the physician in charge of the patient's care for the illness or condition that resulted in death shall complete, sign, and return to the funeral director or person acting as such all medical certification within forty-eight hours after a death occurs. In the absence of said physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which the death occurred, or by the physician who performed an autopsy upon the decedent, if such individual has access to the medical history of the case, if he or she views the decedent at or after the time of death, and if the death is due to natural causes. If an autopsy is performed, the certification shall indicate whether the decedent was pregnant at the time of death, and said information shall be reported on the death certificate as required by subsection (9) of this section.

(5) When inquiry is required by section 30-10-606, C.R.S., the coroner shall determine the cause of death and shall complete and sign the medical certification within forty-eight hours after taking charge of the case. If an autopsy is performed, the certification shall indicate whether the decedent was pregnant at the time of death, and said information shall be reported on the death certificate as required by subsection (9) of this section.

(6) If the cause of death cannot be determined within forty-eight hours after a death, the medical certification shall be completed as provided by rule. If an autopsy is performed, the certification shall indicate whether the decedent was pregnant at the time of death, and said information shall be reported on the death certificate as required by subsection (9) of this section. The attending physician or coroner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the office designated or established pursuant to section 25-2-103 in the county where the death occurred or, if such an office does not exist in the county where the

death occurred, final disposition of the body shall not be made until authorized by the coroner or the coroner's designee.

(7) When a death is presumed to have occurred within Colorado but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "presumptive" and shall show on its face the date of registration and shall identify the court and the date of decree.

(8) Every funeral establishment shall maintain registration with the office of the state registrar and shall act in accordance with the provisions of this article.

(9) (a) If an autopsy is performed, a certificate of death shall identify whether the decedent was pregnant at the time of death.

(b) The requirement in this subsection (9) and subsections (4), (5), and (6) of this section to indicate whether the decedent was pregnant at the time of death shall be complied with when the person required to make the designation has access to the certification form that permits compliance.

Source: L. 67: R&RE, p. 1059, § 1. C.R.S. 1963: § 66-8-10. L. 84: Entire section R&RE, p. 744, § 8, effective July 1. L. 97: (1) amended, p. 1286, § 29, effective July 1. L. 2001: (1) and (3) amended, p. 439, § 2, effective August 8. L. 2005: (9) added, p. 214, § 1, effective July 1. L. 2011: (4), (5), (6), and (9) amended, (HB 11-1183), ch. 85, p. 230, § 1, effective August 10. L. 2012: (1) amended, (HB 12-1041), ch. 266, p. 1384, § 1, effective August 8.

Cross references: (1) For unlawful acts of funeral establishments and mortuary science practitioners, see § 12-54-117; for a certified copy of an affidavit of death as proof in joint tenancy, see §§ 38-31-102 and 38-31-103.

(2) For the legislative declaration contained in the 1997 act amending subsection (1), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For article, "Scientific Findings on Death and Coroner's Inquest", see 20 Rocky Mt. L. Rev. 197 (1948).

The term "physician" relates solely to doctors of medicine and osteopathy. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

Death under care of chiropractor is "without medical assistance". Where one dies while under the care of a chiropractor, it is a "death

occurring without medical attendance". Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

Thus, a chiropractor may not sign a death certificate. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

Article does not encompass autopsy reports. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

25-2-110.5. Fetal deaths - treatment of remains. (1) In every instance of fetal death, the pregnant woman shall have the option of treating the remains of a fetal death pursuant to article 54 of title 12, C.R.S.

(2) In every instance of fetal death, the health care provider, upon request of the pregnant woman, shall release to the woman or the woman's designee the remains of a fetal death for final disposition in accordance with applicable law. Such request shall be made by the pregnant woman or her authorized representative prior to or immediately following the expulsion or extraction of the fetal remains. Unless a timely request was made, nothing in this section shall require the health care provider to maintain or preserve the fetal remains.

(3) (a) Nothing in this section shall prohibit a health care provider from conducting or acquiring medical tests on the remains of a fetal death prior to release.

(b) Upon a request pursuant to subsection (2) of this section, whenever a medical test is conducted pursuant to paragraph (a) of this subsection (3), the health care provider conducting the test shall, where medically permissible and otherwise permitted by law,

release to the pregnant woman or the woman's designee the remains of a fetal death for final disposition.

(4) Nothing in this section shall prohibit the health care provider from requiring a release of liability for the release of the remains of a fetal death prior to such release.

(5) A health care provider shall be immune from all civil or criminal liability, suit, or sanction with regard to any action taken in good faith compliance with the provisions of this section.

Source: L. 2001: Entire section added, p. 1032, § 2, effective June 5.

25-2-111. Dead bodies - disposition - removal from state - records. (1) Any person requested to act as funeral director for a dead body or otherwise whoever first assumes custody of a dead body shall, prior to final disposition of the body, obtain authorization for final disposition of the body. The office designated or established pursuant to section 25-2-103 in the county where the death occurred or, if such an office does not exist in the county where the death occurred, the coroner or the coroner's designee shall authorize final disposition of the body on a form prescribed and furnished by the state registrar. No body shall be buried, cremated, deposited in a vault or tomb, or otherwise disposed of, nor shall any body be removed from this state, until such authorization has been obtained, completed, and approved. The coroner or the coroner's designee shall include in the authorization notice of the requirements of subsection (7) of this section.

(2) A disposition permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(3) Repealed.

(4) Any person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this article, shall keep a record which shall identify the body and such information pertaining to his receipt, removal, and delivery of such body as may be prescribed in regulations. Such record shall be retained for a period of not less than seven years and shall be made available for inspection by the state registrar or his representative upon demand.

(5) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(6) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. Such authorization shall be issued by the state registrar to a funeral director or person acting as such upon proper application.

(7) (a) The owner of land that is used to inter a dead human body shall record the burial within thirty days after the burial with the county clerk and recorder of the county in which the land is situated. The owner shall record the following:

(I) The dead person's name as it appears on the death certificate;

(II) The dead person's date of birth;

(III) The dead person's age at the time of death;

(IV) The cause of death;

(V) The name of the owner or owners of the property where the dead human body is interred;

(VI) The legal description of the property where the dead human body is interred if the person is interred on private property;

(VII) The reception number for the death certificate if recorded by the county clerk; and

(VIII) The latitude and longitude coordinates, such as those given by a global positioning system, that are verified by two witnesses or the county coroner, sheriff, or a designee of the county coroner or sheriff.

(b) This subsection (7) does not apply to dead human bodies interred in cemeteries, vaults, or tombs operated or maintained by public entities or businesses that inter people in the ordinary course of business and are available to the general public.

Source: **L. 67:** R&RE, p. 1059, § 1. **C.R.S. 1963:** § 66-8-11. **L. 84:** (1) amended, (3) repealed, and (5) and (6) added, p. 745, 751, §§ 9, 16, effective July 1. **L. 85:** (1) amended, p. 880, § 2, effective May 24. **L. 2010:** (1) amended and (7) added, (HB 10-1275), ch. 193, p. 827, § 1, effective August 11.

25-2-111.5. Transfer of fetal tissue from induced termination of pregnancy - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the United States congress enacted 42 U.S.C. sec. 289g-2, prohibiting the acquisition, receipt, or other transfer of human fetal tissue for valuable consideration if the transfer affects interstate commerce. The general assembly determines and declares that the acquisition, receipt, or other transfer of human fetal tissue for valuable consideration affects intrastate commerce and is not in the public interest of the residents of Colorado. Therefore, the general assembly finds, determines, and declares that the exchange for valuable consideration of human fetal tissue should be prohibited.

(2) (a) No physician or institution that performs procedures for the induced termination of pregnancy shall transfer such tissue for valuable consideration to any organization or person that conducts research using fetal tissue or that transplants fetal tissue for therapeutic purposes. For the purposes of this section, “valuable consideration” includes, but is not limited to:

(I) Any lease-sharing agreement in excess of the current market value for commercial rental property for the area in which the physician’s or institution’s place of business is located;

(II) Any lease-sharing agreement that is based on the term or number of induced terminations of pregnancy performed by such physician or institution;

(III) Any moneys, gifts in lieu of money, barter arrangements, or exchange of services that do not constitute reasonable payment associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue as defined in 42 U.S.C. sec. 289g-2; or

(IV) Any agreement to purchase fetal tissue for a profit.

(b) Nothing in this subsection (2) shall prevent the disposition of fetal tissue from an induced termination of pregnancy pursuant to part 4 of article 15 of this title.

(3) Any physician or institution that violates subsection (2) of this section shall be fined by the state registrar not more than ten thousand dollars, depending upon the severity of the violation.

(4) The department of public health and environment may promulgate rules related to enforcement activities necessary to implement subsections (2) and (3) of this section.

Source: **L. 2000:** Entire section added, p. 1073, § 2, effective August 2.

25-2-112. Certificates of birth - filing - establishment of paternity. (1) A certificate of birth for each live birth which occurs in this state shall be filed with the state registrar or as otherwise directed by the state registrar within ten days after such birth and shall be registered if it has been completed and filed in accordance with this section. When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in Colorado, the birth shall be registered in Colorado, and the place where the child is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international air space or in a foreign country or its air space and the child is first removed from the conveyance in Colorado, the birth shall be registered in this state but the certificate shall show the actual place of birth insofar as can be determined. Either of the parents of the child shall verify the accuracy of the personal data entered thereon in time to permit its filing within such ten-day period.

(2) When a birth occurs in an institution, or upon order of any court with proper jurisdiction, the person in charge of the institution or such person’s designated representative shall obtain the personal data, prepare the certificate, certify the authenticity of the birth registration either by signature or by an approved electronic process, and file it with the state registrar or as otherwise directed by the state registrar within the required ten days;

the physician in attendance shall provide the medical information required by the certificate within five days after the birth. When the birth occurs outside an institution, the certificate shall be prepared and filed by the physician in attendance at or immediately after birth, or in the absence of such a physician by any person witnessing the birth, or in the absence of any such witness by the father or mother, or in the absence of the father and the inability of the mother by the person in charge of the premises where the birth occurred. The person who completes and files the certificate shall also be responsible for obtaining the social security account numbers of the parents and delivering those numbers to the state registrar along with the certificate.

(2.5) Repealed.

(2.7) For the purposes of a birth registration, the mother is deemed to be the woman who has given birth to the child, unless otherwise provided by law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. The information about the father shall be entered as provided in subsection (3) of this section.

(3) (a) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless:

(I) Paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as so determined shall be entered; or

(II) The mother and the mother's husband execute joint or separate forms prescribed and furnished by the state registrar reflecting the mother's and the husband's signatures individually witnessed and attesting that the husband is not the father of the child, in which case, information about the father shall be omitted from the certificate; or

(III) The mother executes a form prescribed and furnished by the state registrar attesting that the husband is not the father and that the putative father is the father, the putative father executes a form prescribed and furnished by the state registrar attesting that he is the father, and the husband executes a form prescribed and furnished by the state registrar attesting that he is not the father. Such forms may be joint or individual or a combination thereof, and each signature shall be individually witnessed. In such event, the putative father shall be shown as the father on the certificate.

(IV) A court of competent jurisdiction has determined the husband is not the presumed father and the putative father executes a form prescribed and furnished by the state registrar which is individually witnessed attesting that he is the father and the mother executes a form prescribed and furnished by the state registrar which is individually witnessed that the putative father is the father. In such event the putative father shall be shown as the father on the birth certificate.

(b) If the mother was not married at the time of conception or birth, the name of the father shall be entered if, but only if, the mother and the person to be named as the father so request in writing on a form prescribed and furnished by the state registrar or if paternity has been determined by a court of competent jurisdiction, in which case the name of the father as so determined shall be entered.

(c) For purposes of acknowledging paternity, the form prescribed and furnished by the state registrar shall contain the minimum requirements specified by the secretary of the federal department of health and human services.

(3.5) Upon the birth of a child to an unmarried woman in an institution, the person in charge of the institution or that person's designated representative shall provide an opportunity for the child's mother and natural father to complete a written acknowledgment of paternity on the form prescribed and furnished by the state registrar.

(4) Whoever assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within ten days to the state registrar or as otherwise directed by the state registrar such information as the state registrar shall require, which report shall constitute the certificate of birth for the infant. The place where the child was found shall be entered as the place of birth, and the date of birth shall be determined by approximation. If the child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and, except as provided in section 25-2-113.5, may be opened only by order of a court of competent jurisdiction or as provided by regulation.

(5) and (6) (Deleted by amendment, L. 93, p. 952, § 1, effective September 1, 1993.)

Source: L. 67: R&RE, p. 1059, § 1. C.R.S. 1963: § 66-8-12. L. 83: (4) amended, p. 1047, § 2, effective June 15. L. 84: Entire section amended, p. 746, § 10, effective July 1. L. 90: (2) amended and (5) and (6) added, p. 900, § 29, effective July 1. L. 93: (2.5) added, p. 1921, § 6, effective July 1; (1), (2), (3), (5), and (6) amended and (2.7) and (3.5) added, p. 952, § 1, effective September 1. L. 94: (3)(a) amended, p. 1543, § 18, effective May 31; (3)(a)(II), (3)(a)(III), (3)(a)(IV), and (3.5) amended, pp. 2044, 2045, §§ 1, 2, effective June 3. L. 96: (2.5) amended, p. 402, § 14, effective April 17. L. 97: (3)(c) added, p. 1286, § 30, effective July 1.

Editor's note: (1) Amendments to subsection (3)(a) by Senate Bill 94-088 and Senate Bill 94-141 were harmonized.

(2) Subsection (2.5)(b) provided for the repeal of section (2.5) effective July 1, 2001. (See L. 96, p. 402.)

Cross references: (1) For statement in the certificate as to whether blood test for syphilis has been made, see § 25-4-203; for penalty for failure to file a certificate, see § 25-2-118.

(2) For the legislative declaration contained in the 1997 act enacting subsection (3)(c), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Effect of failure to file within time specified in this section is to subject the doctor to a fine or imprisonment under § 25-2-118. *Manship v. People*, 99 Colo. 1, 58 P.2d 1215 (1936) (concurring opinion).

But it does not affect the admissibility of a copy of the certificate certified by the registrar.

Manship v. People, 99 Colo. 1, 58 P.2d 1215 (1936) (concurring opinion).

Applied in *People in Interest of an Unborn Child v. Estergard*, 169 Colo. 445, 457 P.2d 698 (1969).

25-2-112.3. Certificates of stillbirth - filing - delayed registration - rules. (1) The state registrar shall create a certificate of stillbirth and shall furnish and distribute such form as necessary. The state board of health shall promulgate rules necessary to implement this section.

(2) (a) A certificate of stillbirth shall be offered to a mother after the occurrence of any stillbirth. If the mother decides to have a certificate of stillbirth filed, it shall be filed with the state registrar within three days after the stillbirth occurs and shall be registered by the state registrar if it has been completed and filed in accordance with the provisions of this section and section 25-2-112.

(b) If the mother decides not to place a name on the certificate of stillbirth, the person preparing the certificate of stillbirth shall leave this option on the certificate blank.

(3) Notwithstanding the provisions set forth in subsection (2) of this section, if a certificate of stillbirth is not registered after one year from the date the stillbirth occurs, a certificate marked "Delayed" may be filed and registered in accordance with the provisions of section 25-2-114.

Source: L. 2004: Entire section added, p. 473, § 2, effective July 1.

25-2-112.5. Social security account numbers - acknowledgments of paternity - to be furnished. (1) Regardless of the marital status of the mother, each parent shall furnish the social security account number or numbers, if the parent has more than one such number, issued to that parent, and the other parent's social security account number, if known, at the time of the child's birth to the person authorized under section 25-2-112 to obtain them for the state registrar, unless the state, in accordance with federal regulations, finds good cause for not requiring the parent to furnish such numbers to the state.

(2) The department of public health and environment shall make the birth certificate, the mother's and father's social security account numbers, and any written acknowledgments of paternity, including any notarized affidavits acknowledging paternity and any witnessed forms prescribed and furnished by the state registrar, furnished under this section

and section 25-2-112 available to the state agency responsible for enforcing child support under Title IV-D of the federal "Social Security Act" upon request of that agency. The social security account numbers shall not be recorded on the birth certificate and may not be used for any purpose other than for the establishment and enforcement of child support orders.

Source: L. 93: Entire section added, p. 954, § 2, effective September 1. L. 94: (2) amended, p. 2045, § 3, effective June 3; (2) amended, p. 2748, § 399, effective July 1.

Editor's note: Amendments to subsection (2) by Senate Bill 94-141 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-2-113. New certificates of birth following adoption - legitimation - parentage determination. (1) (a) A new certificate of birth shall be prepared by the state registrar as to any person born in this state whenever he receives with respect to such a person any of the following: A report concerning adoption, legitimacy, or parentage as required by section 25-2-107; or a report or certified copy of a decree concerning the adoption, legitimacy, or parentage of such a person from a court of competent jurisdiction outside this state; or a certified copy of the marriage certificate of the parents, together with a statement of the husband, executed after such marriage, in which the husband acknowledges paternity; but with respect to adoptions no new certificate of birth shall be prepared if the state registrar is requested not to do so by the court that has decreed the adoption, by an adoptive parent, or by the adopted person. Each new certificate shall show all information shown on the original certificate of birth, except information for which substitute information is included as a result of the report or decree which prompts the preparation of the new certificate.

(b) A new certificate of birth shall be prepared by the state registrar as to any adopted person born in a foreign country and a resident of this state whenever the state registrar receives with respect to such person a certified copy of the final decree of adoption as required by section 19-5-212, C.R.S., and section 25-2-107 and findings of fact as required by this section. In proceedings for the adoption of a person who was born in a foreign country, the juvenile court having jurisdiction of adoptions, upon evidence from reliable sources, shall make findings of fact as to the date and place of birth and parentage of such person. The state registrar shall prepare a new birth certificate in the new name of the adopted person and shall seal the certified copy of the findings of the court and the certified copy of the final decree of adoption which shall be kept confidential except as otherwise provided in part 3 of article 5 of title 19, C.R.S. The birth certificate shall be labeled as a certificate of foreign birth and shall show specifically the true or probable country of birth and that the certificate is not evidence of United States citizenship. If the child was born in a foreign country but was a citizen of the United States at the time of birth, the state registrar shall not prepare a certificate of foreign birth but instead shall notify the adoptive parents of the procedures for obtaining a revised birth certificate for their child through the United States department of state. Any copy of a certificate of foreign birth issued shall indicate this policy, show the actual place of birth, and indicate the fact that the certificate is not proof of United States citizenship for the adopted child. A new certificate of birth in the new name of the adopted person prepared by the state registrar pursuant to this section is hereby legalized and made valid.

(c) Repealed.

(2) (a) The state registrar shall register each new certificate of birth prepared pursuant to subsection (1) of this section by marking thereon the words "new certificate", by marking thereon the date such certificate is completed, which date thereafter shall be the registration date, and by substituting such new certificate for the original certificate of birth for such person.

(b) A new certificate of birth issued pursuant to an adoption, and any copy of such certificate issued, shall be marked by the state registrar with the words "issued pursuant to adoption" if so requested by an adoptive parent or by an adopted person.

(c) The state registrar shall develop rules to ensure that the adoptive parent's decision to include such information, in paragraph (b) of this subsection (2), is made knowingly, including having a separate signature line verifying such choice.

(3) Thereafter, the original certificate and evidence concerning adoption, legitimacy, or parentage shall be sealed and not be subject to inspection except as provided in section 25-2-113.5 or in part 3 of article 5 of title 19, C.R.S., by regulation, or upon order of a court of competent jurisdiction after the court has satisfied itself that the interests of the child or the child's descendants or the parents will best be served by opening said seal. The information obtained from opening said seal may be withheld from public view or from being presented as evidence at the discretion of the judge.

(4) In the event the decree which formed the basis for the new certificate of birth is annulled and if the state registrar receives either a certified copy of such decree of annulment or a report with respect to such decree as required by section 25-2-107, the state registrar shall return the original certificate to its place in the files. Thereafter the new certificate and evidence concerning the annulment shall not be subject to inspection except as provided in section 25-2-113.5, upon order of a court of competent jurisdiction, or as provided by regulation.

(5) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.

(6) When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection, except as otherwise provided in part 3 of article 5 of title 19, C.R.S., or forwarded to the state registrar, as the state registrar shall direct.

Source: L. 67: R&RE, p. 1060, § 1. C.R.S. 1963: § 66-8-13. L. 76: (1) amended, p. 651, § 1, effective July 1. L. 78: (1)(a) and (3) amended, p. 269, § 81, effective May 23. L. 83: (3) and (4) amended, p. 1047, § 3, effective June 15. L. 84: (1)(b) amended, (1)(c) repealed, and (5) and (6) added, pp. 747, 751, §§ 11, 16, effective July 1. L. 87: (1)(b) amended, p. 820, § 35, effective October 1. L. 99: (1)(b), (3), and (6) amended, p. 1136, § 5, effective July 1. L. 2002: (2) amended, p. 333, § 1, effective August 7.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960).

25-2-113.5. Limited access to information upon consent of all parties - voluntary adoption registry. (1) Adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parent and child between an adoptee and his or her adoptive parents. Under current laws and the social premises underlying adoption, the general assembly has been charged with the duty to preserve the right to privacy and confidentiality of birth parents whose children were adopted, the adoptees, and the adoptive parents. The general assembly recognizes, however, that some adults who were adopted as children, their siblings who may or may not have been adopted, and some birth parents whose children were surrendered for adoption have a strong desire to obtain information about each other. The purpose of this section is to set up a voluntary adoption registry where qualified persons may register their willingness to the release of information to each other and to provide for the disclosure of such information.

(2) As used in this section, unless the context otherwise requires:

(a) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption.

(b) "Consent" means a verified written statement which has been notarized.

(c) "Identifying information" includes the following information:

(I) The name of the qualified adoptee before placement in adoption;

(II) The name and address of each qualified birth parent as it appears in birth records;

(III) The current name, address, and telephone number of the qualified adult adoptee; and

(IV) The current name, address, and telephone number of each qualified birth parent.

(d) "Qualified adult adoptee" means an adopted person eighteen years of age or older who was born in Colorado and who meets the requirements of this section.

(e) "Qualified birth parent" means a genetic, biological, or natural parent whose rights were voluntarily or involuntarily terminated by a court or otherwise and who meets the requirements of this section. "Birth parent" includes a man who is the parent of a child as established in accordance with the provisions of the "Uniform Parentage Act", article 4 of title 19, C.R.S., prior to the termination of parental rights and who meets the requirements of this section.

(f) "Registrar" means the state registrar of vital statistics or his designated representative.

(g) "Relative" includes an individual's spouse, birth parent, adoptive parent, sibling, or child who is twenty-one years of age or older.

(g.5) "Sibling" shall have the same meaning as "biological sibling", section 19-1-103 (14), C.R.S.

(h) "Voluntary adoption registry" or "registry" means a place where eligible persons, as described in this section, may indicate their willingness to have their identities and whereabouts disclosed to each other under conditions specified in this section.

(3) The registrar shall maintain a confidential list of qualified adult adoptees who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified adult adoptee shall be accompanied by the adoptee's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified adult adoptee desires release of his identifying information if a match occurs after his death. The qualified adult adoptee may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed adoptee. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with this section.

(4) The registrar shall maintain a confidential list of qualified birth parents who have presented a consent regarding the release of identifying information about themselves. Any consent by a qualified birth parent shall be accompanied by the birth parent's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Any consent shall also indicate whether the qualified birth parent desires release of his identifying information if a match occurs after his death. The qualified birth parent may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed birth parent. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with this section. Any birth parent who in terminating his parental rights used an alias, and this alias is listed in the original sealed birth certificate, may also file a consent with the registry. A birth parent shall not be matched with the qualified adult adoptee without the consent of the other birth parent unless:

(a) There is only one birth parent listed on the birth certificate; or

(b) The other birth parent is deceased; or

(c) The other birth parent is unable to be located by the department of public health and environment after an exhaustive search, the cost of said search to be fully funded by the

birth parent seeking a match, said search to be in accordance with the rules and regulations promulgated by the department.

(5) The registrar shall maintain a confidential list of relatives of deceased qualified adult adoptees and relatives of deceased qualified birth parents who have presented a consent regarding the release of identifying information about themselves. Any consent by such relative shall be accompanied by the person's desired method of notification in the event that a match occurs; however, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. Such relative may revise his consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed relative. The registrar shall maintain a closed record of such list and accompanying information, except as provided in accordance with this section.

(5.5) The registrar shall maintain a confidential list of former foster children who may or may not have been adopted, who are eighteen years of age or older, who have presented a consent regarding the release of identifying information about themselves and who are searching for a sibling who is also eighteen years of age or older, who may or may not have been adopted, and who may or may not have been in the foster care system. Any consent by such sibling shall be accompanied by the sibling's desired method of notification in the event that a match occurs. However, the state shall not incur costs of notification in excess of that part of the fee charged to the applicant for the purpose of notification. A sibling may revise his or her consent with respect to change of address or method of notification. Any name and accompanying information shall be removed from the list upon the verified written request of the listed sibling. The registrar shall maintain a closed record of the list and accompanying information except as provided for pursuant to this section.

(6) The registrar shall regularly review the lists provided for in subsections (3), (4), (5), and (5.5) of this section and any other nonsealed administrative files or records within his or her office to determine if there is a match. If it appears that a match has occurred, then and only then is the registrar authorized to proceed to confirm the match through recourse to sealed documents on file in the office of the registrar. When a match is confirmed, the registrar shall notify each party, by his or her designated method only, prior to an exchange of identifying information. Nothing in this section shall be construed to allow any state or local governmental department, agency, or institution, or any employee thereof, to solicit any consent for the release of identifying information.

(7) Nothing in this section shall be construed to allow the registrar to issue a copy of the original birth certificate to any registrant.

(8) Any person who knowingly uses, publishes, or divulges information obtained through operation of the registry to any person in a manner not authorized by this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of five hundred dollars.

(9) Notwithstanding any other provision of law, the information acquired by the registry shall not be disclosed under any public records law, sunshine or freedom of information legislation, rules, or practice.

(10) (a) The executive director of the department of public health and environment shall establish fees to be charged each person requesting that his name be placed on the list provided for in subsection (3), (4), or (5) of this section and for the services provided by the registrar in establishing and implementing the registry pursuant to this section. It is the intent of the general assembly that the fees shall cover all direct and indirect costs incurred pursuant to this section.

(b) The fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. The general assembly shall annually appropriate from the general fund to the department of public health and environment an amount sufficient to meet expenses incurred pursuant to this section.

Source: L. 83: Entire section added, p. 1044, § 1, effective June 15. **L. 87:** (2)(e) amended, p. 821, § 36, effective October 1. **L. 94:** (4)(c), (10)(a), and (10)(b) amended, p. 2748, § 400, effective July 1. **L. 2005:** (2)(d) amended, p. 993, § 7, effective July 1. **L. 2009:** (1) and (6) amended and (2)(g.5) and (5.5) added, (SB 09-079), ch. 59, pp. 214, 215, §§ 2, 3, effective March 25.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (4)(c), (10)(a), and (10)(b), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-2-114. Delayed registration of births and deaths. (1) When a birth, founding birth, death, or fetal death has occurred in this state but no certificate as to such event has been filed or registered in accordance with the provisions of section 25-2-110 or 25-2-112, a certificate as to such event may be accepted for filing or registration, or both, in accordance with applicable regulations concerning certificates that have not been timely or properly filed or registered. The state registrar shall endorse on the certificate a summary statement of the evidence submitted to substantiate the facts asserted in such certificate. If a certificate is not registered until more than a year after the event, the state registrar shall mark the word "Delayed" on the face thereof.

(2) When the state registrar finds the certificate or such supplementary evidence as may be required by regulations to be deficient or invalid, the certificate shall not be registered, and the person who requested the registration shall be advised in writing both as to the basis for the alleged deficiency or invalidity and also as to such person's right of appeal. Judicial review of the action of the state registrar may be had in accordance with the provisions of section 24-4-106, C.R.S., but an action for judicial review shall be commenced within sixty days after the date the state registrar gives his notice in writing of his decision. If no action for judicial review is commenced within said period, the state registrar shall return the certificate and all documents submitted in support thereof to the person submitting the same if registration of the certificate has been refused.

Source: L. 67: R&RE, p. 1061, § 1. C.R.S. 1963: § 66-8-14.

25-2-115. Alteration of reports and certificates - amended reports and certificates. (1) No vital statistics report or certificate shall ever be altered in any way except in accordance with this article and applicable regulations. The date of alteration and a summary description of the evidence submitted in support of the alteration shall be endorsed on or made a part of each vital statistics certificate that is altered. Every vital statistics report or certificate that is altered in any way shall be marked "Amended" except the birth report or certificate of any illegitimate child altered by the addition of a father's name pursuant to section 25-2-112 (3), in which case, upon request of the parents, the surname of the child shall be changed on the report and certificate to that of the father, and also except additions and minor corrections made within one year after the date of the statistical event as may be specified by applicable regulations. A child's surname may be changed upon affidavit of the parent that the change is being made to conform such child's surname to the parent's legal surname.

(2) Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person, or upon the request of his parent, guardian, or legal representative if he is under a legal disability, the original certificate of birth shall be amended to reflect the new name thereon.

(3) In the event the state registrar alters a birth certificate or death certificate, he shall promptly report the amendment to any other custodians of the vital statistics record and their records shall be amended accordingly.

(4) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

(5) When an applicant does not submit the minimum documentation required in the regulations for amending a vital statistics record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital statistics record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal to a court of competent jurisdiction.

Source: L. 67: R&RE, p. 1061, § 1. C.R.S. 1963: § 66-8-15. L. 77: (1) amended, p. 1274, § 1, effective May 20. L. 84: (3) amended and (4) and (5) added, p. 748, § 12, effective July 1.

25-2-116. Institutions to keep records - persons to furnish information. (1) Every person in charge of an institution shall keep a record of personal particulars and dates concerning each person admitted or confined to such institution. This record shall include such information as required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this article. The record shall be made at the time of admission. The name and address of the person providing the information shall appear on the record.

(2) When a dead human body is released or disposed of by an institution, the person in charge of the institution shall record the name of the deceased, date of death, name and address of the person to whom the body is released, and date of removal from the institution, or, if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded.

(3) Any person having knowledge of the facts shall furnish such information as he may possess regarding any birth, death, fetal death, adoption, marriage, or dissolution of marriage upon demand of the state registrar.

Source: L. 67: R&RE, p. 1062, § 1. C.R.S. 1963: § 66-8-16.

25-2-117. Certified copies furnished - fee. (1) Vital statistics records shall be treated as confidential, but the department of public health and environment shall, upon request, furnish to any applicant having a direct and tangible interest in a vital statistics record a certified copy of any record registered under the provisions of this article. Any copy of the record of a birth or death, when properly certified by the state registrar or as otherwise directed by the state registrar to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated.

(2) An applicant shall pay fees established pursuant to section 25-2-121 for each of the following services:

(a) The reproduction and certification of birth or death records; except that an applicant shall not pay a fee:

(I) For the provision of a certified copy of such a record to:

(A) Another state agency;

(B) A county department of social services or human services; or

(C) An individual presenting a letter of referral from a county department of social services; or

(II) If the applicant is a delegate child support enforcement unit acting pursuant to article 13 of title 26, C.R.S.;

(b) Any search of the files and records of the state registrar when no certified copy is made, such fee to pertain to each hour or fractional hour of time of the search;

(c) The processing of new certificates, delayed certificates, or corrected certificates;

(d) The verification of marriage or divorce; and

(e) The reproduction of various vital statistics, publications, reports, and data services.

(3) To preserve vital statistics records, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports. When certified by the state registrar, such reproductions shall be accepted as the original records. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation.

Source: L. 67: R&RE, p. 1062, § 1. C.R.S. 1963: § 66-8-17. L. 82: Entire section amended, p. 408, § 1, effective July 1. L. 83: Entire section amended, p. 1049, § 1, effective June 15. L. 84: Entire section amended, p. 749, § 13, effective July 1. L. 89:

(2)(a) amended, p. 796, § 29, effective July 1. **L. 94:** (1) amended, p. 2749, § 401, effective July 1. **L. 2010:** (2)(a) amended, (SB 10-006), ch. 341, p. 1578, § 2, effective June 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2010 act amending subsection (2)(a), see section 1 of chapter 341, Session Laws of Colorado 2010.

ANNOTATION

- I. General Consideration.
- II. Confidentiality.
- III. Certified Copy as Evidence.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Hearsay in Criminal Cases Under the Colorado Rules of Evidence: An Overview", see 50 U. Colo. L. Rev. 277 (1979).

II. CONFIDENTIALITY.

Records exempt from public record act's right to inspect. This section exempts vital statistics records from right to inspect given by public records act and person is entitled to copies of such records only if he can show direct and tangible interest. *Eugene Cervi & Co. v. Russell*, 31 Colo. App. 525, 506 P.2d 748 (1972), *aff'd*, 184 Colo. 282, 519 P.2d 1189 (1974).

Provisions for record search not authority to provide copy. The provisions of this section providing for a search of the records by their custodian do not authorize the custodian to provide a copy of the record or to divulge the contents. Purpose of such search is to determine whether a particular record exists, and information contained in such record can only be released to those having prescribed interest. *Eugene Cervi & Co. v. Russell*, 31 Colo. App. 525, 506 P.2d 748 (1972), *aff'd*, 184 Colo. 282, 519 P.2d 1189 (1974).

Registrar of vital statistics has limited discretion. The registrar of vital statistics is a ministerial officer who, unlike a judge, has but limited discretion in the performance of his duties. *Eugene Cervi & Co. v. Russell*, 184 Colo. 282, 519 P.2d 1189 (1974).

The discretion of the registrar of vital statistics is limited to furnishing the information to an "applicant having a direct and tangible interest", and, where the petitioner does not have the requisite "significant legal relationship", then the registrar does not have discretion to furnish the information. *Eugene Cervi & Co. v. Russell*, 184 Colo. 282, 519 P.2d 1189 (1974).

"Applicant having direct and tangible interest" is one who has significant legal relationship to person who is subject of record. Eugene

Cervi & Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), *aff'd*, 184 Colo. 282, 519 P.2d 1189 (1974).

Person seeking copies of vital statistics record for commercial purposes does not have the direct and tangible interest required by this section. *Eugene Cervi & Co. v. Russell*, 31 Colo. App. 525, 506 P.2d 748 (1972), *aff'd*, 184 Colo. 282, 519 P.2d 1189 (1974).

III. CERTIFIED COPY AS EVIDENCE.

Dependability of certification by local registrar. A birth certificate certified by the local registrar is as dependable as one certified by the state registrar, since it is the former who furnishes the information to the latter. *Trujillo v. People*, 122 Colo. 436, 222 P.2d 775 (1950).

Copy is prima facie evidence. A certified copy of a death certificate is admissible and is prima facie evidence of the facts recited therein. *Parfet v. Kansas City Life Ins. Co.*, 128 F.2d 361 (10th Cir.), cert. denied, 317 U.S. 654, 63 S. Ct. 50, 87 L.Ed. 526 (1942); *Occidental Life Ins. Co. v. United States Nat'l Bank*, 98 Colo. 126, 53 P.2d 1180 (1935); *Indus. Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957); *Michael v. John Hancock Mut. Life Ins. Co.*, 138 Colo. 450, 334 P.2d 1090 (1959); *Nat'l Farmers Union Life Ins. Co. v. Norwood*, 147 Colo. 283, 363 P.2d 681 (1961); *City & County of Denver v. Smerdel*, 165 Colo. 475, 440 P.2d 158 (1968); *Robinson v. New York Life Ins. Co.*, 30 Colo. App. 83, 490 P.2d 81 (1971); *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972).

However, the weight of the certified copy of a death certificate depends upon the information upon which it is based, the source of that information, and the manner in which it is obtained. *Prudential Ins. Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1935); *Nat'l Farmers Union Life Ins. Co. v. Norwood*, 147 Colo. 283, 363 P.2d 681 (1961); *City & County of Denver v. Smerdel*, 165 Colo. 475, 440 P.2d 158 (1968); *Robinson v. New York Life Ins. Co.*, 30 Colo. App. 83, 490 P.2d 81 (1971); *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972); *Simonton v. Continental Cas. Co.*, 32 Colo. App. 138, 507 P.2d 1132 (1973).

Limitation where issue is cause of death.

The term "facts" as used in this section does not extend to the coroner's opinion as to whether death from external means resulted from accident, suicide, or homicide, when the critical issue in the case is whether death resulted from one of these causes. *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972).

Coroner's conclusive statement should be excised.

Therefore, it is error to introduce a coroner's death certificate statement without excision of the conclusive statement that death resulted by accident rather than by suicide or homicide. *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972).

25-2-118. Penalties. (1) Any person who knowingly and willfully makes any false statement in or supplies any false information for or for purposes of deception applies for, alters, mutilates, uses, attempts to use, applies for amendments thereto, or furnishes to another for deceptive use any vital statistics certificate, and any person who knowingly and willfully and for purposes of deception uses or attempts to use or furnishes for use by another any vital statistics certificate knowing that such certificate contains false information or relates to a person other than the person with respect to whom it purports to relate, and any person who manufactures, advertises for sale, sells, or alters any vital statistics certificate knowing or having reason to know that such document establishes or may be used to establish a false status, occupation, membership, license, privilege, or identity for himself or any other person, and any person who uses any such document to commit a crime is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) Any person who willfully violates any of the provisions of this article or refuses or neglects to perform any of the duties imposed upon him by this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 67: R&RE, p. 1062, § 1. **C.R.S. 1963:** § 66-8-18. **L. 84:** (1) amended, p. 750, § 14, effective July 1.

ANNOTATION

Malice must be proved. Where an undertaker was issued a permit to remove a body, but sought no burial permit from any registrar of vital statistics prior to interment of body, believ-

ing the former to be sufficient, he is guilty of no misdemeanor in the absence of malice. *Addington v. Bates*, 101 Colo. 293, 73 P.2d 529 (1937).

25-2-119. Tax on court action affecting vital statistics. (Repealed)

Source: L. 67: R&RE, p. 1063, § 1. **C.R.S. 1963:** § 66-8-19. **L. 78:** Entire section amended, p. 270, § 82, effective May 23. **L. 84:** Entire section repealed, p. 751, § 16, effective July 1.

25-2-120. Reports of electroconvulsive treatment. (1) Any person who performs electroconvulsive treatment in the state of Colorado shall file a report with the department of public health and environment setting forth the data required by subsection (2) of this section. An institution in which electroconvulsive treatment is performed shall be the reporting entity for all electroconvulsive treatments performed at that institution.

(2) Such reports shall be made to the department of public health and environment on forms prescribed by the department within thirty days after January 1 and July 1 of each year on a semiannual basis and shall contain the following detailed information for each reporting period:

(a) The total number, broken down by inpatient and outpatient and exclusive of substance abuse, of adult psychiatric admissions, minor children psychiatric admissions, and readmissions of both;

(b) The number of patients within each category of paragraph (a) of this subsection (2) who received electroconvulsive treatment;

(c) Statistical information on each patient receiving electroconvulsive treatment including, but not limited to, the following:

(I) Diagnosis;

(II) Number of electroconvulsive treatments;

(III) Age;

(IV) Sex;

(V) Ethnicity;

(VI) Whether such patient was voluntary or involuntary;

(VII) Whether or not such patient was capable of giving his written informed consent;

(VIII) Whether or not any complications resulted from such electroconvulsive treatment, such as cardiac arrest, fracture, apnea, memory loss, or death (including autopsy results with particular attention to the brain);

(IX) The method of payment for such electroconvulsive treatment and, if applicable, the name of the insurance company making such payments.

(3) The name of the patient receiving electroconvulsive treatment shall remain confidential information and shall not be disclosed to the department, any other agency or individual. The forms prescribed by subsection (2) of this section shall not require any information which would disclose, directly or indirectly, the identity of the patient.

Source: L. 79: Entire section added, p. 613, § 2, effective June 22. L. 94: (1) and IP(2) amended, p. 2749, § 402, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1) and the introductory portion to subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-2-121. Fee adjustments - vital statistics records cash fund created. (1) This section shall apply to all activities of the office of the state registrar in the department of public health and environment.

(2) (a) The office of the state registrar shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the office of the state registrar is authorized by law to collect. The budget request and the adjusted fees for the office of the state registrar shall reflect its direct and indirect costs and the direct and indirect costs necessary to maintain and operate the Colorado responds to children with special needs program.

(b) (I) Based upon the appropriation made and subject to the approval of the executive director of the department of public health and environment, the office of the state registrar shall adjust its fees so that the revenue generated from said fees approximates its direct and indirect costs and the direct and indirect costs necessary to maintain and operate the Colorado responds to children with special needs program. Such fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the office of the state registrar shall be transmitted to the state treasurer, who shall credit the same to the vital statistics records cash fund, which fund is hereby created. All moneys credited to the vital statistics records cash fund and all interest earned thereon shall be subject to appropriation by the general assembly to be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(II) For those services required by this article and those services provided by the Colorado responds to children with special needs program, each office designated or established pursuant to section 25-2-103 shall charge fees as specified by the state registrar. Such fees shall be used for the purpose of paying the direct and indirect costs of the office and the office of the state registrar for compliance with the provisions of this article and the direct and indirect costs necessary to maintain and operate the Colorado responds to children with special needs program.

(c) Beginning July 1, 1985, and each July 1 thereafter, whenever moneys appropriated to the office of the state registrar for its activities for the prior fiscal year are unexpended,

said moneys shall be made a part of the appropriation to the office of the state registrar for the next fiscal year, and such amount shall not be raised from fees collected by the office of the state registrar. If a supplemental appropriation is made to the office of the state registrar for its activities and the services provided by the Colorado responds to children with special needs program, the fees of the office of the state registrar, when adjusted for the fiscal year following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for the supplemental appropriation. Moneys appropriated to the office of the state registrar in the annual general appropriation act shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by the office of the state registrar.

(d) For purposes of this section, "Colorado responds to children with special needs program" means the program established within the department of public health and environment under the authority of section 25-1.5-105.

(3) Notwithstanding any provision of subsection (2) of this section to the contrary, on March 5, 2003, the state treasurer shall deduct seven hundred sixty-three thousand six hundred eighty dollars from the vital statistics records cash fund and transfer such sum to the general fund.

Source: **L. 84:** Entire section added, p. 750, § 15, effective July 1. **L. 94:** (1) and (2)(b)(I) amended, p. 2750, § 403, effective July 1. **L. 2003:** (3) added, p. 458, § 18, effective March 5. **L. 2008:** (2) amended, p. 2065, § 1, effective June 3. **L. 2010:** (2)(b)(II) amended, (SB 10-006), ch. 341, p. 1578, § 3, effective June 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (2)(b)(I), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2010 act amending subsection (2)(b)(II), see section 1 of chapter 341, Session Laws of Colorado 2010.

25-2-122. Heirloom birth and marriage certificates - funds created - report - rules - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Heirloom birth certificate" means a birth certificate that is suitable for display and may bear the seal of the state and be signed by the governor.

(b) "Heirloom marriage certificate" means a marriage certificate that is suitable for display and may bear the seal of the state and be signed by the governor.

(2) (a) In addition to any other birth certificate issued pursuant to section 25-2-112, the state registrar shall issue, upon request and upon payment of a fee established by rule of the state board of health, an heirloom birth certificate representing the birth of the individual named on the original birth certificate. The state registrar may establish procedures for issuing heirloom birth certificates; except that an heirloom birth certificate shall be issued in a form consistent with the need to protect the integrity of vital records, including secure measures designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes, pursuant to the federal "Intelligence Reform and Terrorism Prevention Act of 2004", 5 U.S.C. sec. 301.

(b) An heirloom birth certificate shall have the same status as evidence as that of an original birth certificate.

(c) The fee established pursuant to paragraph (a) of this subsection (2) shall be sufficient to cover the direct and indirect costs of producing and issuing the heirloom birth certificate, plus an additional ten dollars. The state registrar shall transmit moneys generated pursuant to this subsection (2), along with an explanation of the number of heirloom birth certificate sales that correspond to such moneys, to the state treasurer, who shall credit:

(I) For each sale of an heirloom birth certificate, ten dollars to the immunization fund created in section 25-4-1708; and

(II) The remainder of such moneys to the vital statistics records cash fund created in section 25-2-121.

(3) (a) In addition to any other marriage certificate issued pursuant to section 25-2-106, the state registrar shall issue, upon request and upon payment of a fee established by rule of the state board of health, an heirloom marriage certificate representing the marriage of

the persons named on the original marriage certificate recorded in the county clerk and recorder’s office. The state registrar may establish procedures for issuing the heirloom marriage certificates; except that an heirloom marriage certificate shall be issued in a form consistent with the need to protect the integrity of vital records.

(b) An heirloom marriage certificate shall have the same status as evidence as that of an original marriage certificate.

(c) The fee established pursuant to paragraph (a) of this subsection (3) shall be sufficient to cover the direct and indirect costs of producing and issuing the heirloom marriage certificate, plus an additional ten dollars. The state registrar shall transmit moneys generated pursuant to this subsection (3), along with an explanation of the number of heirloom marriage certificate sales that correspond to such moneys, to the state treasurer, who shall credit:

(I) For each sale of an heirloom marriage certificate, ten dollars to the Colorado domestic abuse program fund created in section 39-22-802, C.R.S.; and

(II) The remainder of such moneys to the vital statistics records cash fund created in section 25-2-121.

Source: L. 2006: Entire section added, p. 943, § 1, effective August 7. **L. 2007:** (2)(c)(I) amended, p. 654, § 1, effective April 26.

HOSPITALS

ARTICLE 3

Hospitals

Cross references: For the university of Colorado university hospital and the university of Colorado psychiatric hospital, see articles 21 and 22 of title 23; for the Colorado mental health institute at Pueblo, see article 93 of title 27; for hospital districts, see §§ 32-1-1001 and 32-1-1003.

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PART 1

HOSPITALS

25-3-100.5. Definitions. As used in this article, unless the context otherwise requires:

(1) “Acute treatment unit” means a facility or a distinct part of a facility for short-term psychiatric care, which may include substance abuse treatment, that provides a total, twenty-four-hour, therapeutically planned and professionally staffed environment for persons who do not require inpatient hospitalization but need more intense and individual services than are available on an outpatient basis, such as crisis management and stabilization services.

Source: L. 2006: Entire section added, p. 1391, § 22, effective August 7.

25-3-101. Hospitals - health facilities - licensed - definitions. (1) It is unlawful for any person, partnership, association, or corporation to open, conduct, or maintain any general hospital, hospital unit, psychiatric hospital, community clinic, rehabilitation hospital, convalescent center, community mental health center, acute treatment unit, facility for persons with developmental disabilities, as defined in section 25-1.5-103 (2) (c), nursing care facility, hospice care, assisted living residence, except an assisted living residence shall be assessed a license fee as set forth in section 25-27-107, dialysis treatment clinic, ambulatory surgical center, birthing center, home care agency, or other facility of a like nature, except those wholly owned and operated by any governmental unit or agency, without first having obtained a license from the department of public health and environment.

(2) As used in this section, unless the context otherwise requires:

(a) (I) “Community clinic” means a health care facility that provides health care services on an ambulatory basis, is neither licensed as an on-campus department or service of a hospital nor listed as an off-campus location under a hospital’s license, and meets at least one of the following criteria:

(A) Operates inpatient beds at the facility for the provision of extended observation and other related services for not more than seventy-two hours;

(B) Provides emergency services at the facility; or

(C) Is not otherwise subject to health facility licensure under this section or section 25-1.5-103 but opts to obtain licensure as a community clinic in order to receive private donations, grants, government funds, or other public or private reimbursement for services rendered.

(II) “Community clinic” includes a prison clinic operated by the department of corrections.

(III) “Community clinic” does not include:

(A) A federally qualified health center, as defined in section 1861 (aa) (4) of the federal “Social Security Act”, 42 U.S.C. sec. 1395x (aa) (4);

(B) A rural health clinic, as defined in section 1861 (aa) (2) of the federal “Social Security Act”, 42 U.S.C. sec. 1395x (aa) (2);

(C) A facility that functions only as an office for the practice of medicine or the delivery of primary care services by other licensed or certified practitioners.

(b) “Hospital unit” means a physical portion of a licensed or certified general hospital, psychiatric hospital, maternity hospital, or rehabilitation hospital that is leased or otherwise occupied pursuant to a contractual agreement by a person other than the licensee of the host facility for the purpose of providing outpatient or inpatient services.

(3) Nothing in this section shall be construed to require the licensing of individual services provided by a licensed or certified provider on its own premises.

(4) A health care facility is not required to be licensed as a community clinic solely due to the facility’s ownership status, corporate structure, or engagement of outside vendors to perform nonclinical management services. This section permits regulation of a physician’s office only to the extent the office is a community clinic as defined in this section.

Source: **L. 09:** p. 411, § 1. **C.L.** § 1053. **CSA:** C. 78, § 133. **CRS 53:** § 66-4-1. **C.R.S. 1963:** § 66-4-1. **L. 71:** p. 631, § 1. **L. 78:** Entire section amended, p. 440, § 3, effective May 18. **L. 83:** Entire section amended, p. 1051, § 1, effective May 25. **L. 84:** (1) amended, p. 338, § 4, effective April 25. **L. 94:** (1) amended, p. 2750, § 404, effective July 1. **L. 95:** Entire section amended, p. 1023, § 2, effective July 1. **L. 2002:** (1) amended, p. 1329, § 16, effective July 1. **L. 2006:** (1) amended, p. 1391, § 23, effective August 7. **L. 2008:** (1) amended, p. 2233, § 2, effective August 5. **L. 2011:** (1) and (2) amended, (HB 11-1101), ch. 94, p. 277, § 2, effective April 8; (2)(a) amended, (HB 11-1323), ch. 265, p. 1198, § 2, effective June 2. **L. 2012:** (1) and (2)(a) amended and (4) added, (HB 12-1294), ch. 252, p. 1253, § 3, effective June 4.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2012 act amending subsections (1) and (2)(a) and adding subsection (4), see section 1 of chapter 252, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For comment on *Moon v. Mercy Hosp.*, appearing below, see 35 U. Colo. L. Rev. 612 (1963). For article, “Smith v. O’Halloran: Nursing Home Reform in the Courts”, see 13 Colo. Law. 2248 (1984).

Hospital license is prerequisite. A license to operate a hospital is a prerequisite to the functioning of such an establishment. *Moon v.*

Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Hospitals and doctors require different licenses. This section and § 12-36-107 are expressions of the legislative will that hospitals and doctors require different licenses. These licenses authorize related but different activities, and the issuance of the one does not permit

operation under the other. The general assembly plainly and unequivocally has treated these pursuits as separate and distinct pursuits requiring different licenses. *Purcell v. Poor Sisters of St. Francis Seraph*, 147 Colo. 478, 364 P.2d 184 (1961); *Moon v. Mercy Hosp.*, 150 Colo. 430, 373 P.2d 944 (1962).

Licensed hospital covered by malpractice limitations section. A hospital which is licensed under this section is clearly embraced within provisions of § 13-80-105 (now § 13-80-102 (1)(c)) prohibiting the bringing of an action to recover from a "licensed health establishment" due to alleged negligence unless such action be

instituted within two years after the cause accrued. *Adams v. Poudre Valley Hosp. Dist.*, 173 Colo. 98, 476 P.2d 565 (1970).

Licensing by home-rule city. The provisions of this article do not conflict with any rights of a home-rule city as to the licensing of a chiropractic sanitarium since the general assembly can provide for the licensing of hospitals within the limits of home-rule cities in the interest of general health. *Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health*, 122 Colo. 147, 220 P.2d 872 (1950).

Applied in *In re Estate of Smith v. O'Halloran*, 557 F. Supp. 289 (D. Colo. 1983).

25-3-102. License - application - issuance - certificate of compliance required.

(1) (a) An applicant for a license described in section 25-3-101 shall apply to the department of public health and environment annually upon such form and in such manner as prescribed by the department; except that a community residential home shall make application for a license pursuant to section 27-10.5-109, C.R.S.

(b) The department has authority to administer oaths, subpoena witnesses or documents, and take testimony in all matters relating to issuing, denying, limiting, suspending, or revoking a license.

(c) The department shall issue licenses to applicants furnishing satisfactory evidence of fitness to conduct and maintain a health facility described in section 25-3-101 in accordance with this part 1 and the rules adopted by the department. The department shall not require, as satisfactory evidence of fitness, evidence as to whether an applicant has provided self declarations, affidavits, or other attestations as to its general compliance with statutory or regulatory licensing requirements. The department shall determine an applicant's fitness solely based on the specific fitness information or documentation submitted by the applicant upon the department's request or as otherwise acquired by the department through its own review or investigation of the applicant. The department may require the applicant to attest to the accuracy of the information provided as long as the attestation does not require the applicant's affirmation of its general compliance with statutory or regulatory licensing requirements.

(d) The license shall be signed by the president and attested by the secretary of the state board of health and have the state board's seal affixed to the license. The license expires one year from the date of issuance.

(e) (I) For a change of ownership, the department shall conduct a fitness review of a new owner based upon information compiled within the five years preceding the date of the application; except that the new owner shall disclose whether, within the ten years preceding the date of an application, the new owner:

(A) Has been convicted of a felony or misdemeanor involving moral turpitude;

(B) Had a state license or federal certification denied, revoked, or suspended by another jurisdiction;

(C) Had a civil judgment or criminal conviction against the new owner in a case brought by the federal, state, or local authorities that resulted from the operation, management, or ownership of a health facility or other entity related to substandard patient care or health care fraud.

(II) The new owner shall provide the information specified in subparagraph (I) of this paragraph (e) to the department regardless of whether action has been stayed during a judicial appeal or otherwise settled between the parties.

(III) The department may review an existing owner of a licensed health facility or entity only when the department has new information not previously available or disclosed that bears on the fitness of the existing owner to operate or maintain a licensed health facility or entity.

(IV) A conversion of the health facility's or entity's legal structure, or the legal structure of an entity that has a direct or indirect ownership interest in the health facility or

entity, is not a change of ownership unless the conversion also includes a transfer of at least fifty percent of the licensed facility's direct or indirect ownership interest to one or more new owners.

(2) In the licensing of a community mental health center, acute treatment unit, or clinic, satisfactory evidence that the applicant is in compliance with the standards, rules, and regulations promulgated pursuant to section 27-66-102, C.R.S., shall be required for licensure.

(3) (a) Notwithstanding any provision of law to the contrary, the department of public health and environment shall not issue or renew any license described in section 25-3-101 for a facility covered by section 25-1.5-103 (5) unless the department receives a certificate of compliance for the applicant's building or structure from the division of fire prevention and control in the office of preparedness, security, and fire safety within the department of public safety in accordance with part 12 of article 33.5 of title 24, C.R.S.

(b) The department of public health and environment shall take action on an application for licensure within thirty days after the date that the department receives from the applicant all of the necessary information and documentation required for licensure, including a certificate of compliance from the division of fire prevention and control.

Editor's note: Subsection (3) is effective July 1, 2013, only if the revisor of statutes receives notification. (See the editor's note following the section.)

Source: L. 09: p. 412, § 2. C.L. § 1054. CSA: C. 78, § 134. C.R.S. 53: § 66-4-2. C.R.S. 1963: § 66-4-2. L. 71: p. 631, § 2. L. 79: Entire section amended, p. 1094, § 3, effective July 1. L. 94: (1) amended, p. 2750, § 405, effective July 1. L. 95: (1) amended, p. 1023, § 3, effective July 1. L. 2006: (2) amended, p. 1391, § 24, effective August 7. L. 2010: (2) amended, (SB 10-175), ch. 188, p. 799, § 61, effective April 29. L. 2012: (1) amended, (HB 12-1294), ch. 252, p. 1254, § 4, effective June 4; (1) amended and (3) added, (HB 12-1268), ch. 234, p. 1025, § 2, effective July 1, 2013.

Editor's note: (1) Amendments to subsection (1) by House Bill 12-1268 and House 12-1294 were harmonized, effective July 1, 2013.

(2) Section 15 of chapter 234, Session Laws of Colorado 2012, provides that the amendments to subsections (1) and (3) by said chapter (HB 12-1268) are effective July 1, 2013, only if the division of fire prevention and control in the department of public safety notifies the revisor of statutes in writing, by June 30, 2013, that the secretary of the United States department of health and human services has granted a modification to the agreement entered into between said secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, which modification allows said division to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2012 act amending subsection (1), see section 1 of chapter 252, Session Laws of Colorado 2012.

ANNOTATION

Relicensing and recertification. The court of appeals cannot order the department of health to recertify or relicense a nursing facility for this decision is statutorily committed to the department of health. *State Dept. of Health v. Geriatrics*, 699 P.2d 952 (Colo. 1985).

Applied in *Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health*, 122 Colo. 147, 220 P.2d 872 (1950).

25-3-102.1. Deemed status for certain facilities. (1) (a) In the licensing of an ambulatory surgical center following the issuance of initial licensure by the department of public health and environment, the voluntary submission of satisfactory evidence that the applicant is accredited by the joint commission, the American association for accreditation of ambulatory surgery facilities, inc., the accreditation association for ambulatory health care, the American osteopathic association, or any successor entities shall be deemed to

meet certain requirements for license renewal so long as the standards for accreditation applied by the accrediting organization are at least as stringent as the licensure requirements otherwise specified by the department.

(b) (I) In the application for the renewal of a license for a health facility described in section 25-3-101, other than an ambulatory surgical center, the department of public health and environment shall deem health facilities that are currently accredited by an accrediting organization recognized by the federal centers for medicare and medicaid services as satisfying the requirements for renewal of the license.

(II) If the standards for national accreditation are less stringent than the state's licensure standards for a particular health facility, the department of public health and environment may conduct a survey that focuses on the more stringent state standards. Beginning one year after the department first grants deemed status to a health facility pursuant to this paragraph (b), the department may conduct validation surveys, based on a valid sample methodology, of up to ten percent of the total number of accredited health facilities in the industry, excluding hospitals. If the department conducts a validation survey of a health facility, the validation survey is in lieu of a licensing renewal survey that the health facility would have undergone if the health facility did not have deemed status pursuant to this paragraph (b).

(III) If the department of public health and environment takes an enforcement activity, as defined in section 25-1.5-103 (2) (b.5), against a health facility to which it has granted deemed status pursuant to this paragraph (b), the department may revoke the health facility's deemed status.

(c) Upon submission of a completed application for license renewal, the department of public health and environment shall accept proof of the accreditation in lieu of licensing inspections or other requirements. Nothing in this section exempts an accredited health facility from inspections or from other forms of oversight by the department as necessary to ensure public health and safety.

(2) In determining fees otherwise payable by a health facility for license renewal, the department of public health and environment shall give due consideration to efficiencies and savings generated in connection with the deemed status process in subsection (1) of this section and shall specifically provide an appropriate credit or reduced fee to a health facility that achieves license renewal through deemed status.

Source: L. 2008: Entire section added, p. 1236, § 1, effective August 5. L. 2009: (1) amended, (SB 09-292), ch. 369, p. 1970, § 84, effective August 5. L. 2012: Entire section amended, (HB 12-1294), ch. 252, p. 1255, § 5, effective June 4.

Cross references: For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 252, Session Laws of Colorado 2012.

25-3-102.5. Nursing facilities - consumer satisfaction survey - pilot survey.

(1) (a) The department shall develop and implement a consumer satisfaction survey based on the results of the pilot survey implemented pursuant to paragraph (a.5) of this subsection (1). The pilot survey and the resulting consumer satisfaction survey shall be implemented to determine the level of satisfaction among residents and residents' families regarding the quality of care and quality of living in nursing facilities. "Nursing facility", as used in this section, means a nursing facility as defined in section 25.5-4-103 (14), C.R.S. The department shall appoint an advisory committee to develop the consumer satisfaction survey. The advisory committee shall include, but not be limited to, the state ombudsman, representatives of senior groups, representatives of the disabled community, representatives of providers of long term care services, and long term care consumers or their family members. The advisory committee shall develop recommendations for the development of an assessment tool for the consumer satisfaction survey and shall develop recommendations for the implementation of the pilot survey and the consumer satisfaction survey. The advisory committee shall ensure that a representative sample of participants are chosen and surveyed in a manner that will yield accurate and useful results. The department shall ensure that every nursing facility licensed by the department participates in the assessment of consumer satisfaction; except that any nursing facility that accepts exclusively private pay

residents shall not be required to participate. Information about results of the most recent consumer satisfaction survey and how such survey was conducted shall be included by the facility in all informational materials provided to persons who inquire about the facility. The department shall assure confidentiality for residents during the survey process. The department shall make the results of consumer satisfaction surveys available to the public.

(a.5) (I) The department shall develop and implement a pilot consumer satisfaction survey to aid in the determination of the level of satisfaction among residents and residents' families regarding the quality of care and quality of living in nursing facilities. The pilot survey shall be used exclusively for the development of the consumer satisfaction survey to be implemented pursuant to paragraph (d) of this subsection (1) and shall not be used to penalize any participating facility. The pilot survey shall be used to assess:

(A) The validity of the questionnaire for use in the consumer satisfaction survey implemented pursuant to paragraph (d) of this subsection (1);

(B) The nursing facilities residents' cognition levels in order to determine the ability of the residents to complete the survey in a meaningful manner;

(C) The techniques employed to obtain the number of completed survey questionnaires needed to achieve a statistical validity of plus or minus ten percent on the final consumer satisfaction survey; and

(D) The survey data to ensure that such data is meaningful to consumers.

(II) The pilot survey shall involve the participation of no more than ten percent of all nursing facilities licensed by the department. The department shall select nursing facilities to participate in the pilot survey based on characteristics including, but not limited to, the rural or urban location of the facilities, and the cross-section of the resident population of the facilities. Facilities that volunteer to participate in the pilot survey shall be given priority in the selection process so long as the required characteristics are met.

(III) (A) The individual nursing facility results of the pilot survey shall be confidential and not made available to the public; except that each nursing facility shall be provided with the pilot survey results from its own facility.

(B) Aggregate statistical results of the pilot survey may be made available to the public.

(C) Repealed.

(IV) Repealed.

(b) The consumer satisfaction survey shall be easy to understand so that each resident or resident's family member or representative who participates may fill out the survey unassisted; except that the department or its designated representative may assist a resident or resident's family with filling out the survey. Nursing facility volunteers and employees shall be prohibited from assisting participants with the completion of the survey. The names of the participants in the survey shall be kept confidential, and all surveys shall be returned directly to the department.

(c) Repealed.

(d) The department shall administer the consumer satisfaction survey based on the recommendations of the advisory committee in all licensed nursing facilities that are required to participate in accordance with paragraph (a) of this subsection (1). The department shall commence implementation of the survey on or before July 1, 2003. After the pilot survey is complete, the department shall evaluate the effectiveness of the pilot survey instruments, adopt any recommendations, and continue to survey all licensed facilities on a three-year cycle with one-third of the participating licensed nursing facilities completing the initial survey in one of the three years. Each participating licensed nursing facility shall perform a new consumer satisfaction survey every three years thereafter; except that the department may require, or a participating licensed nursing facility may request, that a new consumer satisfaction survey be performed more often if conditions warrant. If the licensed nursing facility requests such a survey, the department shall perform the survey if the licensed nursing facility pays the department for the costs associated with performing the survey. A licensed nursing facility may comment on the results of a consumer satisfaction survey and have such comments included in any publication or distribution of the results by the department.

(e) Hospice residents and their family members and transitional care unit residents and their family members, shall be exempt from participation in the pilot survey and consumer satisfaction survey conducted in each nursing facility.

(f) Nursing facilities shall release the name, address, and telephone number of each family member or party responsible for a nursing facility resident to the department for the sole use of conducting the pilot survey and the consumer satisfaction survey.

(2) (a) The department shall respond to a complaint from a nursing facility resident or resident's family member or representative within five working days after receipt of the complaint and, for sixty days after the date the department received the complaint, the department shall update the complainant on the status of the complaint investigation at least every fourteen days until the complaint is resolved and an investigation is finalized. If the complaint is not resolved within sixty days after the date the department received the complaint, the department shall continue to update the complainant on the status of the complaint every thirty days until the complaint is resolved and an investigation report is resolved and an investigation is finalized. At the request of the complainant, the department shall not maintain such contact.

(b) (I) The state and local long-term care ombudsman, established pursuant to article 11.5 of title 26, C.R.S., in compliance with the federal "Older Americans Act of 1965", ("ombudsman") shall refer to the state department for investigation and resolution all complaints received by the ombudsman involving possible licensure violations in nursing homes that are exclusively private pay facilities.

(II) Information about the ombudsman, including the ombudsman's role in dealing with resident complaints and all contact information and telephone numbers for the ombudsman, shall be included in the information provided to a resident upon admission to a facility that is not a private pay facility.

Source: **L. 2001:** Entire section added, p. 1222, § 1, effective June 5. **L. 2002:** (1)(a) and (1)(d) amended and (1)(a.5), (1)(e), and (1)(f) added, p. 1924, § 1, effective June 7; (1)(a.5)(III)(C) repealed, p. 1935, § 4, effective July 1. **L. 2004:** (1)(c) repealed, p. 471, § 1, effective August 4. **L. 2005:** (1)(a.5)(IV) repealed, p. 279, § 12, effective August 8. **L. 2006:** (1)(a) amended, p. 2014, § 87, effective July 1.

25-3-103. License denial or revocation - provisional license - rules. (1) (a) The department of public health and environment may deny an application for a new or renewal license under this part 1 or revoke a license if the applicant or licensee has not satisfied the requirements of this part 1 or part 6 of this article and the rules of the department or the state board of health. If a license is denied or revoked, the department may grant the applicant or licensee a provisional license upon payment of a fee established by the state board of health by rule, subject to the limitations in paragraph (c) of this subsection (1). The provisional license is valid for no longer than ninety days and may be issued to allow the applicant or licensee time to comply with the requirements for a regular license. A second provisional license may be issued if the department determines it is necessary to effect compliance. The second provisional license must be issued for the same duration as the first provisional license upon payment of the fee established by the state board of health by rule, subject to the limitations in paragraph (c) of this subsection (1). No further provisional licenses may be issued for the then current year after the second issuance.

(b) The state board of health by rule or as otherwise provided by law may reduce the amount of the fee established pursuant to paragraph (a) of this subsection (1) if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(c) On or after June 4, 2012, the state board of health may increase the amount of a provisional license fee established pursuant to paragraph (a) of this subsection (1) that is in effect on June 4, 2012, by an amount not to exceed the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley for all urban consumers, all goods, or its successor index. Nothing

in this paragraph (c) limits the ability of the state board of health to reduce the amount of a provisional license fee in effect on such date or to modify fees in accordance with paragraph (b) of this subsection (1) as necessary to comply with section 24-75-402, C.R.S.

(2) Upon a finding of reasonable compliance by an applicant holding a provisional license, a regular license shall be issued upon receipt of the regular license fee established pursuant to section 25-3-105.

(3) No denial of a renewal license shall be lawful unless, before institution of such proceedings by the department of public health and environment, said department has given the licensee notice in writing of facts on conduct that may warrant denial, has afforded the applicant opportunity to submit written data, views, and arguments with respect to such facts on conduct, and, except in cases of deliberate and willful violation, has given the applicant a reasonable opportunity to comply with all lawful requirements for licensure.

(4) No application for renewal of a license shall be denied by the department of public health and environment, and no previously issued license shall be revoked, suspended, annulled, limited, or modified until after a hearing as provided in section 24-4-105, C.R.S.

(5) The department of public health and environment may suspend or revoke the license for the operation of a nursing care facility or intermediate care facility of any licensee convicted of violating any provision of section 26-1-127 or section 25.5-6-206 (8), C.R.S., if the department finds such suspension or revocation necessary to safeguard the rights of patients in the future. No license or permit shall thereafter be issued to any person so convicted, except upon a specific finding by the department that the rights of the patients will have adequate safeguards.

Source: L. 09: p. 412, § 3. C.L. § 1055. CSA: C. 78, § 135. CRS 53: § 66-4-3. C.R.S. 1963: § 66-4-3. L. 71: p. 632, § 3. L. 77: (5) added, p. 1357, § 5, effective June 19. L. 78: (5) amended, p. 270, § 83, effective May 23. L. 84: (2) amended, p. 1121, § 25, effective June 7. L. 91: (5) amended, p. 1856, § 14, effective April 11. L. 94: (1), (3), (4), and (5) amended, p. 2751, § 406, effective July 1. L. 95: (1) and (2) amended, p. 1024, § 4, effective July 1. L. 98: (1) and (2) amended, p. 1333, § 44, effective June 1. L. 2006: (1)(a) amended, p. 1574, § 2, effective June 2; (5) amended, p. 2015, § 88, effective July 1. L. 2007: (1) amended, p. 954, § 3, effective May 17. L. 2012: (1)(a) amended and (1)(c) added, (HB 12-1294) ch. 252, p. 1256, § 6, effective June 4.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1), (3), (4), and (5), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2012 act amending subsection (1)(a) and adding subsection (1)(c), see section 1 of chapter 252, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "Smith v. O'Halloran: Nursing Home Reform in the Courts", see 13 Colo. Law. 2248 (1984).

Applied in Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health, 122 Colo.

147, 220 P.2d 872 (1950); In re Estate of Smith v. O'Halloran, 557 F. Supp. 289 (D. Colo. 1983).

25-3-103.1. Health facilities general licensure cash fund. (1) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the health facilities general licensure cash fund, which fund is hereby created.

(2) The general assembly shall make annual appropriations from the health facilities general licensure cash fund to partially reimburse the department of public health and environment for the direct and indirect costs of the department incurred in the performance of its duties under this article and for the purposes of section 25-1.5-103 (3.5). No appropriation shall be made out of the cash fund for expenditures incurred by the department pursuant to section 25-1.5-103 (1) (a) (II) in carrying out duties relating to health facilities wholly owned and operated by a governmental unit or agency.

Source: L. 95: Entire section added, p. 1024, § 5, effective July 1. L. 2003: (2) amended, p. 709, § 37, effective July 1. L. 2008: (2) amended, p. 1948, § 2, effective June 2.

25-3-103.5. Nondiscrimination - hospital surgical privileges - hospital rules and regulations. (1) The bylaws of any hospital licensed pursuant to the provisions of part 3 of this article or established pursuant to section 32-1-1003, C.R.S., which does not limit staff privileges to employees or contracting physicians of such hospital, shall include provisions for the use of the facility by, and staff privileges for, duly licensed doctors of medicine, osteopathy, dentistry, and podiatry within the scope of their respective licenses. Such bylaws shall not discriminate on the basis of the staff member's holding a degree of doctor of medicine, doctor of osteopathy, doctor of dental science, or doctor of podiatric medicine within the scope of their respective licensure. Provision shall be made in the bylaws for the right to pursue and practice full surgical privileges for holders of a degree of doctor of medicine, doctor of osteopathy, doctor of dental science, or doctor of podiatric medicine within the scope of their respective licensure. Such rights and privileges may be limited or restricted upon the basis of an individual practitioner's demonstrated training, experience, current competence, professional ethics, health status, or failure to abide by the hospital's rules, regulations, and procedures.

(2) Nothing in this section shall be construed to require a hospital to offer a specific service or services not otherwise offered or to buy, construct, or renovate facilities, to purchase equipment, hire additional staff, or to comply with other requirements of law concerning its planning, financing, or operation. If a health service is offered, the hospital shall not discriminate between persons holding a degree of doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine who are authorized by law to perform such services.

(3) A hospital may require the coadmittance by a medical doctor or doctor of osteopathy for any patient admitted for surgical treatment by a podiatrist or dentist. The responsibility for obtaining such coadmittance shall be that of the podiatrist or dentist admitting said patient and not of the hospital. Patients admitted for podiatric or dental care shall receive the same basic medical appraisal as patients admitted for other services. Such appraisal shall include an admission history and physical examination by a medical doctor, doctor of osteopathy, or qualified, hospital-credentialed and -privileged podiatrist, who is either on the medical staff or approved by the medical staff of such hospital. The findings of such appraisal shall be recorded on the patient's medical record. The admitting podiatrist or dentist shall be responsible for that part of the history and examination that is related to podiatry or dentistry. The medical doctor or doctor of osteopathy shall be responsible for the treatment of any medical problem that may be present on admission or arise during hospitalization of such podiatric or dental patient. Such doctor shall evaluate the general medical condition of the podiatric or dental patient and determine, after consultation if necessary, the overall risk of the pending surgical treatment to the patient's health.

(4) Within one hundred eighty days after May 25, 1983, the governing body of every hospital subject to the provisions of part 3 of this article or established pursuant to section 32-1-1003, C.R.S., which does not limit staff privileges to employees or contracting physicians of such hospital, shall provide in its bylaws reasonable standards and procedures to be applied by such hospital and its staff in considering and acting upon applications for staff membership or privileges by a person holding a Colorado license to practice as a doctor of medicine, doctor of osteopathic medicine, podiatrist, or dentist in conformance with the requirements of any national accrediting body to which the hospital subscribes. Such standards and procedures shall be available for public inspection and shall be based on an applicant's individual training, experience, current competence, professional ethics, health status, and the hospital's rules of professional conduct applied equally to all persons holding a Colorado license to practice as a doctor of medicine, doctor of osteopathic medicine, podiatrist, or dentist.

(5) Hospital rules and regulations shall be reasonable, necessary, and applied in good faith equally and in a nondiscriminatory manner to all staff members, or applicants seeking to become staff members, holding a degree of doctor of medicine, doctor of osteopathic medicine, doctor of dental science, or doctor of podiatric medicine.

Source: L. 83: Entire section added, p. 1053, § 1, effective May 25. L. 2007: (3) amended, p. 436, § 1, effective August 3.

25-3-103.7. Employment of physicians - when permissible - conditions - definitions. (1) For purposes of this section:

(a) “Community mental health center” means a community mental health center, as defined in section 25-1.5-103 (2), that is currently licensed and regulated by the department pursuant to the department’s authority under section 25-1.5-103 (1) (a).

(b) “Department” means the department of public health and environment.

(c) “Federally qualified health center” or “FQHC” shall have the same meaning as set forth in section 1861(aa) (4) of the federal “Social Security Act”, 42 U.S.C. sec. 1395x (aa) (4).

(d) “Health care facility” means a hospital, hospice, community mental health center, federally qualified health center, school-based health center, rural health clinic, PACE organization, or long-term care facility.

(e) “Hospice” means an entity that administers services to a terminally ill person utilizing palliative care or treatment and that is currently licensed and regulated by the department pursuant to the department’s authority under section 25-1.5-103 (1) (a).

(f) “Hospital” means a hospital currently licensed or certified by the department pursuant to the department’s authority under section 25-1.5-103 (1) (a).

(f.3) “Long-term care facility” means:

(I) A nursing facility as defined by section 25.5-4-103, C.R.S., and licensed pursuant to section 25-1.5-103;

(II) An assisted living residence as defined by section 25-27-102 and licensed pursuant to section 25-27-103; or

(III) An independent living facility or a residence for seniors that provides assistance to its residents in the performance of their daily living activities.

(f.5) “PACE organization” means an organization providing a program of all-inclusive care for the elderly pursuant to section 25.5-5-412, C.R.S.

(g) “Physician” means a person duly licensed to practice under article 32, 35, or 36 of title 12, C.R.S.

(h) “Rural health clinic” shall have the same meaning as set forth in section 1861(aa) (2) of the federal “Social Security Act”, 42 U.S.C. sec. 1395x (aa) (2).

(i) “School-based health center” shall have the same meaning as set forth in section 25-20.5-502.

(2) (a) A health care facility may employ physicians, subject to the limitations set forth in subsections (3) to (6) of this section. The employment of physicians at a long-term care facility may be direct or through a separate entity authorized to conduct business in this state that has common or overlapping ownership as an affiliate or subsidiary of an entity, including a foreign entity, that owns, controls, or manages the long-term care facility, subject to the limitations set forth in subsections (3) to (6) of this section.

(b) Nothing in this subsection (2) allows any person who is not licensed pursuant to article 36 of title 12, C.R.S., to practice or direct the practice of medicine at a long-term care facility.

(3) Nothing in this section shall be construed to allow any health care facility that employs a physician to limit or otherwise exercise control over the physician’s independent professional judgment concerning the practice of medicine or diagnosis or treatment or to require physicians to refer exclusively to the health care facility or to the health care facility’s employed physicians. Any health care facility that knowingly or recklessly so limits or controls a physician in such manner or attempts to do so shall be deemed to have violated standards of operation for the particular type of health care facility and may be held liable to the patient or the physician, or both, for such violations, including proximately caused damages. Nothing in this section shall be construed to affect any health care facility’s decisions with respect to the availability of services, technology, equipment, facilities, or treatment programs, or as requiring any health care facility to make available to patients or physicians additional services, technology, equipment, facilities, or treatment programs.

(4) Nothing in this section shall be construed to allow a health care facility that employs a physician to offer the physician any percentage of fees charged to patients by the health care facility or other financial incentive to artificially increase services provided to patients.

(5) The medical staff bylaws or policies or the policies of any health care facility that employs physicians shall not discriminate with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the health care facility. Any health care facility that discriminates with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the health care facility shall be deemed to have violated standards of operation for the particular type of health care facility and may be held liable to the physician for such violations, including proximately caused damages. This subsection (5) shall not affect the terms of any contract or written employment arrangement that provides that the credentials or staff and clinical privileges of any practitioner are incident to or coterminous with the contract or employment arrangement or the individual's association with a group holding the contract.

(6) When applying for initial facility licensure and upon each application for license renewal, every health care facility licensed or certified by the department that employs a physician shall report to the department the number of physicians on the health care facility's medical staff. The report shall separately identify the number of those physicians who are employed by the health care facility under separate contract to the health care facility and independent of the health care facility.

(7) The medical staff bylaws or policies or the policies of any health care facility that employs physicians shall contain a procedure by which complaints by physicians alleging a violation of subsection (3), (4), or (5) of this section may be heard and resolved, which procedure shall ensure that the due process rights of the parties are protected. A physician who believes he or she has been the subject of a violation of subsection (3), (4), or (5) of this section has a right to complain and request review of the matter pursuant to such procedure.

(8) Nothing in this section shall preclude a physician or a patient from seeking other remedies available to the physician or to the patient at law or in equity.

Source: **L. 93:** Entire section added, p. 721, § 2, effective May 6. **L. 94:** (1)(a) and (6) amended, p. 2751, § 407, effective July 1. **L. 95:** (1)(a), (3), and (5) amended and (7) and (8) added, p. 977, § 2, effective July 1. **L. 2003:** (1)(a) amended, p. 709, § 38, effective July 1. **L. 2007:** (1) to (7) amended, p. 452, § 1, effective April 11. **L. 2008:** Entire section amended, p. 932, § 1, effective August 5. **L. 2009:** (1)(d) and (6) amended and (1)(f.5) added, (HB 09-1004), ch. 26, p. 115, § 1, effective March 19. **L. 2011:** (1)(d) and (2) amended and (1)(f.3) added, (SB 11-084), ch. 112, p. 346, § 2, effective August 10. **L. 2012:** (6) amended, (HB 12-1052), ch. 228, p. 1006, § 4, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1)(a) and (6), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1995 act amending subsections (1)(a), (3), and (5) and adding subsections (7) and (8), see section 1 of chapter 201, Session Laws of Colorado 1995. For the legislative declaration in the 2012 act amending subsection (6), see section 1 of chapter 228, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, "The Physician as the Hospital's Employee: SB 95-212", see 24 Colo. Law. 2345 (1995).

No exposure to vicarious liability. Since a hospital may employ a physician but cannot limit or otherwise exercise control over the physician's independent professional judgment, this section does not expose the hospital to vicarious

liability with respect to negligent or tortious acts committed by the physician employee. *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

Corporate practice of medicine doctrine is statutorily altered, but not abolished, in Colorado. *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450 (Colo. App. 2005).

25-3-104. Reports. Any person, partnership, association, or corporation maintaining any hospital or other facility for the treatment or care of the sick or injured shall make a report to the department of public health and environment upon request but not more frequently than quarterly. The department of public health and environment shall have power to investigate and shall have free access to such facilities consistent with section 25-1.5-103 (1) (a).

Source: L. 09: p. 412, § 4. C.L. § 1056. CSA: C. 78, § 136. CRS 53: § 66-4-4. C.R.S. 1963: § 66-4-4. L. 71: p. 632, § 4. L. 94: Entire section amended, p. 2752, § 408, effective July 1. L. 95: Entire section amended, p. 1024, § 6, effective July 1. L. 2003: Entire section amended, p. 709, § 39, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3-105. License - fee - rules - penalty. (1) (a) (I) (A) Subject to the limitations in sub-subparagraph (B) of this subparagraph (I), the state board of health shall establish a schedule of fees, which must be set at a level sufficient to meet the direct and indirect costs of administration and enforcement of this article, as appropriated by the general assembly for each fiscal year, less any moneys appropriated for the same fiscal year by the general assembly from any other source to meet such costs. The fee schedule must also ensure that the reserve balance in the health facilities general licensure cash fund created in section 25-3-103.1 (1) is consistent with the limits specified in section 24-75-402 (3), C.R.S., and must be modified, as necessary, to comply with said limits. The state board shall establish and modify, as necessary, the fee schedule by rules adopted in accordance with article 4 of title 24, C.R.S. Except as specified in subparagraph (II) of this paragraph (a), the department of public health and environment may assess fees in accordance with the fee schedule established by the state board against health facilities licensed by the department. All fees collected pursuant to the fee schedule must be deposited in the health facilities general licensure cash fund created in section 25-3-103.1 (1) and are subject to appropriation by the general assembly in accordance with section 25-3-103.1 (2).

(B) On or after June 4, 2012, the state board of health may increase the amount of any fee on the schedule of fees established pursuant to sub-subparagraph (A) of this subparagraph (I) that is in effect on June 4, 2012, by an amount not to exceed the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley for all urban consumers, all goods, or its successor index. Nothing in this sub-subparagraph (B) limits the ability of the state board of health to reduce the amount of any fee on the schedule of fees in effect on such date or to modify fees as necessary to comply with section 24-75-402, C.R.S.

(C) The department of public health and environment shall institute, by rule, a performance incentive system for licensed health facilities under which a licensed health facility would be eligible for a reduction in its license renewal fee if: The department's on-site relicensure inspection demonstrates that the health facility has no significant deficiencies that have negatively affected the life, safety, or health of its consumers; the licensed health facility has fully and timely cooperated with the department during the on-site inspection; the department has found no documented actual or potential harm to consumers; and, in the case where any significant deficiencies are found that do not negatively affect the life, safety, or health of consumers, the licensed health facility has submitted, and the department has accepted, a plan of correction and the health facility has corrected the deficient practice, as verified by the department, within the period required by the department.

(II) An acute treatment unit shall be assessed a fee as set forth in paragraph (c) of this subsection (1), an assisted living residence shall be assessed a fee as set forth in section 25-27-107, and a separate fee shall be collected pursuant to section 25-3-704 to meet the costs incurred by the department in completing the requirements of part 7 of this article.

(III) A license issued by the department may be revoked at any time by the state board of health for any of the causes set forth in section 25-3-103 or for a licensee's failure to

comply with any of the rules of the state board or to make the reports required by section 25-3-104. Any person, partnership, association, company, or corporation opening, conducting, or maintaining any facility for the treatment and care of the sick or injured who does not have a provisional or regular license authorizing such person or entity to open, conduct, or maintain the facility is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars.

(b) (Deleted by amendment, L. 2007, p. 953, § 2, effective May 17, 2007.)

(c) (I) On and after August 7, 2006, an applicant for licensure for an acute treatment unit shall submit to the department nonrefundable fees with an application for licensure as follows:

(A) A fee of one hundred dollars per available bed in addition to a fee of three thousand five hundred dollars for a license related to new facility operations; except that a facility that converts from a different licensure category to an acute treatment unit shall submit its application and initial licensure fee no later than July 1, 2008;

(B) A fee of twenty dollars per available bed in addition to a fee of one thousand seven hundred dollars to issue a new license when there has been a change of ownership of an existing licensed acute treatment unit;

(C) A fee of twenty dollars per available bed in addition to a fee of one thousand five hundred dollars when the licensee seeks annual renewal of an existing acute treatment unit license.

(II) A licensee shall submit a fee of one hundred dollars for an acute treatment unit in the following circumstances:

(A) When submitting a name change for approval by the department; or

(B) When submitting a request to increase the number of licensed beds for approval by the department.

(III) A licensee shall submit a fee of five hundred dollars for an acute treatment unit in the following circumstances:

(A) For remodeling plan review by the department when the licensee undergoes new construction or substantial remodeling of an acute treatment unit, as defined by rule of the state board of health; or

(B) For remodeling on-site review by the department when the licensee undergoes new construction or substantial remodeling of an acute treatment unit, as defined by rule of the state board of health. Fees for remodeling on-site review shall be in addition to the fees assessed for remodeling plan review.

(2) The department of public health and environment shall maintain a full, true, and accurate accounting of the costs of providing services under this article, including indirect costs, and, at least annually, shall provide a detailed cost accounting report to the health care facility stakeholder forum created in section 25-3-113. The department shall regularly evaluate and update its cost-accounting methods.

(3) Repealed.

(4) On July 1, 2013, any moneys remaining in the health facilities general licensure cash fund created in section 25-3-103.1 (1) from fees collected by the department of public health and environment for health facility building and structure code plan reviews and inspections are transferred to the health facility construction and inspection cash fund created in section 24-33.5-1207.8, C.R.S.

Editor's note: Subsection (4) is effective July 1, 2013, only if the revisor of statutes receives notification. (See the editor's note following this section.)

Source: L. 09: p. 413, § 6. C.L. § 1058. CSA: C. 78, § 138. CRS 53: § 66-4-5. L. 54: p. 133, § 1. C.R.S. 1963: § 66-4-5. L. 71: p. 632, § 5. L. 77: Entire section amended, p. 1275, § 1, effective July 1. L. 95: Entire section amended, p. 1025, § 7, effective July 1. L. 98: (1) amended, p. 1333, § 45, effective June 1. L. 2000: (2) amended, p. 461, § 2, effective August 2. L. 2003: (1)(a) amended, p. 1524, § 1, effective May 1. L. 2006: (1) amended, p. 1391, § 25, effective August 7. L. 2007: (1)(a) and (1)(b) amended, p. 953, § 2, effective May 17. L. 2012: (1)(a)(I) and (2) amended, (HB 12-1294), ch. 252, p. 1257, § 7, effective June 4; (4) added (HB 12-1268), ch. 234, p. 1026, § 3, effective July 1, 2013.

Editor's note: (1) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 1996. (See L. 95, p. 1025.)

(2) Section 15 of chapter 234, Session Laws of Colorado 2012, provides that subsection (4) is effective July 1, 2013, only if the division of fire prevention and control in the department of public safety notifies the revisor of statutes in writing, by June 30, 2013, that the secretary of the United States department of health and human services has granted a modification to the agreement entered into between said secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, which modification allows said division to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities.

Cross references: For the legislative declaration in the 2012 act amending subsections (1)(a)(I) and (2), see section 1 of chapter 252, Session Laws of Colorado 2012.

25-3-106. Unincorporated associations. An unincorporated association organized and existing for the purpose of providing hospital services for its members shall be governed, managed, and controlled by a board of trustees selected in accordance with the provisions of the state constitution and bylaws of such association. Such board of trustees shall have the right to acquire, own, and hold, in the name of such association or in the name of persons who hold title in trust for said association, real property devoted to or connected with hospital purposes and to operate and manage the same in accordance with the laws of this state, and such board of trustees shall have the power and right from time to time to sell, convey, lease, or otherwise dispose of such property, including any hospital building of such association, whenever acquired, and to direct the sale, conveyance, lease, or other disposition of the same by persons who hold the title to such property in trust for said association to such purchaser, lessee, or other person or entity for such price and upon such terms and conditions as may be determined by resolution of the board of trustees of the association adopted by two-thirds vote of the entire board of trustees of such association at any regular or special meeting of said board. The sale, conveyance, lease, or other disposition of such property may be made in the manner provided in this section to any person, corporation, county, municipality, or other entity.

Source: L. 57: p. 416, § 1. CRS 53: § 66-4-6. C.R.S. 1963: § 66-4-6.

25-3-107. Disciplinary actions reported to Colorado medical board or podiatry board. (1) Any disciplinary action to suspend, revoke, or otherwise limit the privileges of a licensed physician or podiatrist that is taken by the governing board of a hospital required to be licensed or certified pursuant to this part 1 or required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1) (a) (I) or (1) (a) (II) shall be reported to the Colorado medical board or the Colorado podiatry board, whichever board is appropriate, in the form prescribed by said board.

(2) Said hospital shall provide such additional information as is deemed necessary by the Colorado medical board or the Colorado podiatry board to conduct a further investigation and hearing.

Source: L. 76: Entire section added, p. 421, § 7, effective July 1. L. 79: (1) amended, p. 523, § 28, effective July 1. L. 85: Entire section amended, p. 505, § 23, effective July 1. L. 88: (1) amended, p. 527, § 11, effective July 1. L. 2003: (1) amended, p. 710, § 40, effective July 1. L. 2010: Entire section amended, (HB 10-1260), ch. 403, p. 1990, § 86, effective July 1.

25-3-108. Receivership. (1) It is the purpose of this section to establish a receivership mechanism that will be available as a remedy for such violations of applicable laws and regulations by a licensee of a long-term health care facility that require facility closure by the department of public health and environment in order to safeguard against potential transfer trauma resulting from relocation of its residents as a result of closure of the facility.

(2) The department of public health and environment, the licensee or owner of a long-term health care facility, or the lessee of such facility with the approval of the owner

may apply to the district court for the appointment of a receiver to operate the long-term health care facility when:

(a) The department of public health and environment has refused to issue a renewal license or has revoked the license of such facility and the action of the department is final; or

(b) The department of public health and environment, through the executive director thereof, has taken summary action to suspend the license of any such facility in accordance with the provisions of section 24-4-104 (4), C.R.S.

(3) The action of the department of public health and environment with respect to nonrenewal or revocation of a license and recommendation for certification for medicaid participation shall not be final for the purposes of paragraph (a) of subsection (2) of this section until all administrative hearings and judicial appeals sought by a licensee of a long-term health care facility have been exhausted or the time permitted for the same has expired and until the decisions resulting from any such appeals, if any, sustain the action of said department.

(4) Application for the appointment of a receiver pursuant to this section shall be to the district court for the county where the long-term health care facility is located. No hearing on such application shall be held sooner than seventy-two hours after the licensee of such facility has been served with notice thereof, as provided in the Colorado rules of civil procedure; except that when the department exercises its summary powers, an emergency receiver may be appointed upon agreement in writing between the department and licensee, with the approval of the owner, until a hearing for appointment of a receiver as provided in this section. Notice shall also be served upon any owner and any lessee of a long-term health care facility and any holder of a security interest of record in said facility. An application for appointment of a receiver pursuant to this section shall have precedence and priority over any civil or criminal case pending in the district court wherein the application is filed.

(5) For the purposes of this section the action of the department of public health and environment exercised pursuant to subsection (2) of this section shall become effective upon appointment of the receiver of the court.

(6) Prior to ordering the appointment of a receiver for the operation of a long-term health care facility, the district court must find:

(a) That grounds for the appointment of a receiver exist as provided in subsection (2) of this section; and

(b) That proper notice as required by subsection (4) of this section has been served; and

(c) That there is a necessity to continue care on a temporary basis at the facility to avoid potential transfer trauma which would serve the best interests of the residents of the facility pending arrangements for the lease, sale, or closure of the facility.

(7) The department of public health and environment shall grant the receiver a license pursuant to section 25-3-102 and shall recommend certification for medicaid participation, and the department of health care policy and financing shall reimburse the receiver for the long-term health care facility's medicaid residents pursuant to section 25.5-6-204, C.R.S.

(8) The appointment of the receiver shall be in accordance with and governed by the provisions of rule 66 of the Colorado rules of civil procedure. The court shall enter an order of appointment and fix the fees and expenses of the receiver. The receiver shall be a licensed nursing home administrator and shall post a bond with adequate sureties as determined by the court, and the receiver may be sued upon the same in the name of the people of the state of Colorado at the instance and for the use of any party injured. The receiver shall perform duties, assume responsibilities, and preserve the long-term health care facility property in accordance with established principles of law for receivers of real property. Such duties and responsibilities shall be determined by the court following a hearing, at which time the parties may appear and be heard. The court shall specify the duties and responsibilities of the receiver in the order of appointment. No security interest in any real or personal property comprising said facility or contained within the facility nor any fixture of the facility shall be impaired or diminished by the receiver, but the receiver shall comply with the standards of the department of public health and environment in providing health care to patients.

(9) Nothing in this section shall prevent the court from altering or amending the terms and conditions of the receivership or the receiver's responsibilities and duties following a hearing, at which time the parties may appear and be heard; and nothing in this section shall prohibit the parties from stipulating to the terms and conditions of the receivership and the responsibilities and duties of the receiver, including the duration thereof, and such stipulation shall be submitted to the court for approval.

(10) A receivership established pursuant to this section may be terminated by the court upon application therefor by the licensee of a long-term health care facility, the department of public health and environment, or the receiver. The receivership may be terminated upon a finding by the court that the receivership is no longer necessary, but in no case shall the receivership continue for longer than one hundred eighty days from the date of the initial appointment of the receiver unless extended by written agreement of the parties as provided in subsection (9) of this section.

(11) Upon termination of the receivership, the court shall order a final accounting and finally fix the fees and expenses of the receiver following a hearing, at which time the parties may appear and be heard.

Source: **L. 79:** Entire section added, p. 1003, § 1, effective June 7. **L. 91:** (7) amended, p. 1857, § 15, effective April 11. **L. 94:** (1), (2), (3), (5), (7), (8), and (10) amended, pp. 2752, 2624, §§ 409, 43, effective July 1. **L. 2006:** (7) amended, p. 2015, § 89, effective July 1. **L. 2007:** (1) amended, p. 2040, § 64, effective June 1.

Editor's note: Amendments to subsection (7) by sections 43 and 409 of House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1), (2), (3), (5), (7), (8), and (10), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Smith v. O'Halloran: Nursing Home Reform in the Courts", see 13 Colo. Law. 2248 (1984).

This section modifies the general rule that a receiver stands in the shoes of the entity in receivership and may assert no greater rights than the entity whose property the receiver was appointed to receive. Rather, to implement the statutory purpose to avoid "transfer trauma" from relocation of patients, the Department of Social Services is required to reimburse a receiver appointed pursuant to this section for its

medicaid residents in accordance with § 26-4-110 (5). Thus, despite an apparent conflict with its regulations, the Department may not withhold the final month's payment claimed by a receiver pending completion of audits. *Good Shepherd v. Dept. of Health*, 789 P.2d 423 (Colo. App. 1989).

Applied in *State ex rel. State Dept. of Health v. I.D.I., Inc.*, 642 P.2d 14 (Colo. App. 1981); *In re Estate of Smith v. O'Halloran*, 557 F. Supp. 289 (D. Colo. 1983).

25-3-109. Quality management functions - confidentiality and immunity. (1) The general assembly hereby finds and declares that the implementation of quality management functions to evaluate and improve patient and resident care is essential to the operation of health care facilities licensed or certified by the department of public health and environment pursuant to section 25-1.5-103 (1) (a). For this purpose, it is necessary that the collection of information and data by such licensed or certified health care facilities be reasonably unfettered so a complete and thorough evaluation and improvement of the quality of patient and resident care can be accomplished. To this end, quality management information relating to the evaluation or improvement of the quality of health care services shall be confidential, subject to the provisions of subsection (4) of this section, and persons performing such functions shall be granted qualified immunity. It is the intent of the general assembly that nothing in this section revise, amend, or alter article 36 or part 1 of article 36.5 of title 12, C.R.S.

(2) For purposes of this section, a "quality management program" means a program which includes quality assurance and risk management activities, the peer review of licensed health care professionals not otherwise provided for in part 1 of article 36.5 of title

12, C.R.S., and other quality management functions which are described by a facility in a quality management program approved by the department of public health and environment. Nothing in this section shall revise, amend, or alter article 36 or part 1 of article 36.5 of title 12, C.R.S.

(3) Except as otherwise provided in this section, any records, reports, or other information of a licensed or certified health care facility that are part of a quality management program designed to identify, evaluate, and reduce the risk of patient or resident injury associated with care or to improve the quality of patient care shall be confidential information; except that such information shall be subject to the provisions of subsection (4) of this section.

(4) The records, reports, and other information described in subsection (3) and subsection (5.5) of this section shall not be subject to subpoena or discoverable or admissible as evidence in any civil or administrative proceeding. No person who participates in the reporting, collection, evaluation, or use of such quality management information with regard to a specific circumstance shall testify thereon in any civil or administrative proceeding. However, this subsection (4) shall not apply to:

(a) Any civil or administrative proceeding, inspection, or investigation as otherwise provided by law by the department of public health and environment or other appropriate regulatory agency having jurisdiction for disciplinary or licensing sanctions;

(b) Persons giving testimony concerning facts of which they have personal knowledge acquired independently of the quality management information program or function;

(c) The availability, as provided by law or the rules of civil procedure, of factual information relating solely to the individual in interest in a civil suit by such person, next friend or legal representative. In no event shall such factual information include opinions or evaluations performed as a part of the quality management program.

(d) Persons giving testimony concerning an act or omission which they have observed or in which they participated, notwithstanding any participation by them in the quality management program;

(e) Persons giving testimony concerning facts they have recorded in a medical record relating solely to the individual in interest in a civil suit by such person.

(5) Nothing in this section shall affect the voluntary release of any quality management record or information by a health care facility; except that no patient-identifying information shall be released without the patient's consent.

(5.5) (a) The confidentiality of information provided for in this section shall in no way be impaired or otherwise adversely affected solely by reason of the submission of the information to a nongovernmental entity to conduct studies that evaluate, develop, and analyze information about health care operations, practices, or any other function of health care facilities. The records, reports, and other information collected or developed by a nongovernmental entity shall remain protected as provided in subsections (3) and (4) of this section. In order to adequately protect the confidentiality of such information, no findings, conclusions, or recommendations contained in such studies conducted by any such nongovernmental entity shall be deemed to establish a standard of care for health care facilities.

(b) For purposes of this subsection (5.5), "health care facility" includes a health carrier as defined in section 10-16-102 (8), C.R.S., and a health care practitioner licensed or certified pursuant to title 12, C.R.S.

(6) Any person who in good faith and within the scope of the functions of a quality management program participates in the reporting, collection, evaluation, or use of quality management information or performs other functions as part of a quality management program with regard to a specific circumstance shall be immune from suit in any civil action based on such functions brought by a health care provider or person to whom the quality information pertains. In no event shall this immunity apply to any negligent or intentional act or omission in the provision of care.

(7) and (8) (Deleted by amendment, L. 97, p. 507, § 2, effective April 24, 1997.)

(9) Nothing in this section shall be construed to limit any statutory or common law privilege, confidentiality, or immunity.

(10) Nothing in this section shall revise, amend, or alter the requirements of section 25-3-107.

(11) (Deleted by amendment, L. 97, p. 507, § 2, effective April 24, 1997.)

(12) Nothing in this section shall affect a person's access to his medical record as provided in section 25-1-801, nor shall it affect the right of any family member or any other person to obtain medical record information upon the consent of the patient or his authorized representative.

Source: L. 88: Entire section added, p. 1006, § 1, effective April 29. L. 89: (1) and (2) amended, p. 689, § 5, effective July 1. L. 94: (1), (2), (3), (4)(a), IP(7), and (8) amended, p. 2754, § 410, effective July 1. L. 97: (1), (3), (7), (8), and (11) amended, p. 507, § 2, effective April 24. L. 2003: IP(4) amended and (5.5) added, p. 942, § 1, effective April 17; (1) amended, p. 710, § 41, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1), (2), (3), and (4)(a), the introductory portion to subsection (7), and subsection (8), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

The federal Protection and Advocacy for Mentally Ill Individuals Act (PAMII) requires disclosure of peer review and quality assurance records. To the extent Colorado's laws conflict with PAMII and the access to peer review and medical assurance records that PAMII provides, they are preempted. *Ctr. for Legal Advocacy v. Hammons*, 323 F.3d 1262 (10th Cir. 2003).

Documents that exist regardless of any quality management functions undertaken pursuant to a state approved quality management program are discoverable, but only from their original source; and conversations between or among health care providers about medical care before a qualifying quality management function is initiated or outside the operation of a qualifying quality management function are not

privileged. *Zander v. Craig Hosp.*, 743 F. Supp. 2d 1225 (D. Colo. 2010).

Doctor's investigation, undertaken on his own, was outside the scope of hospital's quality management program and is not privileged. Doctor's belief and expectation that hospital would initiate a quality management review does not alter the independent nature of doctor's investigation or make it privileged. *Zander v. Craig Hosp.*, 743 F. Supp. 2d 1225 (D. Colo. 2010).

A wrongful discharge claim could not be predicated on this section where, with regard to the employee's conduct at issue, this section neither established a public duty nor created an important job-related right or privilege. *Jaynes v. Centura Health Corp.*, 148 P.3d 241 (Colo. App. 2006).

25-3-110. Emergency contraception - definitions. (1) For purposes of this section, unless the context otherwise requires:

(a) "Emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse, including but not limited to oral contraceptive pills; except that "emergency contraception" shall not include RU-486, mifepristone, or any other drug or device that induces a medical abortion. Nothing in section 2-4-401 (1.5), C.R.S., shall be construed to amend or alter the definition of "emergency contraception".

(b) "Sexual assault survivor" shall have the same meaning as "victim" as defined in section 18-3-401 (7), C.R.S.

(2) Notwithstanding any other provision of law to the contrary, all health care facilities that are licensed pursuant to this part 1 and provide emergency care to sexual assault survivors shall amend their evidence-collection protocols for the treatment of sexual assault survivors to include informing the survivor in a timely manner of the availability of emergency contraception as a means of pregnancy prophylaxis and educating the survivor on the proper use of emergency contraception and the appropriate follow-up care.

(3) Nothing in this section shall be interpreted to require:

(a) A health care professional who is employed by a health care facility that provides emergency care to a sexual assault survivor to inform the survivor of the availability of emergency contraception if the professional refuses to provide the information on the basis of religious or moral beliefs; or

(b) A health care facility to provide emergency contraception to a sexual assault survivor who is not at risk of becoming pregnant as a result of the sexual assault or who was already pregnant at the time of the assault.

(4) If any licensed pharmacy does not have nonprescription emergency contraception in stock, the pharmacy shall place a conspicuous notice in the area where customers obtain prescription drugs that states "Plan B Emergency Contraception Not Available".

(5) The general assembly encourages health care facilities to provide training to emergency room staff concerning the efficacy of emergency contraception and the time-sensitive nature of the drug.

(6) Because emergency contraception is time-sensitive and a sexual assault survivor may seek information on or direct access to emergency contraception to prevent an unintended pregnancy resulting from the assault instead of or prior to seeking hospital treatment, it is critical that sexual assault survivors have accurate information about the availability and use of emergency contraception. Therefore, the general assembly encourages:

(a) Entities offering victim assistance or counseling and rape crisis hotlines to include information concerning the availability and use of emergency contraception; and

(b) Licensed or registered pharmacies in the state of Colorado to distribute information concerning the availability and use of emergency contraception.

Source: L. 2007: Entire section added, p. 63, § 2, effective March 15. **L. 2009:** (1)(a) amended, (SB 09-225), ch. 126, p. 546, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 24, Session Laws of Colorado 2007.

25-3-111. Authentication of verbal orders - hospital policies or bylaws. (1) A hospital licensed pursuant to part 3 of this article shall require that all verbal orders be authenticated by a physician or responsible individual who has the authority to issue verbal orders in accordance with hospital and medical staff policies or bylaws. The policies or bylaws shall require that:

(a) Authentication of a verbal order occurs within forty-eight hours after the time the order is made unless a read-back and verify process pursuant to paragraph (b) of this subsection (1) is used. The individual receiving a verbal order shall record in writing the date and time of the verbal order, and sign the verbal order in accordance with hospital policies or medical staff bylaws.

(b) A hospital policy may provide for a read-back and verify process for verbal orders. A read-back and verify process shall require that the individual receiving the order immediately read back the order to the physician or responsible individual, who shall immediately verify that the read-back order is correct. The individual receiving the verbal order shall record in writing that the order was read back and verified. If the read-back and verify process is followed, the verbal order shall be authenticated within thirty days after the date of the patient's discharge.

(2) Verbal orders shall be used infrequently. Nothing in this section shall be interpreted to encourage the more frequent use of verbal orders by the medical staff at a hospital.

Source: L. 2010: Entire section added, (HB 10-1229), ch. 199, p. 869, § 1, effective May 5.

25-3-112. Hospitals - charges for the uninsured - collections protection - charity care information. (1) Each hospital shall make information available to each patient about the hospital's financial assistance, charity care, and payment plan policies. Each hospital shall communicate this information in a clear and understandable manner and in languages appropriate to the communities and patients the hospital serves. The hospital shall:

(a) Post the information conspicuously on its web site;

- (b) Make the information available in patient waiting areas;
- (c) Make the information available to each patient, when possible, before the patient's discharge from the hospital; and
- (d) Include the information in each patient's billing statement.

(2) (a) When possible, each hospital shall offer to screen each uninsured patient for eligibility for financial assistance as described by this subsection (2). Each hospital shall offer financial assistance for qualified patients on a community-specific basis. In determining eligibility for financial assistance, each hospital shall, at a minimum, take into consideration federal, state, and local government requirements.

- (b) For purposes of this section, a qualified patient is an individual:

(I) Who is uninsured;

(II) Whose annual family income is not more than two hundred fifty percent of the federal poverty guidelines; and

(III) Who received a service at a hospital for which the "Colorado Indigent Care Program" established in part 1 of article 3 of title 25.5, C.R.S., was not available.

(3) A hospital shall limit the amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in subsection (2) of this section to not more than the lowest negotiated rate from a private health plan.

- (4) Before initiating collection proceedings, a hospital shall:

(a) Offer a qualified patient a reasonable payment plan; and

(b) Allow for at least thirty days past the due date of any scheduled payment that is not paid in full. A hospital must allow the thirty-day period only for the first late payment.

(5) Nothing in this section limits or affects a hospital's right to pursue the collection of personal injury, bodily injury, liability, uninsured, underinsured, medical payment rehabilitation, disability, homeowner's, business owner's, workers' compensation, or fault-based insurance.

(6) For the purposes of this section, "hospital" means a hospital licensed pursuant to part 1 of article 3 of this title or certified pursuant to section 25-1.5-103 (1) (a) (II).

Source: L. 2012: Entire section added, (SB 12-134), ch. 162, p. 569, § 1, effective August 8.

25-3-113. Health care facility stakeholder forum - creation - membership - duties.

(1) There is hereby created in the department of public health and environment the health care facility stakeholder forum, referred to in this section as the "stakeholder forum". The stakeholder forum must consist of representatives from various types of provider facilities licensed by the department, consumers, consumer advocates, ombudsmen, and other interested parties. The department shall meet at least four times each year with the stakeholder forum to discuss and take into consideration the concerns and issues of interest to the forum members and other attendees regarding the development and implementation of rules and other matters that affect all health care facilities licensed by the department.

(2) The members of the stakeholder forum serve on a voluntary basis without compensation and are responsible for noticing, staffing, recording, and reporting the notes from the stakeholder forum meetings. The department shall consider the attendance of its representatives at meetings with the stakeholder forum to be within the normal course of business, with no additional appropriation to or resources from the department required.

(3) The stakeholder forum and the department shall work to coordinate with, and shall not duplicate the work being done by, established or statutorily authorized advisory committees or working groups on issues related to the development and implementation of rules.

(4) For purposes of section 24-4-103 (2), C.R.S., as amended by House Bill 12-1008, enacted in 2012, the department may use the stakeholder forum described in this section, when appropriate, to serve as the representative group for the department of public health and environment.

Source: L. 2012: Entire section added, (HB 12-1294), ch. 252, p. 1258, § 8, effective June 4.

Editor's note: Subsection (4) is effective June 4, 2012, only if House Bill 12-1008 is enacted and becomes law. Said bill was signed by the governor on May 17, 2012.

Cross references: For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 252, Session Laws of Colorado 2012.

PART 2

MATERNITY HOSPITALS

25-3-201 to 25-3-207. (Repealed)

Source: L. 96: Entire part repealed, p. 561, § 23, effective April 24.

Editor's note: This part 2 was numbered as article 5 of chapter 66, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

COUNTY HOSPITALS - ESTABLISHMENT

25-3-301. Establishment of public hospital. (1) Whenever the board of county commissioners of any county which has a population of at least three thousand is presented with a petition signed by five hundred resident registered qualified electors, or by fifty percent of the resident registered qualified electors of such county, at least two hundred fifty of whom are residents of other than the county seat or town where it is proposed to locate such public hospital, asking that a public hospital board be appointed and that an annual tax be levied for the establishment and maintenance of a public hospital at a place in the county named therein, and which petition shall specify the maximum amount of money proposed to be expended in purchasing or building said hospital, such board of county commissioners shall have the power to create, by resolution, such public hospital board, to levy such tax, and to appropriate to such public hospital board the funds for purchasing or building such hospital and for maintaining the hospital, as well as the power to turn to the control and maintenance of such public hospital board any public or other hospital then being conducted by the board of county commissioners. Said tax shall not exceed three mills on the dollar for each year.

(2) If it is proposed in such petition, or in a petition later filed with like number of resident registered qualified elector signers, to create an indebtedness of the county for purchasing, erecting, or enlarging of buildings or equipment for such public hospital, then the board of county commissioners shall submit such question in the manner provided by law for creating debt for erecting public buildings and, if the vote authorizes it, shall issue such bonds, so authorized, as the public hospital board requests. In those counties having a population of less than three thousand, a public hospital board may be created by the petition of not less than fifty-one percent of the resident registered qualified electors or two hundred such resident registered qualified electors, regardless of where they live in the county. In such counties, an annual levy of not to exceed five mills on the dollar shall be assessed to purchase, build, and maintain such a county hospital.

Source: L. 43: p. 275, § 1. **CSA: C. 78,** § 151(1). **L. 53:** p. 342, § 1. **CRS 53:** § 66-7-1. **C.R.S. 1963:** § 66-7-1. **L. 70:** p. 140, § 9. **L. 71:** p. 634, § 1.

25-3-302. Board of trustees. (1) If the board of county commissioners decides to create such public hospital board, levy such annual tax, and appropriate funds to purchase,

erect, and maintain or turn over to it control of such county hospital, the board of county commissioners shall proceed at once to appoint, for designated terms, a board of seven public hospital trustees chosen from the citizens at large with reference to their fitness for such office, all of whom shall be residents of the county and none of whom shall be an elective or appointive state, county, or city official. Not more than four of said hospital trustees shall be residents of the city or town in which said hospital is to be located. Nothing in this article shall require that a licensed physician be appointed to the board of hospital trustees; however, should a licensed physician be appointed to the board, membership on that board shall be limited to one licensed physician at any given time. The seven appointees shall constitute the board of hospital trustees for said public hospital. Such board shall be a body corporate under the name "Board of Trustees for Hospital", the name of the hospital being inserted in the blank.

(2) One of the trustees, so designated in such original appointment, shall hold office until the second Tuesday of January following his appointment, one until the second Tuesday of the second January following his appointment, two until the second Tuesday of the third January following their appointment, one until the second Tuesday of the fourth January following his appointment, and two until the second Tuesday of the fifth January from their appointment. Thereafter, the term of office of each appointee shall be five years from the end of the preceding term. At the expiration of the term of each of said trustees, the office shall be filled by appointment of the board of county commissioners.

(3) In those counties having a population of less than three thousand, the board of public hospital trustees shall consist of five citizens at large having the same requirements with reference to their fitness for such office as all other counties. One of said trustees, so designated in such original appointment, shall hold office until the second Tuesday of January following his appointment, one until the second Tuesday of the second January following his appointment, one until the second Tuesday of the third January following his appointment, one until the second Tuesday of the fourth January following his appointment, and one until the second Tuesday of the fifth January following his appointment. The term of office and the method of filling vacancies shall be the same as for all other counties.

Source: L. 43: p. 276, § 2. L. 47: p. 503, § 1. CSA: C. 78, § 151(2). L. 53: p. 343, § 2. CRS 53: § 66-7-2. C.R.S. 1963: § 66-7-2. L. 84: (1) amended, p. 752, § 1, effective March 5.

25-3-303. Organization of trustees. (1) The members of the board of public hospital trustees within ten days after their appointment shall qualify by taking the oath of office. On the second Tuesday of each January, they shall organize and operate as follows:

(a) Unless otherwise authorized under the provisions of paragraph (b) of this subsection (1), they shall elect one of their number as president, one as vice-president, and one as secretary. No bond shall be required of them. The county treasurer of the county shall be treasurer of the board of trustees and shall receive and pay out all moneys under the control of said board as ordered by it but shall receive no compensation from such board. No trustee shall receive any compensation for services performed but may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee. An itemized statement of all such expenses and money paid out shall be made under oath by such trustee and filed with the secretary and allowed only by the affirmative vote of all the trustees present at a meeting of the board.

(b) If approved by resolution of the board of county commissioners, the board may organize and operate by electing one of their number as president, one as vice-president, and one as secretary-treasurer. The trustees may appoint an assistant secretary-treasurer from outside the membership of the board of trustees. No bond shall be required of the trustees, except of the secretary-treasurer and assistant secretary-treasurer who shall each file with the board of trustees, at the expense of the hospital, a corporate fidelity bond in an amount not less than ten thousand dollars, conditioned on the faithful performance of the duties of his office. The secretary-treasurer shall receive and pay out all the moneys under the control of the board of trustees as ordered by it. No trustee shall receive any compensation for services performed, but may receive reimbursement for any cash expenditures actually

made for personal expenses incurred as such trustee. An itemized statement of all such expenses and money paid out shall be made under oath by such trustee and filed with the secretary-treasurer and allowed only by the affirmative vote of all the trustees present at a meeting of the board.

(2) For purposes of part 4 of article 6 of title 24, C.R.S., any board of public hospital trustees created pursuant to section 25-3-302 shall continue to be a local public body, as defined in section 24-6-402 (1) (a), C.R.S., regardless of whether the hospital governed by such board of trustees is designated an enterprise pursuant to section 25-3-304 (3).

Source: L. 43: p. 276, § 3. CSA: C. 78, § 151(3). CRS 53: § 66-7-3. C.R.S. 1963: § 66-7-3. L. 73: p. 690, § 1. L. 93: (2) added, p. 1819, § 2, effective June 6.

25-3-304. Trustees - powers and duties. (1) The board of public hospital trustees shall make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the hospital as it deems expedient for the economic and equitable conduct thereof, not inconsistent with state law or the ordinances of the city or town wherein such public hospital is located. The public hospital board shall have the exclusive control of the use and expenditure of all moneys collected to the credit of the hospital, including the right to invest or have invested hospital moneys and funds held by the hospital or in the office of the county treasurer and to receive the interest and income therefrom, and of the purchase of sites, the purchase, construction, or enlargement of any hospital building, and the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose. The hospital board may acquire by lease real and personal property subject to the approval of the board of county commissioners. All tax moneys received for hospital purposes shall be paid out of the county treasury only upon warrants drawn by the county commissioners upon sworn vouchers approved by the hospital board. All other moneys received for such hospital shall be deposited in the treasury of the hospital and paid out only upon order of said hospital board. Hospital property and facilities, including real and personal property, may be acquired and held by lease or conveyance on transfer of title, but if by conveyance title to all lands shall be in the name of the county. County hospitals situated in home rule counties shall have the additional borrowing authority as granted by section 30-35-201 (23) (b), C.R.S.

(2) The board of public hospital trustees shall have power to hire, retain, and remove agents and employees, including administrative, nursing, and professional personnel, engineers, architects, and attorneys, and to fix their compensation; shall have the power to borrow money and incur indebtedness, and to issue bonds and other evidence of such indebtedness; except that no indebtedness shall be created, except as otherwise provided by statute, in excess of the revenue which may reasonably be expected to be available to the hospital for repayment thereof in the fiscal year in which such indebtedness is to be created, and except that no such indebtedness shall be incurred without the approval of the board of county commissioners; and shall in general carry out the spirit and intent of this part 3 in establishing and maintaining a county public hospital. Such board of public hospital trustees shall hold meetings at least once each month and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine said hospital at least twice each month, and the public hospital board, during the first week in each January and July, shall file with the board of county commissioners a report of their proceedings with reference to such hospital and a statement of all receipts and expenditures during the half year. On or before each October first, the board shall certify to the board of county commissioners the amount necessary to maintain and improve said hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding.

(3) (a) The board of public hospital trustees may, in accordance with the provisions of paragraph (b) of this subsection (3), designate the hospital as an enterprise for purposes of section 20 of article X of the state constitution so long as said board of trustees retains authority to issue revenue bonds and the hospital receives less than ten percent of its total annual revenues in grants. So long as the hospital is designated as an enterprise pursuant to

the provisions of this subsection (3), the hospital shall not be subject to any of the provisions of section 20 of article X of the state constitution.

(b) (I) The board of public hospital trustees may, by resolution, designate the hospital as an enterprise as long as the hospital meets the requirements for an enterprise as stated in paragraph (a) of this subsection (3). Such designation shall be effective beginning with the budget year immediately following the budget year in which such resolution is adopted. Such resolution shall be adopted no sooner than ninety days and no later than thirty days prior to the commencement of the budget year in which such designation becomes effective.

(II) The board of public hospital trustees may, by resolution, revoke the designation of the hospital as an enterprise. Such revocation shall be effective beginning with the budget year immediately following the budget year in which such resolution is adopted. Such resolution shall be adopted no sooner than ninety days and no later than thirty days prior to the commencement of the budget year in which such revocation becomes effective.

(III) Upon adoption of any resolution pursuant to the provisions of subparagraph (I) or (II) of this paragraph (b), the board of public hospital trustees shall transmit a copy of the resolution to the division of local government in the department of local affairs and the appropriate board or boards of county commissioners.

(IV) The termination or revocation of the designation of the hospital as an enterprise shall not affect in any manner the validity of any revenue bonds issued by the board of public hospital trustees of such hospital pursuant to subsection (4) of this section.

(c) (I) For purposes of this subsection (3), "grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid.

(II) "Grant" does not include:

(A) Any indirect benefit conferred upon a hospital from the state or any local government in Colorado;

(B) Any revenues resulting from rates, fees, assessments, or other charges imposed by a hospital for the provision of goods or services by such hospital;

(C) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by a hospital.

(4) (a) Subject to the limitations set forth in paragraph (b) of this subsection (4), the board of public hospital trustees shall have the power to issue revenue bonds, secured by any revenues of the hospital other than property tax revenues. Notwithstanding subsection (2) of this section to the contrary, such revenue bonds may provide for their repayment over a term greater than one fiscal year. The board shall authorize the issuance of revenue bonds by resolution, duly approved by no less than two-thirds of the entire membership of the board. All bonds shall be signed by the president of the board of trustees, countersigned by the secretary of the board of trustees, and shall be numbered and registered in a book kept by the secretary or the secretary-treasurer, as applicable. Each bond shall state upon its face the amount for which such bond is issued, to whom such bond is issued, and the date of its issuance.

(b) Except as otherwise provided in this paragraph (b), the issuance of any revenue bonds pursuant to the provisions of this subsection (4) shall not become effective for a period of thirty days following the adoption of any resolution authorizing such issuance for the purpose of allowing the board of county commissioners to review such pending bond issue. Such review period shall commence upon the date of receipt by the board of county commissioners of written notice from the board of public hospital trustees of such pending revenue bond issue. During said thirty days, the board of county commissioners may file a written notice with the board of trustees stating that the board of county commissioners has no objection to such pending bond issue. Upon receipt of such notice of no objection, the issuance of such revenue bonds shall become effective. If, within said thirty days, the board of county commissioners does not file with the board of trustees either a written notice of no objection or a written objection, the issuance of such revenue bonds shall become effective. If the board of county commissioners files a written objection, the issuance of such revenue bonds shall be prohibited until such time as the board of county commissioners gives written notice to the board of trustees of withdrawal of the board's objection.

Source: L. 43: p. 277, § 4. CSA: C. 78, § 151(4). CRS 53: § 66-7-4. C.R.S. 1963: § 66-7-4. L. 73: p. 691, § 2. L. 81: (1) amended, p. 1486, § 2, effective June 8. L. 93: (3) and (4) added, p. 1817, § 1, effective June 6. L. 94: (3)(c)(II)(B) amended, p. 1640, § 59, effective May 31.

25-3-305. Vacancies - removal for cause. Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the board of county commissioners and be filled in like manner as original appointments. Any trustee may be removed for cause by the board of county commissioners.

Source: L. 43: p. 278, § 5. CSA: C. 78, § 151(5). CRS 53: § 66-7-5. C.R.S. 1963: § 66-7-5.

25-3-306. Right of eminent domain. If the board of public hospital trustees and the owners of any property desired by it for hospital purposes cannot agree as to the price to be paid therefor, said board shall report the facts to the board of county commissioners, and condemnation proceedings shall be instituted by the board of county commissioners and prosecuted in the name of the county wherein such public hospital is to be located.

Source: L. 43: p. 278, § 6. CSA: C. 78, § 151(6). CRS 53: § 66-7-6. C.R.S. 1963: § 66-7-6.

25-3-307. Building requirements. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of public hospital trustees and bids advertised for according to law as for other county public buildings. Such hospital may be in more than one unit or set of buildings within the same town or city, or in separate towns or cities, or within adjacent counties, and, if in adjacent counties, upon approval of the respective boards of county commissioners.

Source: L. 43: p. 278, § 7. CSA: C. 78, § 151(7). L. 51: p. 442, § 1. CRS 53: § 66-7-7. C.R.S. 1963: § 66-7-7. L. 73: p. 692, § 3.

25-3-308. Improvements or enlargements. In counties exercising the rights conferred by this part 3, the board of county commissioners may appropriate each year, in addition to the tax for hospital fund provided for in section 25-3-301, not more than five percent of its general fund for the improvement or enlargement of any public hospital so established.

Source: L. 43: p. 278, § 8. CSA: C. 78, § 151(8). CRS 53: § 66-7-8. C.R.S. 1963: § 66-7-8.

25-3-309. Hospital fees. Every hospital established under this part 3 shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits. Every inhabitant or person who is not a pauper shall pay to the board of public hospital trustees or such officer as it shall designate for such county public hospital a reasonable compensation for occupancy, nursing, laboratories, care, medicine, or attendants according to the rules and regulations prescribed by said board in order to render the use of said hospital of the greatest benefit to the greatest number.

Source: L. 43: p. 278, § 9. CSA: C. 78, § 151(9). CRS 53: § 66-7-9. C.R.S. 1963: § 66-7-9.

25-3-310. Rules and regulations. (1) When such hospital is established, the physicians, nurses, attendants, persons sick therein, and persons approaching or coming within the limits of same and all buildings and grounds of such hospital and all furniture and other

articles used or brought there shall be subject to such rules and regulations as said public hospital board may prescribe.

(2) Said public hospital board may exclude from the use of such hospital any inhabitants and persons who willfully violate such rules and regulations. The board may extend the privileges and use of such hospital to persons residing outside of such county upon such terms and conditions as said board may from time to time by its rules and regulations prescribe.

Source: L. 43: p. 279, § 10. CSA: C. 78, § 151(10). CRS 53: § 66-7-10. C.R.S. 1963: § 66-7-10.

25-3-311. Donations permitted. Any person, firm, organization, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such public hospital shall have the right to vest title of the money, personal property, or real estate so donated in said county, to be controlled, when accepted, by the board of public hospital trustees according to the terms of the deed, gift, devise, or bequest of such property.

Source: L. 43: p. 279, § 11. CSA: C. 78, § 151(11). CRS 53: § 66-7-11. C.R.S. 1963: § 66-7-11. L. 83: Entire section amended, p. 2050, § 16, effective October 14.

25-3-312. Training school for nurses. The board of trustees of such county public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses.

Source: L. 43: p. 279, § 12. CSA: C. 78, § 151(12). CRS 53: § 66-7-12. C.R.S. 1963: § 66-7-12.

25-3-313. Lease of hospital. The public hospital board having control of such hospital after its establishment and turning over to its management may in its discretion rent or lease the said hospital, for such rental and for such term as it deems reasonable and proper, to any corporation not for pecuniary profit duly organized under the laws of the state of Colorado for the purpose of conducting a hospital.

Source: L. 43: p. 279, § 13. CSA: C. 78, § 151(13). CRS 53: § 66-7-13. C.R.S. 1963: § 66-7-13.

25-3-314. Charge for professional services. Any hospital which is owned by a county, or by a city and county, having a population in excess of two hundred fifty thousand persons and which is a teaching hospital duly accredited as such by the joint commission on accreditation of hospitals and by the council on medical education of the American medical association may employ physicians and surgeons licensed to practice medicine in the state of Colorado for the performance of professional services in such hospital or in any related outpatient facility which is owned by such county or city and county. Charges for the services so rendered by any such physician or surgeon, excluding professional trainees, may be collected through the medium of such hospital in the name of the physician or surgeon and, upon collection, may be placed in a medical practice fund to be established, maintained, and used by such hospital solely for the purpose of payment of compensation to the physicians and surgeons so employed and for the payment of consultation fees to other physicians and surgeons not so employed, or directly to physicians and surgeons who are directly engaged in medical research or medical education.

Source: L. 67: p. 306, § 1. C.R.S. 1963: § 66-7-14. L. 94: Entire section amended, p. 671, § 4, effective April 19.

25-3-315. Records of hospital. For purposes of part 2 of article 72 of title 24, C.R.S., the records of any hospital established pursuant to this part 3 shall continue to be public records, as defined in section 24-72-202 (6), C.R.S., regardless of whether such hospital is designated as an enterprise pursuant to section 25-3-304 (3).

Source: L. 93: Entire section added, p. 1819, § 3, effective June 6.

PART 4

STATE PLAN FOR IMPLEMENTATION OF FEDERAL ACT FOR THE CONSTRUCTION OF HEALTH FACILITIES

25-3-401. Department to administer plan. (1) The department of public health and environment is designated as the sole agency for carrying out the purposes of the federal "Hospital Survey and Construction Act", Public Law 79-725 of the 79th Congress of the United States, approved August 13, 1946, or any amendments thereto, and the successor provisions thereof of Public Law 93-641, and is authorized to formulate, submit, and administer a state plan for carrying out the provisions thereof and to accept on behalf of the state any funds allotted to the state under the provision of the said federal acts, or any amendments thereto. In carrying out the purposes of this section, the department of public health and environment is authorized to make such reports as may be required by the said federal acts, or any amendments thereto, and to do all things that may be required as a condition precedent to the proper application for the receipt of federal grants under the said federal acts, and any amendments thereto and regulations thereof, and to administer and supervise the expenditure of such grants for the purposes of this section.

(2) The state plan established under subsection (1) of this section shall provide for adequate hospital facilities for the people residing in the state, without discrimination on account of race, creed, or color, and shall provide for adequate hospital facilities for persons unable to pay therefor. The department of public health and environment shall provide minimum standards for the maintenance and operation of hospitals which receive federal aid under this part 4, and compliance with such standards shall be required in the case of hospitals which have received federal aid under the provisions of said federal acts, or any amendments thereto.

Source: L. 47: p. 500, § 1. **CSA:** C. 78, § 151(14). **CRS 53:** § 66-18-1. **C.R.S. 1963:** § 66-18-1. **L. 78:** Entire section amended, p. 425, § 3, effective July 1. **L. 94:** Entire section amended, p. 2756, § 415, effective July 1. **L. 96:** (2) amended, p. 1471, § 18, effective June 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3-402. State advisory hospital and mental retardation facilities and community mental health centers council. (Repealed)

Source: L. 47: p. 501, § 2. **CSA:** C. 78, § 151(15). **CRS 53:** § 66-18-2. **C.R.S. 1963:** § 66-18-2. **L. 64:** p. 481, § 2. **L. 65:** p. 706, § 1. **L. 78:** Entire section repealed, p. 425, § 4, effective July 1.

25-3-403. Department to administer federal mental retardation and mental health construction funds. The department of public health and environment is designated as the sole agency for carrying out the purposes of Part C of Title I and Title II of the federal "Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963", Public Law 88-164 of the 88th congress of the United States, approved October 31, 1963, or any amendments thereto, and is authorized to administer a state plan for carrying out the provisions thereof and to accept, on behalf of the state, all funds allotted to the state

under the provisions of said federal act, or any amendments thereto. Such state plan shall be formulated by the state mental health and mental retardation authority. In carrying out the purposes hereof, the department of public health and environment is authorized to make such reports as may be required by said federal act, or any amendments thereto, and to do all things that may be required as a condition precedent to the proper application for the receipt of federal grants under said federal act, and any amendments thereto and regulations thereof, and to administer and supervise the expenditure of such grants for the purposes hereof in consultation with the mental health and mental retardation authority of the state of Colorado.

Source: L. 64: p. 480, § 1. C.R.S. 1963: § 66-18-3. L. 94: Entire section amended, p. 2756, § 416, effective July 1.

Cross references: (1) For the “Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963”, see 42 U.S.C. sec. 6000 et seq.; for designation of the department of human services as the official mental health and mental retardation authority, see § 27-66-106.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 5

CERTIFICATE OF PUBLIC NECESSITY

25-3-501 to 25-3-521. (Repealed)

Editor’s note: (1) This part 5 was numbered as article 41 of chapter 66, C.R.S. 1963. For amendments to this part 5 prior to its repeal in 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Pursuant to § 25-3-521, as enacted by section 1 of chapter 107, Session Laws of Colorado 1982, this part 5 was to be repealed effective July 1 after the date congress repealed state requirements for certificates of public necessity as provided in Pub.L. 93-641. Such requirements were repealed by Pub.L. 99-660, effective January 1, 1987. This part 5 was therefore repealed effective July 1, 1987.

PART 6

HOSPITAL-ACQUIRED INFECTIONS DISCLOSURE

25-3-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “Advisory committee” means the advisory committee created pursuant to section 25-3-602 (4).

(2) “Department” means the department of public health and environment.

(3) “Health facility” means a hospital, a hospital unit, an ambulatory surgical center, or a dialysis treatment clinic currently licensed or certified by the department pursuant to the department’s authority under section 25-1.5-103 (1) (a).

(4) “Hospital-acquired infection” means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or its toxins that was not present or incubating at the time of admission to the health facility.

(5) “Infection” means the invasion of the body by pathogenic microorganisms that reproduce and multiply, causing disease by local cellular injury, secretion of a toxin, or antigen-antibody reaction in the host.

Source: L. 2006: Entire part added, p. 1569, § 1, effective June 2. L. 2007: IP added, p. 2041, § 65, effective June 1.

25-3-602. Health facility reports - repeal. (1) (a) A health facility shall collect data on hospital-acquired infection rates for specific clinical procedures, including the following categories:

- (I) Cardiac surgical site infections;
- (II) Orthopedic surgical site infections; and
- (III) Central line-related bloodstream infections.

(b) The advisory committee may define criteria to determine when data on a procedure listed in paragraph (a) of this subsection (1) shall be collected.

(c) An individual who collects data on hospital-acquired infection rates shall take the test for the appropriate national certification for infection control and become certified within six months after the individual becomes eligible to take the certification test. Mandatory national certification requirements shall not apply to individuals collecting data on hospital-acquired infections in hospitals licensed for fifty beds or less, licensed ambulatory surgical centers, and certified dialysis treatment centers. Qualifications for these individuals may be met through ongoing education, training, experience, or certification, as defined by the department.

(2) Each physician who performs a clinical procedure listed in subsection (1) of this section shall report to the health facility at which the clinical procedure was performed a hospital-acquired infection that the physician diagnoses at a follow-up appointment with the patient using standardized criteria and methods consistent with guidelines determined by the advisory committee. The reports made to the health facility under this subsection (2) shall be included in the reporting the health facility makes under subsection (3) of this section.

(3) (a) A health facility shall routinely submit its hospital-acquired infection data to the national healthcare safety network in accordance with national healthcare safety network requirements and procedures. The data submissions shall begin on or before July 31, 2007, and continue thereafter.

(b) If a health facility is a division or subsidiary of another entity that owns or operates other health facilities or related organizations, the data submissions required under this part 6 shall be for the specific division or subsidiary and not for the other entity.

(c) Health facilities shall authorize the department to have access to health-facility-specific data contained in the national healthcare safety network database consistent with the requirements of this part 6.

(4) (a) The executive director of the department shall appoint an advisory committee. The advisory committee shall consist of:

- (I) One representative from a public hospital;
- (II) One representative from a private hospital;
- (III) One board-certified or board-eligible physician licensed in the state of Colorado, who is affiliated with a Colorado hospital or medical school, who is an active member of a national organization specializing in health care epidemiology or infection control, and who has demonstrated an interest and expertise in health facility infection control;
- (IV) Four infection control practitioners as follows:
 - (A) One from a stand-alone ambulatory surgical center; and
 - (B) Three health care professionals certified by the certification board of infection control and epidemiology, inc., or its successor;
- (V) Either one medical statistician with an advanced degree in such specialty or one clinical microbiologist with an advanced degree in such specialty;
- (VI) One representative from a health consumer organization;
- (VII) One representative from a health insurer; and
- (VIII) One representative from a purchaser of health insurance.

(b) The advisory committee shall assist the department in development of the department's oversight of this article and the department's methodology for disclosing the information collected under this part 6, including the methods and means for release and dissemination.

(c) The department and the advisory committee shall evaluate on a regular basis the quality and accuracy of health-facility information reported under this part 6 and the data collection, analysis, and dissemination methodologies.

(d) The advisory committee shall elect a chair of the advisory committee annually. The advisory committee shall meet no less than four times per year in its first year of existence

and no less than two times in each subsequent year. The chair shall set the meeting dates and times. The members of the advisory committee shall serve without compensation.

(5) (a) The advisory committee shall recommend additional clinical procedures based upon the criteria set forth in paragraph (c) of this subsection (5) that must be reported pursuant to subsection (1) of this section in the manner specified in paragraph (b) of this subsection (5). The recommendations of the advisory committee shall be consistent with information that may be collected by the national healthcare safety network.

(b) (I) On or before November 1, 2008, the advisory committee shall either recommend to the department the addition of abdominal surgical site infections and at least one other clinical procedure to the data collected on hospital-acquired infection rates as required in this section or comply with the provisions of paragraph (d) of this subsection (5) and shall recommend to the department whether to include long-term acute care centers as health facilities that are subject to the reporting requirements of this part 6.

(II) In addition to the requirements of subparagraph (I) of this paragraph (b), on or before November 1, 2010, the advisory committee shall either recommend to the department the addition of at least two clinical procedures to the data collected on hospital-acquired infection rates as required in this section or comply with the provisions of paragraph (d) of this subsection (5).

(c) In making its recommendations under paragraph (a) or (b) of this subsection (5), the advisory committee shall recommend clinical procedures using the following considerations:

(I) Whether the procedure contains a high risk for infection contraction;

(II) Whether the type or types of infection present a serious risk to the patient's health or life; and

(III) Any other factors determined by the advisory committee.

(d) If the advisory committee determines that it is unable to identify at least two clinical procedures for addition to the data collected by the deadline, the committee shall report to the department its reasons for not identifying at least two new clinical procedures.

(6) The advisory committee may recommend that health facilities report process measures to the advisory committee, in addition to those listed in subsections (1) and (5) of this section, to accommodate best practices for effective prevention of infection.

(7) (a) Subsections (4), (5), and (6) of this section and this subsection (7) are repealed, effective July 1, 2016.

(b) Prior to such repeal, the advisory committee and its functions shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: **L. 2006:** Entire part added, p. 1570, § 1, effective June 2. **L. 2009:** (1)(c) amended, (HB 09-1025), ch. 34, p. 143, § 1, effective August 5. **L. 2012:** (4)(a)(IV) amended, (HB 12-1294), ch. 252, p. 1259, § 9, effective June 4.

Cross references: For the legislative declaration in the 2012 act amending subsection (4)(a)(IV), see section 1 of chapter 252, Session Laws of Colorado 2012.

25-3-603. Department reports. (1) On or before January 15, 2008, and each January 15 thereafter, the department shall submit to the health and human services committees of the house of representatives and of the senate a report summarizing the risk-adjusted health-facility data. The department shall post the report on its web site.

(2) The department shall issue semi-annual informational bulletins summarizing all or part of the information submitted in the health-facility reports.

(3) (a) All data in reports issued by the department shall be risk-adjusted consistent with the standards of the national healthcare safety network.

(b) The annual report shall compare the risk-adjusted, hospital-acquired infection rates, collected under section 25-3-602, for each individual health facility in the state. The department, in consultation with the advisory committee, shall make this comparison as easy to comprehend as possible. The report shall include an executive summary, written in plain language, that includes, but is not limited to, a discussion of findings, conclusions, and trends concerning the overall state of hospital-acquired infections in the state, including a

comparison to prior years when available. The report may include policy recommendations as appropriate.

(c) The department shall publicize the report and its availability as widely as practical to interested parties, including but not limited to health facilities, providers, media organizations, health insurers, health maintenance organizations, purchasers of health insurance, organized labor, consumer or patient advocacy groups, and individual consumers. The annual report shall be made available to any person upon request.

(d) A health-facility report or department disclosure may not contain information identifying a patient, employee, or licensed health care professional in connection with a specific infection incident.

Source: L. 2006: Entire part added, p. 1572, § 1, effective June 2.

25-3-604. Privacy. Compliance with this part 6 shall not violate a patient's right to confidentiality. A patient's social security number and any other information that could be used to identify a patient shall not be released, notwithstanding any other provision of law.

Source: L. 2006: Entire part added, p. 1573, § 1, effective June 2.

25-3-605. Confidentiality. (1) Except as provided by subsection (5) of this section, all information and materials obtained and compiled by the department under this part 6 or compiled by a health facility under this part 6, including all related information and materials, are confidential; are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person, subject to subsection (2) of this section; and may not be admitted as evidence or otherwise disclosed in a civil, criminal, or administrative proceeding.

(2) The confidential protections under subsection (1) of this section shall apply without regard to whether the information or materials are obtained from or compiled by a health facility or an entity that has ownership or management interests in a health facility.

(3) The transfer of information or materials under this part 6 is not a waiver of a privilege or protection granted under law.

(4) Information reported by a health facility under this part 6 and analyses, plans, records, and reports obtained, prepared, or compiled by a health facility under this part 6 and all related information and materials are subject to an absolute privilege and shall not be used in any form against the health facility, its agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or materials.

(5) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a health facility in compliance with or as authorized under this part 6 shall not restrict access, to the extent authorized by law, by the patient or the patients' legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

Source: L. 2006: Entire part added, p. 1573, § 1, effective June 2.

25-3-606. Penalties. (1) A determination that a health facility has violated the provisions of this part 6 may result in the following:

(a) Termination of licensure or other sanctions related to licensure under part 1 of this article; or

(b) A civil penalty of up to one thousand dollars per violation for each day the health facility is in violation of this part 6.

Source: L. 2006: Entire part added, p. 1574, § 1, effective June 2.

25-3-607. Regulatory oversight. The department shall be responsible for ensuring compliance with this part 6 as a condition of licensure under part 1 of this article and shall enforce compliance according to the provisions in part 1 of this article.

Source: L. 2006: Entire part added, p. 1574, § 1, effective June 2.

PART 7

COLORADO HOSPITAL REPORT CARD ACT

Editor's note: This part 7 was originally numbered as part 6 in House Bill 06-1278 but has been renumbered on revision for ease of location.

25-3-701. Short title. This part 7 shall be known and may be cited as the "Colorado Hospital Report Card Act".

Source: L. 2006: Entire part added, p. 1576, § 1, effective August 7.

25-3-702. Comprehensive hospital information system - executive director - duties - definitions. (1) (a) The executive director shall approve a comprehensive hospital information system to provide for the collection, compilation, coordination, analysis, indexing, and utilization of both purposefully collected and extant hospital-related data and statistics to produce and report comparable and uniform health information and statistics that shall be utilized in the development and production of the report card described in section 25-3-703. The executive director shall designate or contract with any individual or entity he or she deems appropriate to carry out the purposes of this part 7.

(b) (I) The association selected pursuant to subsection (3) of this section shall review and prepare the nursing-sensitive quality measures set forth in this paragraph (b) for inclusion in the hospital information system and hospital report card developed pursuant to this part 7. In reviewing and preparing to implement the nursing-sensitive quality measures, the association shall determine whether the measures should be reported for the hospital as a whole or by unit level of a hospital. In making its determinations pursuant to this paragraph (b), the association shall involve and seek input from no more than seven direct-care nurses who have been recommended by the governor.

(II) The association shall collect, review, and implement the following nursing-sensitive quality measures as soon as practicable:

(A) Practice environment scale or PES, as defined by the national quality forum, which is the nursing work index that measures the composite score and individual scores for the following subscales: Nurse participation in hospital affairs; nursing foundations for quality of care; nurse manager ability, leadership, and support of nurses; staffing and resource adequacy; and collegiality of nurse-physician relations; and

(B) Registered nurse education and certification.

(III) The association shall collect, review, and implement the following nursing-sensitive quality measures, as defined by the national quality forum, no later than November 30, 2010:

(A) Skill mix;

(B) The nursing hours per patient day;

(C) Voluntary turnover;

(D) Patient falls prevalence rate; and

(E) Patient falls with injury.

(IV) The association shall identify a process or mechanism to allow access to or use of the data collected pursuant to this paragraph (b), as appropriate, for research purposes.

(V) The association may exempt from the requirements of this paragraph (b) a licensed or certified hospital that has not more than one hundred licensed beds.

(VI) As used in this paragraph (b):

(A) “Direct-care nurse” means a registered nurse who is engaged in direct patient care responsibilities in an inpatient hospital unit setting for more than fifty percent of his or her working hours.

(B) (Deleted by amendment, L. 2010, (SB 10-217), ch. 315, p. 1474, § 1, effective May 27, 2010.)

(C) “National quality forum” means the private, not-for-profit membership organization created to develop and implement a national strategy for healthcare quality measurement and reporting, or its successor organization.

(2) In order to implement this section the executive director or his or her designee shall:

(a) Develop and implement a long-range plan for making available clinical outcomes and data that will allow consumers to compare health care services;

(b) On or before May 15, 2007, submit an initial plan and an annual update to the plan and a report on the status of implementation to the governor, the president of the senate, and the speaker of the house of representatives with copies to all members of the general assembly and available to the public on an internet web site. The plan shall identify the process and time frames for implementation, barriers to implementation, and recommendations of changes in the law that may be enacted by the general assembly to eliminate the barriers.

(c) Make available clinical outcomes measures from general hospitals licensed pursuant to this article and public hospitals certified pursuant to section 25-1.5-103 (1) (a). When determining which data to report, the executive director or designee shall consider:

(I) Inclusion of data on all patients regardless of the payer source for Colorado hospitals and other information that may be required for either individual or group purchasers to assess the value of the product;

(II) Use of standardized clinical outcomes measures recognized by national organizations that establish standards to measure the performance of health care providers;

(III) Data that is severity and acuity adjusted using statistical methods that show variation in reported outcomes, where applicable, and data that has passed standard edits;

(IV) Reporting the results with separate documents containing the technical specification and measures;

(V) Standardization in reporting; and

(VI) Disclosure of the methodology of reporting.

(3) (a) The executive director shall select a duly constituted association of hospitals for assistance in carrying out the purposes of this part 7 and shall rely upon the advice and assistance of the selected association. The association shall provide the executive director with a copy of the association’s organizational documents and any rules or regulations governing the association’s activities and a list of the association’s members. The association shall provide to the executive director a plan outlining the association’s inclusion and consideration of the interests of health care consumers, including health plans and employers, in the process of carrying out the purposes of this part 7. The name and address of a representative of the organization, who is a resident of this state, upon whom notices or orders of the executive director may be served shall be provided to the executive director. The executive director shall have the authority to examine the collection, analysis, and validity of the data used as a basis for the reporting required in this part 7.

(b) The executive director may refuse to accept, or may suspend or revoke the acceptance of, an association for any of the following reasons:

(I) It reasonably appears that the association will not be able to carry out the purpose of this part 7.

(II) The association does not provide to the executive director a plan outlining the association’s inclusion and consideration of the interests of health care consumers, including health plans and employers, in the process of carrying out the purposes of this part 7.

(III) On or before April 15, 2007, the association does not submit a plan to the executive director and report on the status of its implementation satisfactory to the executive director.

(IV) The association fails to meet other applicable requirements prescribed in this part 7.

(c) There shall not be liability on the part of, nor shall a cause of action of any nature arise against, the association or its agents, employees, directors, or authorized designees of the executive director for actions taken or omitted in the performance of their powers and duties under this section.

(4) (a) In the event the executive director refuses to accept, or suspends or revokes the acceptance of, an association previously accepted for assistance in carrying out the purposes of this part 7 for any of the reasons set forth in this part 7, there shall be created in the state department the Colorado commission for hospital statistics, referred to in this subsection (4) as the "commission", to carry out the purposes of this part 7.

(b) The commission shall consist of nine members, who shall be appointed by the governor with the consent of the senate, as follows:

(I) Three members representing hospitals licensed under this article;

(II) Two members representing licensed health care providers; and

(III) Four members representing consumers or businesses without any direct interest in hospitals licensed under this article.

(c) At no time shall the commission have more than five members of any one political party. Members of the commission shall be compensated for actual and necessary expenses incurred in the conduct of official business.

(d) The commission shall annually elect the chairman of the commission from its members. A majority of the commission shall constitute a quorum.

(e) The commission shall meet at least once during each calendar quarter. Meeting dates shall be set upon written request by three or more members of the commission or by a call of the chairman upon five days' notice to the members.

(f) Action of the commission shall not be taken except upon the affirmative vote of a majority of a quorum of the commission.

(g) All meetings of the commission shall be open to the public pursuant to section 24-6-402, C.R.S.

Source: L. 2006: Entire part added, p. 1576, § 1, effective August 7. L. 2008: (1) amended, p. 709, § 1, effective August 5. L. 2010: (1)(b)(II)(B) and (1)(b)(VI)(B) amended, (SB 10-217), ch. 315, p. 1474, § 1, effective May 27.

Editor's note: This section was originally numbered as § 25-3-602 in House Bill 06-1278 but has been renumbered on revision for ease of location.

25-3-703. Hospital report card. (1) The executive director shall approve a Colorado hospital report card consisting of public disclosure of data assembled pursuant to this part 7. At a minimum, the data shall be made available on an internet web site in a manner that allows consumers to conduct an interactive search that allows them to view and compare the information for specific hospitals. The web site shall include such additional information as is determined necessary to ensure that the web site enhances informed decision making among consumers and health care purchasers, which shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from hospital to hospital. The data specified in this subsection (1) shall be released on or before November 30, 2007.

(2) Prior to the completion of the Colorado hospital report card, the executive director shall ensure that every hospital is allowed thirty days within which to examine the data and submit comments for consideration and inclusion in the final Colorado hospital report card.

Source: L. 2006: Entire part added, p. 1579, § 1, effective August 7.

25-3-704. Fees. (1) The executive director shall annually determine the costs incurred by the department and the Colorado commission for hospital statistics in completing the requirements of this part 7.

(2) The executive director shall apportion, according to net patient service revenues, the costs annually among the hospitals who pay the annual registration fee required by this

section and report the same to the state board of health. The state board of health by rule or as otherwise provided by law may increase the amount of the annual fee imposed by this section. At no time shall the fee be higher than what is necessary to implement the report required pursuant to this part 7.

(3) All fees collected pursuant to this part 7 shall be transmitted to the state treasurer, who shall credit the same to the health facilities general licensure cash fund created in section 25-3-103.1.

(4) Notwithstanding the amount specified for the fee in this section, the state board of health by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 2006: Entire part added, p. 1579, § 1, effective August 7.

25-3-705. Health care charge transparency - hospital charge report. (1) The commissioner of insurance shall work with the duly constituted association of hospitals selected by the executive director pursuant to section 25-3-702 for assistance in carrying out the purposes of this section.

(2) (a) On or before August 1, 2009, and on or before each August 1 thereafter, each hospital licensed pursuant to part 1 of this article shall report annually to the association of hospitals the information necessary to allow the association to determine the charges for the twenty-five most common inpatient diagnostic-related groups for which there are at least ten cases rendered by the hospital during the calendar year immediately preceding the release of the hospital charge report. If a hospital does not have twenty-five of the most common diagnostic-related groups with at least ten or more cases rendered, the hospital shall report only on those most common diagnostic-related groups that have at least ten cases rendered.

(b) A hospital that does not use diagnostic-related groups is exempt from paragraph (a) of this subsection (2).

(3) (a) The commissioner of insurance shall work with the association of hospitals to incorporate the information reported pursuant to this section on the web site.

(b) The commissioner of insurance shall require the association of hospitals to submit a plan to the commissioner on or before November 30, 2008, that states the implementation status of a plan to make the hospital charges reported pursuant to this section available to the public on the web site. The plan shall identify the process and time periods for implementation, any barriers to implementation, and recommendations of changes in the law that may be enacted by the general assembly to eliminate the barriers.

(c) When developing the required plan, the association of hospitals shall consider:

- (I) The method for hospitals to report charges to the association;
- (II) Standards that provide for the validity and comparability of hospital charges; and
- (III) The format for making hospital charges available to the public.

(4) (a) The association of hospitals shall make the information reported by the hospitals pursuant to this section available on the web site on or before August 1, 2009, and on or before August 1 of each year thereafter. The information reported by the hospitals shall include disclaimers regarding factors including case severity ratings and individual patient variations that may affect actual charges to a patient for services provided.

(b) The information reported by the hospitals that is published in accordance with this section shall include:

- (I) Volume of cases by diagnostic-related group required to be reported by the hospital;
- (II) Rank by volume of the top twenty-five diagnostic-related groups required to be reported by the hospital;
- (III) Mean charge for each of the top twenty-five diagnostic-related groups with more than ten occurrences by hospital;

(IV) Case severity rating by hospital by diagnostic-related group; and

(V) A general disclaimer statement regarding the hospital variations and patient variations that affect the actual charges to patients.

(c) Before publication of the information published pursuant to this section on the web site, the commissioner shall ensure that every hospital is allowed thirty days within which to examine the data and submit comments for consideration and inclusion in the final hospital charge report.

(5) (a) The commissioner of insurance shall approve the publication of information on the web site consisting of public disclosure of charge data assembled pursuant to this section. At a minimum, the information shall be made available on the web site in a manner that allows consumers to conduct an interactive search to view and compare the information for specific hospitals. The web site shall include any additional information necessary to ensure that the web site information is available to consumers and health care purchasers. The information shall include, at a minimum, appropriate guidance on how to use the data and an explanation of why the data may vary from hospital to hospital. The report specified in this subsection (5) shall be released on the web site on or before August 1, 2009, and on or before each August 1 thereafter.

(b) The commissioner of insurance shall make the web site available by hyperlink on the division of insurance web site.

(c) The division of insurance shall review the information posted on the web site to ensure that the web site and information provided by the association is easy to navigate, contains consumer-friendly language, and fulfills the intent of this section. The division shall also ensure that the hyperlink from the division's web site to the web site is easily accessible.

(6) There shall be no liability on the association of hospitals or a cause of action against the association or its agents, employees, or directors or authorized designees of the commissioner for actions taken or omitted in the performance of duties pursuant to this section.

(7) Repealed.

(8) For purposes of this section:

(a) "Charge" means the amount that a hospital expects to charge for an inpatient diagnostic-related group. A charge that is required to be reported to the public shall be the mean charge for all cases of the diagnostic-related group occurring in the calendar year prior to the release of the hospital charge report.

(b) "Diagnostic-related group" means the classification assigned to an inpatient hospital service claim based on the patient's age and sex, the principal and secondary diagnoses, the procedures performed, and the discharge status.

(c) "Web site" means a web site established by the association of hospitals that links to the web site created pursuant to section 25-3-703.

Source: L. 2008: Entire section added, p. 1262, § 3, effective May 27. L. 2011: (7) repealed, (HB 11-1303), ch. 264, p. 1165, § 60, effective August 10.

Cross references: In 2008, this section was added by the "Health Care Transparency Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 294, Session Laws of Colorado 2008.

ARTICLE 3.5

Emergency Medical and Trauma Services

Cross references: For exemption from civil liability of persons acting as volunteer members of rescue units, see § 13-21-108.

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PART 1

GENERAL AND ADMINISTRATIVE

25-3.5-101. Short title. This article shall be known and may be cited as the “Colorado Emergency Medical and Trauma Services Act”.

Source: **L. 77:** Entire article added, p. 1278, § 2, effective January 1, 1978. **L. 2000:** Entire section amended, p. 525, § 1, effective July 1.

25-3.5-102. Legislative declaration. (1) The general assembly hereby declares that it is in the public interest to provide available, coordinated, and quality emergency medical and trauma services to the people of this state. It is the intent of the general assembly in enacting this article to establish an emergency medical and trauma services system, consisting of at least treatment, transportation, communication, and documentation subsystems, designed to prevent premature mortality and to reduce the morbidity that arises from critical injuries, exposure to poisonous substances, and illnesses.

(2) To effect this end, the general assembly finds it necessary that the department of public health and environment assist, when requested by local government entities, in planning and implementing any one of such subsystems so that it meets local and regional needs and requirements and that the department coordinate local systems so that they interface with an overall state system providing maximally effective emergency medical and trauma systems.

(3) The general assembly further finds that the provision of adequate emergency medical and trauma services on highways in all areas of the state is a matter of statewide concern and requires state financial assistance and support.

Source: **L. 77:** Entire article added, p. 1278, § 2, effective January 1, 1978. **L. 83:** (1) amended, p. 1055, § 2, effective July 1. **L. 89:** (3) added, p. 1148, § 1, effective July 1. **L. 94:** (2) amended, p. 2757, § 417, effective July 1. **L. 2000:** Entire section amended, p. 525, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Limitation on entities eligible to license ambulances. Since the general assembly has indicated a coordinated system of emergency medical care to be of statewide concern and has provided a comprehensive statutory scheme to regulate the field, governmental entities other than those provided in § 25-3.5-301 may not license ambulances. *DuHamel v. People ex rel. City of Arvada*, 42 Colo. App. 491, 601 P.2d 639 (1979).

To subject ambulance companies to authority of two jurisdictions is contrary to purpose of section because it fragments the coordinated system and could reduce the availability of service. *DuHamel v. People ex rel. City of Arvada*, 42 Colo. App. 491, 601 P.2d 639 (1979).

25-3.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Air ambulance” means a fixed-wing or rotor-wing aircraft that is equipped to provide air transportation and is specifically designed to accommodate the medical needs of individuals who are ill, injured, or otherwise mentally or physically incapacitated and who require in-flight medical supervision.

(1.5) “Ambulance” means any privately or publicly owned ground vehicle:

(a) Especially constructed or modified and equipped, intended to be used, and maintained or operated by an ambulance service for the transportation, upon the streets and highways in this state, of individuals who are sick, injured, or otherwise incapacitated or helpless; and

(b) That is required to be licensed pursuant to part 3 of this article.

(2) (Deleted by amendment, L. 2005, p. 1330, § 1, effective July 1, 2005.)

(3) “Ambulance service” means the furnishing, operating, conducting, maintaining, advertising, or otherwise engaging in or professing to be engaged in the transportation of patients by ambulance. Taken in context, it also means the person so engaged or professing to be so engaged. The person so engaged and the vehicles used for the emergency transportation of persons injured at a mine are excluded from this definition when the personnel utilized in the operation of said vehicles are subject to the mandatory safety standards of the federal mine safety and health administration, or its successor agency.

(3.5) “Board” means the state board of health created pursuant to section 25-1-103.

(4) “Board of county commissioners” includes the governing body of any city and county.

(5) “Department” means the department of public health and environment.

(6) “Director” means the executive director of the department of public health and environment.

(7) “Emergency” means any actual or self-perceived event which threatens life, limb, or well-being of an individual in such a manner that a need for immediate medical care is created.

(7.5) “Emergency medical practice advisory council” or “advisory council” means the emergency medical practice advisory council created in section 25-3.5-206.

(8) “Emergency medical service provider” means an individual who holds a valid emergency medical service provider certificate issued by the department as provided in this article.

(9) “Patient” means any individual who is sick, injured, or otherwise incapacitated or helpless.

(10) “Permit” means the authorization issued by the governing body of a local government with respect to an ambulance used or to be used to provide ambulance service in this state.

(10.6) “Refresher course program” means a program establishing a course of instruction designed to keep emergency medical service providers abreast of developments or new techniques in their profession, which course includes an examination administered at any time during or following the course to facilitate continuing evaluation of emergency medical service providers.

(11) “Rescue unit” means any organized group chartered by this state as a corporation not for profit or otherwise existing as a nonprofit organization whose purpose is the search for and the rescue of lost or injured persons and includes, but is not limited to, such groups as search and rescue, mountain rescue, ski patrols (either volunteer or professional), law enforcement posses, civil defense units, or other organizations of governmental designation responsible for search and rescue.

(11.5) “Service agency” means a fixed-base or mobile prehospital provider of emergency medical services that employs emergency medical service providers to render medical care to patients.

(12) “Volunteer emergency medical service provider” means an emergency medical service provider who does not receive direct remuneration for the performance of emergency medical services.

Source: **L. 77:** Entire article added, p. 1279, § 2, effective January 1, 1978. **L. 80:** (1) and (3) amended, p. 633, § 1, effective April 8. **L. 84:** (10.6) added, p. 763, § 1, effective July 1. **L. 87:** (12) added, p. 1126, § 1, effective July 1. **L. 94:** (5) and (6) amended, p. 2757, § 418, effective July 1. **L. 2000:** (3.5) and (11.5) added, p. 526, § 3, effective July 1. **L. 2005:** (1) and (2) amended and (1.5) added, p. 1330, § 1, effective July 1. **L. 2010:** (7.5) added, (HB 10-1260), ch. 403, p. 1944, § 6, effective July 1. **L. 2012:** (8), (10.6), (11.5), and (12) amended, (HB 12-1059), ch. 271, p. 1437, § 20, effective July 1.

Editor's note: Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsections (8), (10.6), (11.5), and (12) applies to acts committed on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (5) and (6), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3.5-104. Emergency medical and trauma services advisory council - creation - duties. (1) (a) There is hereby created, in the department of public health and environment, a state emergency medical and trauma services advisory council, referred to in this article as the "council", to be composed of thirty-two members, of whom twenty-five shall be appointed by the governor no later than January 1, 2001, and at least one of whom shall be from each of the regional emergency medical and trauma advisory council planning areas established in section 25-3.5-704. The other seven members shall be ex officio, nonvoting members. Not more than thirteen of the appointed members of the council shall be members of the same political party. A majority of the members shall constitute a quorum. The membership of the council shall reflect, as equally as possible, representation of urban and rural members.

- (b) The appointed members of the council shall be from the following categories:
- (I) A fire chief of a service that provides prehospital care in an urban area;
 - (II) A fire chief of a service that provides prehospital care in a rural area;
 - (III) An administrative representative of an urban trauma center;
 - (IV) An administrative representative of a rural trauma center;
 - (V) A licensed physician who is a prehospital medical director;
 - (VI) A board-certified physician certified in pediatrics or a pediatric subspecialty;
 - (VII) A board-certified emergency physician;
 - (VIII) A flight nurse of an emergency medical service air team or unit;
 - (IX) An officer or crew member of a volunteer organization who provides prehospital care;
 - (X) An officer or employee of a public provider of prehospital care;
 - (XI) An officer or employee of a private provider of prehospital care;
 - (XII) A representative of a government provider of prehospital care;
 - (XIII) Three county commissioners or council members from a city and county, two of whom shall represent rural counties and one of whom shall represent an urban county or city and county;
 - (XIV) A board-certified surgeon providing trauma care at a level I trauma center;
 - (XV) A board-certified surgeon providing trauma care at a level II trauma center;
 - (XVI) A board-certified surgeon providing trauma care at a level III trauma center;
 - (XVII) A board-certified neurosurgeon involved in providing trauma care at a level I or II trauma center;
 - (XVIII) A trauma nurse coordinator;
 - (XIX) A registered nurse involved in rural emergency medical and trauma services care;
 - (XX) A regional council chair;
 - (XXI) A county emergency manager; and
 - (XXII) Two representatives of the general public, one from a rural area and one from an urban area.

(c) Ex officio, nonvoting members of the council shall include members from the following categories:

- (I) A representative of the state coroners' association, as selected by the association;

(II) The director of the state board for community colleges and occupational education or the director's designee;

(III) The manager of the telecommunication services of the Colorado information technology services in the department of personnel, general support services, or the manager's designee;

(IV) The executive director of the department of public health and environment or the director's designee;

(V) The director of the office of transportation safety in the department of transportation or the director's designee;

(VI) A representative from the state sheriffs' association; and

(VII) A representative from the Colorado state patrol.

(2) Members of the council shall serve for terms of three years each; except that, of the members first appointed, eight shall be appointed for terms of one year, nine shall be appointed for terms of two years, and eight shall be appointed for terms of three years. Members of the council shall be reimbursed for actual and necessary expenses incurred in the actual performance of their duties. All vouchers for expenditures shall be subject to approval by the director. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. Any appointed member who has two consecutive unexcused absences from meetings of the council shall be deemed to have vacated the membership, and the governor shall fill such vacancy as provided in this subsection (2).

(3) The council shall meet at least quarterly at the call of the chairperson or at the request of any seven members. At the first meeting after the appointment of new members, the members shall elect a chairperson who shall serve for a term of one year.

(4) The council shall:

(a) Advise the department on all matters relating to emergency medical and trauma services programs;

(b) Make recommendations concerning the development and implementation of statewide emergency medical and trauma services;

(c) Identify and make recommendations concerning statewide emergency medical and trauma service needs;

(d) Review and approve new rules and modifications to rules existing prior to July 1, 2000, prior to the adoption of such rules or modifications by the state board of health;

(e) Review and make recommendations concerning guidelines and standards for the delivery of emergency medical and trauma services, including:

(I) Establishing a list of minimum equipment requirements for ambulance vehicles operated by an ambulance service licensed in this state and making recommendations on the process used by counties in the licensure of ambulance services;

(II) Developing curricula for the training of emergency medical personnel; and

(III) Making recommendations on the verification process used by the department to determine facility eligibility to receive trauma center designation;

(f) Seek advice and counsel, up to and including the establishment of special ad hoc committees with other individuals, groups, organizations, or associations, when in the judgment of the council such is advisable to obtain necessary expertise for the purpose of meeting the council's responsibilities under this article. The council is authorized to establish special committees for the functions described in this paragraph (f).

(g) Review and make recommendations to the department regarding the amount, allocation, and expenditure of funds for the development, implementation, and maintenance of the statewide emergency medical and trauma system.

Source: L. 77: Entire article added, p. 1280, § 2, effective January 1, 1978. L. 82: (1) amended, p. 356, § 17, effective April 30. L. 83: (1) amended, p. 889, § 4, effective July 1. L. 84: (4)(j), (4)(k), and (5) added, p. 763, §§ 2, 3, effective July 1. L. 85: (1) amended, p. 881, § 1, effective July 1. L. 86: (6) added, p. 420, § 42, effective March 26. L. 89: (1) amended and (6) repealed, pp. 1146, 1147, §§ 2, 3, effective April 6. L. 91: (1) amended, p. 1068, § 40, effective July 1. L. 92: (1) amended, p. 1043, § 9, effective March 12.

L. 94: (1) amended, p. 2757, § 419, effective July 1. **L. 95:** (1), (2), (3), IP(4), (4)(f), (4)(g), and (5) amended, p. 1350, § 2, effective July 1. **L. 2000:** Entire section R&RE, p. 526, § 4, effective January 1, 2001.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3.5-104.3. State trauma advisory council - duties. (Repealed)

Source: **L. 95:** Entire section added, p. 1347, § 1, effective July 1. **L. 96:** (1)(c)(IV) amended, p. 1541, § 128, effective June 1. **L. 2000:** Entire section repealed, p. 547, § 26, effective January 1, 2001.

25-3.5-104.5. Joint advisory council - duties. (Repealed)

Source: **L. 95:** Entire section added, p. 1347, § 1, effective July 1. **L. 2000:** Entire section repealed, p. 547, § 26, effective January 1, 2001.

25-3.5-105. Rules and regulations. All rules and regulations adopted pursuant to the provisions of this article shall be adopted in accordance with the provisions of article 4 of title 24, C.R.S.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978.

25-3.5-106. Local standards - uninterrupted service. (1) Nothing in this article shall be construed to prevent a municipality or special district from adopting standards more stringent than those provided in this article.

(2) In no event shall the providing of service to sick or injured persons be interrupted, between point of origin and point of destination, when an ambulance run traverses one or more jurisdictions whose adopted standards are more stringent than those adopted in the jurisdiction where such ambulance run originates.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978.

ANNOTATION

This section does not refer to licensing of ambulances. DuHamel v. People ex rel. City of Arvada, 42 Colo. App. 491, 601 P.2d 639 (1979).

25-3.5-107. Religious exception. Nothing in this article or the rules and regulations adopted pursuant to this article shall be construed to authorize any medical treatment or transportation to any hospital or other emergency care center of an adult who objects thereto on religious grounds and signs a written waiver to that effect.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978.

PART 2

TREATMENT SUBSYSTEM

25-3.5-201. Training programs. (1) The department shall design and establish specialized curricula for personnel who respond routinely to emergencies. The board of county commissioners may select from the various curricula available those courses meeting the minimum requirements established by said board.

(2) The department shall distribute the curricula and teaching aids to training institutions and hospitals upon request from a recognized training group or hospital. If a county

is unable to arrange for necessary training programs, the department shall arrange a training program within the immediate vicinity of the agency requesting the program. The department shall issue emergency medical service provider certificates in accordance with section 25-3.5-203 (1) and may issue certificates of successful course completion to those individuals who successfully complete other emergency medical services training programs of the department. The programs may provide for the training of emergency medical dispatchers, emergency medical services instructors, emergency medical services coordinators, and other personnel who provide emergency medical services. The receipt of the certificate of course completion is not deemed state licensure, approval, or a determination of competency.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978. **L. 92:** (2) amended, p. 1143, § 1, effective May 29. **L. 2010:** (1) amended, (HB 10-1260), ch. 403, p. 1944, § 7, effective July 1. **L. 2012:** (2) amended, (HB 12-1059), ch. 271, p. 1428, § 2, effective July 1.

Editor's note: Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to acts committed on or after July 1, 2012.

25-3.5-202. Personnel - basic requirements. Emergency medical personnel employed or utilized in connection with an ambulance service shall meet the qualifications established, by resolution, by the board of county commissioners of the county in which the ambulance is based in order to be certified. For ambulance drivers, the minimum requirements include the possession of a valid driver's license and other requirements established by the board by rule under section 25-3.5-308; for any person responsible for providing direct emergency medical care and treatment to patients transported in an ambulance, the minimum requirement is possession of an emergency medical service provider certificate issued by the department. In the case of an emergency in an ambulance service area where no person possessing the qualifications required by this section is present or available to respond to a call for the emergency transportation of patients by ambulance, any person may operate the ambulance to transport any sick, injured, or otherwise incapacitated or helpless person in order to stabilize the medical condition of the person pending the availability of medical care.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978. **L. 78:** Entire section amended, p. 409, § 1, effective April 4. **L. 79:** Entire section amended, p. 1011, § 1, effective July 1. **L. 84:** Entire section amended, p. 764, § 4, effective July 1. **L. 2000:** Entire section amended, p. 529, § 5, effective July 1. **L. 2012:** Entire section amended, (HB 12-1059), ch. 271, p. 1428, § 3, effective July 1.

Editor's note: Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending this section applies to acts committed on or after July 1, 2012.

25-3.5-203. Emergency medical service providers - certification - renewal of certificate - duties of department - rules - criminal history record checks.

(1) (a) Repealed.

(a.5) The executive director or chief medical officer shall regulate the acts emergency medical service providers are authorized to perform subject to the medical direction of a licensed physician. The executive director or chief medical officer, after considering the advice and recommendations of the advisory council, shall adopt and revise rules, as necessary, regarding the regulation of emergency medical service providers and their duties and functions.

(b) The department shall certify emergency medical service providers. The board shall adopt rules for the certification of emergency medical service providers. The rules must include the following:

(I) A statement that a certificate is valid for a period of three years after the date of issuance;

(II) A statement that the certificate shall be renewable at its expiration upon the certificate holder's satisfactory completion of the training requirements established pursuant to subsection (2) of this section;

(III) Provisions governing the use of results of national and state criminal history record checks by the department to determine the action to take on a certification application pursuant to subsection (4) of this section. Notwithstanding the provisions of section 24-5-101, C.R.S., these provisions shall allow the department to consider whether the applicant has been convicted of a felony or misdemeanor involving moral turpitude and the pertinent circumstances connected with the conviction and to make a determination whether any such conviction disqualifies the applicant from certification.

(IV) Disciplinary sanctions, which shall include provisions for the denial, revocation, and suspension of certificates and the suspension and probation of certificate holders; and

(V) An appeals process pursuant to sections 24-4-104 and 24-4-105, C.R.S., that is applicable to department decisions in connection with certifications and sanctions.

(c) (I) The department may issue a provisional certification to an applicant for certification as an emergency medical service provider who requests issuance of a provisional certification and who pays any fee authorized under rules adopted by the board. A provisional certification is valid for not more than ninety days.

(II) The department shall not issue a provisional certification unless the applicant satisfies the requirements for certification in accordance with this section and rules adopted by the board under this subsection (1). If the department finds that an emergency medical service provider that has received a provisional certification has violated any requirements for certification, the department may impose disciplinary sanctions under subparagraph (IV) of paragraph (b) of this subsection (1).

(III) The department may issue a provisional certification to an applicant whose fingerprint-based criminal history record check has not yet been completed. The department shall require the applicant to submit a name-based criminal history record check prior to issuing a provisional certification.

(IV) The board shall adopt rules as necessary to implement this paragraph (c), including rules establishing a fee to be charged to applicants seeking a provisional certification. Any fee collected for a provisional certification shall be deposited in the emergency medical services account created in section 25-3.5-603.

(d) (I) The department shall exempt certified emergency medical service providers who have been called to federally funded active duty for more than one hundred twenty days to serve in a war, emergency, or contingency from the payment of certification fees and from continuing education or professional competency requirements of this article for a renewal date during the service or the six months after the completion of service.

(II) Upon presentation of satisfactory evidence by an applicant for renewal of certification, the department may accept continuing medical education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the qualifications to renew the individual's certification.

(III) An individual serving in the armed services of the United States or the spouse of the individual may apply for certification under this article while stationed within this state. The individual or spouse is exempt from the initial certification requirements in this article, except for those in subsection (4) of this section if the person holds a valid certificate or license to provide emergency medical services from another state, the certificate or license is current, and the person is in good standing.

(IV) The board shall promulgate rules to implement this paragraph (d), including the criteria and evidence for acceptable continuing medical education and training or service.

(2) The council shall advise the department and the board in establishing the training requirements for certificate renewal. Such training requirements shall consist of not more than fifty classroom hours and not less than thirty-six classroom hours.

(3) Repealed.

(4) (a) The department may, with reasonable cause, acquire a fingerprint-based criminal history record check from the Colorado bureau of investigation to investigate the holder of or applicant for an emergency medical service provider certificate. The department may acquire a name-based criminal history record check for a certificate holder or an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(b) (I) Any government entity that employs a person as or allows a person to volunteer as an emergency medical service provider in a position requiring direct contact with patients shall require all volunteer and employed emergency medical service providers, who have lived in the state for three years or less at the time of the initial certification or certification renewal, to submit to a federal bureau of investigation fingerprint-based national criminal history record check to determine eligibility for employment. Each emergency medical service provider required to submit to a federal bureau of investigation fingerprint-based national criminal history record check shall obtain a complete set of fingerprints taken by a local law enforcement agency or another entity designated by the department. The local law enforcement agency or other designated entity that took the fingerprints shall transmit them to the Colorado bureau of investigation, which shall in turn forward them to the federal bureau of investigation for a national criminal history record check. The department or other authorized government entity is the authorized agency to receive and disseminate information regarding the result of a national criminal history record check. Each entity handling the national criminal history record check shall comply with Pub.L. 92-544, as amended. Each government entity acting as the authorized recipient of the result of a national criminal history record check shall forward the result of the initial national criminal history record check and any subsequent notification of activity on the record to the department to determine the individual's eligibility for initial certification or certification renewal.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the government entity may acquire a name-based criminal history record check for an individual who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(c) (I) (A) A government entity or private, not-for-profit, or for-profit organization that employs a person or allows a person to volunteer as an emergency medical service provider in a position requiring direct contact with patients shall require all volunteer and employed emergency medical service providers, who have lived in the state for more than three years at the time of initial certification or certification renewal, to submit to a fingerprint-based criminal history record check by the Colorado bureau of investigation to determine eligibility for employment. The organization shall forward the result of the criminal history record check and any subsequent notification of activity on the record to the department to determine eligibility for initial certification or certification renewal.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), the government entity or private, not-for-profit, or for-profit organization may acquire a name-based criminal history record check for an individual who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), if a person submitted to a fingerprint-based criminal history record check at the time of initial certification or certification renewal, the person shall not be required to submit to a subsequent fingerprint-based criminal history record check.

(d) (I) If an applicant for initial certification or certification renewal is not employed at the time of application, the department shall require the applicant to submit to a fingerprint-based criminal history record check by the Colorado bureau of investigation as defined in rule by the board of health, if the applicant has lived in the state for more than three years; except that the department may acquire a state name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), if a person submitted to a fingerprint-based criminal history record check at the time of initial

certification or certification renewal, the person shall not be required to submit to a subsequent fingerprint-based criminal history record check.

(e) If the applicant is not employed or is employed by a nongovernmental entity at the time of application and has lived in the state for three years or less, the department shall require the applicant to submit to a federal bureau of investigation fingerprint-based national criminal history record check; except that the department may acquire a national name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The department shall be the authorized agency to receive and disseminate information regarding the result of any national criminal history record check. Any such national criminal history record check shall be handled in accordance with Pub.L. 92-544, as amended.

(5) For the purposes of this article, unless the context otherwise requires, “medical direction” includes, but is not limited to, the following:

(a) Approval of the medical components of treatment protocols and appropriate prearrival instructions;

(b) Routine review of program performance and maintenance of active involvement in quality improvement activities, including access to dispatch tapes as necessary for the evaluation of procedures;

(c) Authority to recommend appropriate changes to protocols for the improvement of patient care; and

(d) Provide oversight for the ongoing education, training, and quality assurance for providers of emergency care.

Source: **L. 77:** Entire article added, p. 1281, § 2, effective January 1, 1978. **L. 84:** Entire section amended, p. 764, § 5, effective July 1. **L. 85:** (1) amended, p. 524, § 16, effective July 1. **L. 87:** (1) amended and (3) added, p. 1126, § 2, effective July 1. **L. 89:** (1) amended and (3) repealed, p. 1152, §§ 3, 5, effective July 1. **L. 94:** (1) amended, p. 2758, § 420, effective July 1. **L. 2000:** (1) amended and (4) and (5) added, p. 529, § 6, effective July 1. **L. 2001:** (1), (2), and (4) amended, p. 1144, § 1, effective June 5. **L. 2003:** (1)(b)(III) and (4) amended, p. 1662, § 1, effective May 14. **L. 2007:** (4)(a), (4)(b), (4)(c)(I), (4)(d)(I), and (4)(e) amended, p. 637, § 1, effective April 26. **L. 2009:** (1)(c) added, (HB 09-1275), ch. 278, p. 1244, § 1, effective May 19. **L. 2010:** (1)(a) amended and (1)(a.5) added, (HB 10-1260), ch. 403, p. 1944, § 8, effective July 1. **L. 2012:** (1)(a.5), IP(1)(b), (1)(c)(1), (1)(c)(II), (4)(a), (4)(b)(I), and (4)(c)(I)(A) amended and (1)(d) added, (HB 12-1059), ch. 271, p. 1428, § 4, effective July 1.

Editor’s note: (1) Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective January 1, 2011. (See L. 2010, p. 1944.)

(2) Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (1)(a.5), the introductory portion to subsection (1)(b), subsections (1)(c)(I), (1)(c)(II), (4)(a), (4)(b)(I), and (4)(c)(I)(A) and adding subsection (1)(d) applies to acts committed on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3.5-204. Emergency medical services for children. (1) The department is authorized to establish a program to improve the quality of emergency care to pediatric patients throughout the state, including a component to address public awareness of pediatric emergencies and injury prevention.

(2) The department is authorized to receive contributions, grants, donations, or funds from any public or private entity to be expended for the program authorized pursuant to this section.

Source: **L. 95:** Entire section added, p. 1361, §4, effective July 1.

25-3.5-205. Emergency medical service providers - investigation - discipline.

(1) (a) The department may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant records and documents to investigate alleged misconduct by certified emergency medical service providers.

(b) Upon failure of a witness to comply with a subpoena, the department may apply to a district court for an order requiring the person to appear before the department or an administrative law judge, to produce the relevant records or documents, or to give testimony or evidence touching the matter under investigation or in question. When seeking an order, the department shall apply to the district court of the county in which the subpoenaed person resides or conducts business. The court may punish such failure as a contempt of court.

(2) An emergency medical service provider, the employer of an emergency medical service provider, a medical director, and a physician providing medical direction of an emergency medical service provider shall report to the department any misconduct that is known or reasonably believed by the person to have occurred.

(3) A person acting as a witness or consultant to the department, a witness testifying, and a person or employer who reports misconduct to the department under this section shall be immune from liability in any civil action brought for acts occurring while testifying, producing evidence, or reporting misconduct under this section if such individual or employer was acting in good faith and with a reasonable belief of the facts. A person or employer participating in good faith in an investigation or an administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that may result from such participation.

(4) All records, documents, testimony, or evidence obtained under this section shall remain confidential except to the extent necessary to support the administrative action taken by the department, to refer the matter to another regulatory agency, or to refer the matter to a law enforcement agency for criminal prosecution.

(5) For the purposes of this section:

(a) "Medical director" means a physician who supervises certified emergency medical service providers consistent with the rules adopted by the executive director or chief medical officer, as applicable, under section 25-3.5-206.

(b) "Misconduct" means an activity meeting the good cause for disciplinary sanctions standard, as defined by the board.

Source: **L. 2005:** Entire section added, p. 875, § 1, effective August 8. **L. 2010:** (5)(a) amended, (HB 10-1260), ch. 403, p. 1945, § 9, effective July 1. **L. 2012:** (1)(a), (2), and (5)(a) amended, (HB 12-1059), ch. 271, p. 1430, § 5, effective July 1.

Editor's note: Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsections (1)(a), (2), and (5)(a) applies to acts committed on or after July 1, 2012.

25-3.5-206. Emergency medical practice advisory council - creation - powers and duties - emergency medical service provider scope of practice rules.

(1) There is hereby created within the department, as a **type 2** entity under the direction of the executive director of the department, the emergency medical practice advisory council, referred to in this part 2 as the "advisory council". The advisory council is responsible for advising the department regarding the appropriate scope of practice for emergency medical service providers certified under section 25-3.5-203.

(2) (a) The emergency medical practice advisory council consists of the following eleven members:

(I) Eight voting members appointed by the governor as follows:

(A) Two physicians licensed in good standing in Colorado who are actively serving as emergency medical service medical directors and are practicing in rural or frontier counties;

(B) Two physicians licensed in good standing in Colorado who are actively serving as emergency medical service medical directors and are practicing in urban counties;

(C) One physician licensed in good standing in Colorado who is actively serving as an emergency medical service medical director in any area of the state;

(D) One emergency medical service provider certified at an advanced life support level who is actively involved in the provision of emergency medical services;

(E) One emergency medical service provider certified at a basic life support level who is actively involved in the provision of emergency medical services; and

(F) One emergency medical service provider certified at any level who is actively involved in the provision of emergency medical services;

(II) One voting member who, as of July 1, 2010, is a member of the state emergency medical and trauma services advisory council, appointed by the executive director of the department; and

(III) Two nonvoting ex officio members appointed by the executive director of the department.

(b) Members of the advisory council shall serve four-year terms; except that, of the members initially appointed to the advisory council by the governor, four members shall serve three-year terms. A vacancy on the advisory council shall be filled by appointment by the appointing authority for that vacant position for the remainder of the unexpired term. Members serve at the pleasure of the appointing authority and continue in office until the member's successor is appointed.

(c) Members of the advisory council shall serve without compensation but shall be reimbursed from the emergency medical services account, created in section 25-3.5-603, for their actual and necessary travel expenses incurred in the performance of their duties under this article.

(d) The advisory council shall elect a chair and vice-chair from its members.

(e) The advisory council shall meet at least quarterly and more frequently as necessary to fulfill its obligations.

(f) The department shall provide staff support to the advisory council.

(g) As used in this subsection (2), "licensed in good standing" means that the physician holds a current, valid license to practice medicine in Colorado that is not subject to any restrictions.

(3) The advisory council shall provide general technical expertise on matters related to the provision of patient care by emergency medical service providers and shall advise or make recommendations to the department in the following areas:

(a) The acts and medications that certified emergency medical service providers at each level of certification are authorized to perform or administer under the direction of a physician medical director;

(b) Requests for waivers to the scope of practice rules adopted pursuant to this section and section 25-3.5-203 (1) (a.5);

(c) Modifications to emergency medical service provider certification levels and capabilities; and

(d) Criteria for physicians to serve as emergency medical service medical directors.

(4) (a) The executive director or, if the executive director is not a physician, the chief medical officer shall adopt rules in accordance with article 4 of title 24, C.R.S., concerning the scope of practice of emergency medical service providers for prehospital care. The rules must include the following:

(I) Allowable acts for each level of emergency medical service provider certification and the medications that each level of emergency medical service provider certification can administer;

(II) Defining the physician medical direction required for appropriate oversight of an emergency medical service provider by an emergency medical services medical director;

(III) Criteria for requests to waive the scope of practice rules and the conditions for such waivers; and

(IV) Minimum standards for physicians to be emergency medical services medical directors.

(b) Rules adopted pursuant to this subsection (4) supersede any rules of the Colorado medical board regarding the matters set forth in this subsection (4).

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1945, § 10, effective July 1. **L. 2012:** (1), IP(2)(a), (2)(a)(I)(D), (2)(a)(I)(E), (2)(a)(I)(F), IP(3), (3)(a), (3)(c), IP(4)(a), (4)(a)(I), and (4)(a)(II) amended, (HB 12-1059), ch. 271, p. 1431, § 6, effective July 1.

Editor's note: Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (1), the introductory portion to subsection (2)(a), subsections (2)(a)(I)(D), (2)(a)(I)(E), and (2)(a)(I)(F), the introductory portion to subsection (3), subsections (3)(a) and (3)(c), the introductory portion to subsection (4)(a), and subsections (4)(a)(I) and (4)(a)(II) applies to acts committed on or after July 1, 2012.

PART 3

TRANSPORTATION SUBSYSTEM

25-3.5-301. License required - exceptions. (1) After January 1, 1978, no person shall provide ambulance service publicly or privately in this state unless that person holds a valid license to do so issued by the board of county commissioners of the county in which the ambulance service is based, except as provided in subsection (5) of this section. Licenses, permits, and renewals thereof, issued under this part 3, shall require the payment of fees in amounts to be determined by the board to reflect the direct and indirect costs incurred by the department in implementing such licensure, but the board may waive payment of such fees for ambulance services operated by municipalities or special districts.

(2) (a) (I) Each ambulance operated by an ambulance service shall be issued a permit and, in order to be approved, shall bear evidence that its equipment meets or is equivalent to the minimum requirements set forth in the minimum equipment list established by the council and approved by the state board of health. The board of county commissioners of any county may impose by resolution additional requirements for ambulances based in such county.

(II) Repealed.

(a.1) Repealed.

(b) The council shall make available to the board of county commissioners guidelines for ambulance design criteria for use in developing standards for vehicle replacement.

(3) No patient shall be transported in an ambulance in this state after January 1, 1978, unless there are two or more individuals, including the driver, present and authorized to operate said ambulance except under unusual conditions when only one authorized person is available.

(4) (Deleted by amendment, L. 2002, p. 696, § 1, effective May 29, 2002.)

(5) The provisions of subsections (1) to (3) of this section shall not apply to the following:

(a) The exceptional emergency use of a privately or publicly owned vehicle, including search and rescue unit vehicles, or aircraft not ordinarily used in the formal act of transporting patients;

(b) A vehicle rendering services as an ambulance in case of a major catastrophe or emergency when ambulances with permits based in the localities of the catastrophe or emergency are insufficient to render the services required;

(c) Ambulances based outside this state which are transporting a patient in Colorado;

(d) Vehicles used or designed for the scheduled transportation of convalescent patients, individuals with disabilities, or persons who would not be expected to require skilled treatment or care while in the vehicle;

(e) Vehicles used solely for the transportation of intoxicated persons or persons incapacitated by alcohol as defined in section 27-81-102, C.R.S., but who are not otherwise disabled or seriously injured and who would not be expected to require skilled treatment or care while in the vehicle.

Source: L. 77: Entire article added, p. 1282, § 2, effective January 1, 1978. **L. 81:** (2)(a) amended, p. 1944, § 4, effective July 1; (2)(a.1) added, p. 1951, § 18, effective July

1, 1984. **L. 84:** (2)(a)(I) amended, p. 1125, § 45, effective July 1; (2)(a)(II) and (2)(a.1) repealed, p. 1080, § 1, effective July 1; (2)(a.1)(I) amended, p. 765, § 6, effective July 1. **L. 93:** (5)(d) amended, p. 1664, § 73, effective July 1. **L. 2002:** (1) and (4) amended, p. 696, § 1, effective May 29. **L. 2010:** (5)(e) amended, (SB 10-175), ch. 188, p. 799, § 62, effective April 29.

ANNOTATION

Limitation on entities which may license ambulances. Since the general assembly has indicated a coordinated system of emergency medical care to be of statewide concern and has provided a comprehensive statutory scheme to regulate the field, governmental entities other than those provided in this section may not license ambulances. *DuHamel v. People ex rel. City of Arvada*, 42 Colo. App. 491, 601 P.2d 639 (1979).

To subject ambulance companies to authority of two jurisdictions is contrary to purpose of this act because it fragments the coordinated system and could reduce the availability of service. *DuHamel v. People ex rel. City of Arvada*, 42 Colo. App. 491, 601 P.2d 639 (1979).

25-3.5-302. Issuance of licenses and permits - term - requirements. (1) (a) After receipt of an original application for a license to provide ambulance service, the board of county commissioners shall review the application and the applicant's record and provide for the inspection of equipment to determine compliance with the provisions of this part 3.

(b) The board of county commissioners shall issue a license to the applicant to provide ambulance service and a permit for each ambulance used, both of which shall be valid for twelve months following the date of issue, upon a finding that the applicant's staff, vehicle, and equipment comply with the provisions of this part 3 and any other requirement established by said board.

(2) Any such license or permit, unless revoked by the board of county commissioners, may be renewed by filing an application as in the case of an original application for such license or permit. Applications for renewal shall be filed annually but not less than thirty days before the date the license or permit expires.

(3) No license or permit issued pursuant to this section shall be sold, assigned, or otherwise transferred.

Source: **L. 77:** Entire article added, p. 1283, § 2, effective January 1, 1978.

ANNOTATION

Applied in *DuHamel v. People ex rel. City of Arvada*, 42 Colo. App. 491, 601 P.2d 639 (1979).

25-3.5-303. Vehicular liability insurance required. No ambulance shall operate in this state unless it is covered by a complying policy as defined in section 10-4-601 (2), C.R.S.

Source: **L. 77:** Entire article added, p. 1283, § 2, effective January 1, 1978. **L. 2006:** Entire section amended, p. 1504, § 45, effective June 1.

25-3.5-304. Suspension - revocation - hearings. (1) Upon a determination by the board of county commissioners that any person has violated or failed to comply with any provisions of this part 3, the board may temporarily suspend, for a period not to exceed thirty days, any license or permit issued pursuant to this part 3. The licensee shall receive written notice of such temporary suspension, and a hearing shall be held no later than ten days after such temporary suspension. After such hearing, the board may suspend any license or permit, issued pursuant to this part 3, for any portion of or for the remainder of

its life. At the end of such period, the person whose license or permit was suspended may apply for a new license or permit as in the case of an original application.

(2) Upon a second violation or failure to comply with any provision of this part 3 by any licensee, the board of county commissioners may permanently revoke such license or permit.

Source: L. 77: Entire article added, p. 1283, § 2, effective January 1, 1978.

25-3.5-305. Alleged negligence. (1) In any legal action filed against a person who has been issued a license pursuant to this part 3 in which it is alleged that the plaintiff's injury, illness, or incapacity was exacerbated or that he was otherwise injured by the negligence of the licensee, an act of negligence shall not be presumed based on the fact of the allegation.

(2) In the event a judgment is entered against any such licensee, he shall, within thirty days thereof, file a copy of the findings of fact, conclusions of law, and order in such case with the clerk and recorder of the county issuing the license. Said board shall take note of such judgment for purposes of investigation and appropriate action if a violation of this part 3 is present. Any and all complaints received directly by said board shall be subject to review.

Source: L. 77: Entire article added, p. 1283, § 2, effective January 1, 1978.

25-3.5-306. Violation - penalty. Any person who violates any provision of this part 3 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 77: Entire article added, p. 1284, § 2, effective January 1, 1978. **L. 2002:** Entire section amended, p. 1536, § 264, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-3.5-307. Licensure of fixed-wing and rotor-wing air ambulances - cash fund created - rules. (1) (a) Except as provided in paragraph (b) of this subsection (1), prior to beginning air ambulance operations in this state, all fixed-wing and rotor-wing air ambulance services shall be licensed by the department. Successful completion of an accreditation process as established and updated by the commission on accreditation of medical transport systems (CAMTS) or a successor organization is required for full licensure and renewal of such license by the department for all fixed-wing and rotor-wing air ambulance services. The department may issue a conditional license to an air ambulance service that has not completed CAMTS accreditation if the service is actively working toward CAMTS accreditation. An air ambulance service that receives a conditional license shall complete its CAMTS accreditation within two years after issuance of the conditional license. If an air ambulance service to which a conditional license has been issued fails to complete the CAMTS accreditation process within two years after issuance of the initial conditional license, the conditional license shall be revoked, and the air ambulance service shall not be issued any type of license until it successfully completes the CAMTS accreditation process.

(b) Upon a showing of exigent circumstances, as defined by the board, the department may authorize an unlicensed air ambulance service to provide a particular transport.

(c) The board shall promulgate rules specifying additional licensure requirements, establishing a reasonable fee for licensure, defining exigent circumstances for purposes of the exception in paragraph (b) of this subsection (1), and specifying the procedure and grounds for the suspension, revocation, or denial of a license. Such rules shall include the process used to investigate complaints against an air ambulance service and procedures for data collection and reporting to the department by an air ambulance service; except that

complaints that are related to the requirements of CAMTS or a successor organization shall be referred to CAMTS or such successor organization for investigation. The department shall consider the results of such investigations in making licensure decisions concerning air ambulance services.

(2) (a) The board shall establish the amount of the licensure fee to reflect the direct and indirect costs incurred by the department in implementing such licensure. The department shall transmit all fees collected pursuant to this section to the state treasurer who shall credit the same to the fixed-wing and rotary-wing ambulances cash fund, which fund is hereby created in the state treasury.

(b) Any interest derived from the deposit and investment of moneys in the fixed-wing and rotary-wing ambulances cash fund shall be credited to such fund. Any unexpended or unencumbered moneys remaining in such fund at the end of any fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state. Moneys in such fund shall be subject to annual appropriation by the general assembly to the department for the costs incurred by the department in implementing this section.

Source: L. 2002: Entire section added, p. 697, § 2, effective May 29. **L. 2005:** (1) amended, p. 1331, § 2, effective July 1. **L. 2007:** (1) amended, p. 380, § 1, effective April 2.

25-3.5-308. Rules. (1) The board shall adopt rules establishing the minimum requirements for ground ambulance service licensing, including but not limited to:

- (a) Minimum equipment to be carried on an ambulance pursuant to section 25-3.5-104;
- (b) Staffing requirements for ambulances as required in section 25-3.5-104;
- (c) Medical oversight and quality improvement of ambulance services pursuant to section 25-3.5-704 (2) (h);
- (d) The process used to investigate complaints against an ambulance service; and
- (e) Data collection and reporting to the department by an ambulance service.

Source: L. 2002: Entire section added, p. 697, § 2, effective May 29. **L. 2005:** IP(1) amended, p. 1331, § 3, effective July 1.

PART 4

TELECOMMUNICATIONS SUBSYSTEM

25-3.5-401. Responsibility for coordination. (1) The telecommunications subsystem shall be used to maintain effective interface with the other components of the system, which shall include but not be limited to the following:

- (a) To dispatch the ambulance;
 - (b) To maintain contact while en route to the scene of the emergency;
 - (c) To provide for triage at the scene of the emergency;
 - (d) To provide for treatment while en route to the primary emergency care center;
 - (e) To arrange for transfer to advanced emergency care centers.
- (2) (a) The department of personnel, in consultation with the office of information technology created in the office of the governor, shall coordinate the telecommunications subsystem with the existing state telecommunications network to the extent possible.
- (b) Repealed.

Source: L. 77: Entire article added, p. 1284, § 2, effective January 1, 1978. **L. 81:** IP(1) amended, p. 2028, § 29, effective June 7; (2)(b) repealed, p. 2028, § 31, effective July 14. **L. 83:** (2)(a) amended, p. 889, § 5, effective July 1. **L. 84:** IP(1) amended, p. 1121, § 26, effective June 7. **L. 95:** (2)(a) amended, p. 663, § 96, effective July 1. **L. 2001:** (2)(a) amended, p. 125, § 6, effective March 23. **L. 2006:** (2)(a) amended, p. 1736, § 25, effective June 6.

Cross references: (1) For provisions concerning telecommunications coordination within state government, see part 5 of article 37.5 of title 24; for the state telecommunications network, see § 24-33.5-223.

(2) For the legislative declaration contained in the 1995 act amending subsection (2)(a), see section 112 of chapter 167, Session Laws of Colorado 1995.

25-3.5-402. Local government participation. The department of personnel shall consult with local government entities to ensure that provision is made for their entry into the statewide telecommunications subsystem and that their present resources are being fully utilized.

Source: **L. 77:** Entire article added, p. 1284, § 2, effective January 1, 1978. **L. 83:** Entire section amended, p. 889, § 6, effective July 1. **L. 96:** Entire section amended, p. 1541, § 129, effective June 1.

25-3.5-403. Poison information center - state funding. (Repealed)

Source: **L. 83:** Entire section added, p. 1056, § 3, effective July 1. **L. 94:** Entire section amended, p. 1665, § 2, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1995. (See L. 94, p. 1665.)

PART 5

DOCUMENTATION SUBSYSTEM

25-3.5-501. Records. (1) Each ambulance service shall prepare and transmit copies of uniform and standardized records, as specified by regulation adopted by the department, concerning the transportation and treatment of patients in order to evaluate the performance of the emergency medical services system and to plan systematically for improvements in said system at all levels.

(2) The record forms adopted by the department may distinguish between rural ambulance service and urban ambulance service and between mobile intensive care units and basic ambulance service.

Source: **L. 77:** Entire article added, p. 1284, § 2, effective January 1, 1978. **L. 78:** Entire section amended, p. 270, § 84, effective May 23.

25-3.5-502. Forms and reports. The department shall provide the necessary forms and copies of quarterly statistical report forms for local and state evaluation of ambulance service unless specifically exempted by the board of county commissioners of a particular county for that county.

Source: **L. 77:** Entire article added, p. 1285, § 2, effective January 1, 1978. **L. 78:** Entire section amended, p. 271, § 85, effective May 23.

PART 6

LOCAL EMERGENCY MEDICAL SERVICES

25-3.5-601. Legislative declaration. (1) The general assembly recognizes that an efficient and reliable statewide emergency medical and trauma network would serve not only to promote the health, safety, and welfare of Colorado residents, but would also, by increasing safety throughout the state, indirectly serve to facilitate tourism and economic development in the state.

(2) The general assembly also finds that accident victims are often transported over state highways and that an improved response to accidents through an efficient and reliable statewide emergency medical and trauma network impacts both directly and indirectly on the maintenance and supervision of the public highways of this state.

(3) Therefore, it is the purpose of this part 6 to enhance emergency medical and trauma services statewide by financially assisting local emergency medical and trauma service providers who operate or wish to operate in the counties in their efforts to improve the quality and effectiveness of local emergency medical and trauma services, including emergency medical and trauma equipment and communications, and by supporting the overall coordination of such efforts by the department.

Source: **L. 89:** Entire part added, p. 1148, § 2, effective July 1. **L. 94:** (3) amended, p. 2758, § 421, effective July 1. **L. 2000:** Entire section amended, p. 532, § 10, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3.5-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Council" means the state emergency medical and trauma services advisory council created in section 25-3.5-104.

(2) "Department" means the department of public health and environment.

(3) "EMTS" means emergency medical and trauma services.

(4) "Local emergency medical and trauma service providers" includes, but is not limited to, local governing boards, training centers, hospitals, special districts, and other private and public service providers that have as their purpose the provision of emergency medical and trauma services.

Source: **L. 89:** Entire part added, p. 1149, § 2, effective July 1. **L. 94:** (2) amended, p. 2758, § 422, effective July 1. **L. 2000:** (1), (3), and (4) amended, p. 532, § 11, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-3.5-603. Emergency medical services account - creation - allocation of funds.

(1) (a) There is hereby created a special account within the highway users tax fund established under section 43-4-201, C.R.S., to be known as the emergency medical services account, which consists of all moneys transferred thereto in accordance with section 42-3-304 (21), C.R.S., and fees collected under section 25-3.5-203 for provisional certifications of emergency medical service providers.

(b) All moneys in and state FTE funded by the emergency medical services account shall be subject to annual appropriation by the general assembly.

(c) At the end of any fiscal year, all unexpended and unencumbered moneys in the emergency medical services account shall remain therein and shall not be credited or transferred to the general fund or any other fund. Any interest earned on the investment or deposit of moneys in the account shall also remain in the account and shall not be credited to the general fund.

(2) (Deleted by amendment, L. 2005, p. 280, § 13, effective August 8, 2005.)

(3) On and after July 1, 2002, the general assembly shall appropriate moneys in the emergency medical services account:

(a) (I) To the department for distribution as grants to local emergency medical and trauma service providers pursuant to the emergency medical and trauma services (EMTS) grant program set forth in section 25-3.5-604.

(II) Of the amount appropriated under subparagraph (I) of this paragraph (a) for grants:

(A) One hundred thousand dollars shall remain in the account for unexpected emergencies that arise after the deadline for grant applications has passed. The department and the council shall promulgate any rules necessary to define the expenditures of such emergency funds.

(B) The department shall award a minimum of one hundred fifty thousand dollars to offset the training costs of emergency medical service providers, emergency medical dispatchers, emergency medical services instructors, emergency medical services coordinators, and other personnel who provide emergency medical services. Of said one hundred fifty thousand dollars, no less than eighty percent shall be used in the training of emergency medical service providers.

(b) (I) To the department for distribution for each Colorado county within a RETAC no less than fifteen thousand dollars and seventy-five thousand dollars to each RETAC, in accordance with section 25-3.5-605 for planning and, to the extent possible, coordination of emergency medical and trauma services in the county and between counties when such coordination would provide for better service geographically. In the event that a RETAC is composed of less than five counties as of July 1, 2002, the council shall recommend that for each Colorado county within such RETAC, the RETAC shall receive fifteen thousand dollars in accordance with section 25-3.5-605 for planning and, to the extent possible, coordination of emergency medical and trauma services in the county and between counties when such coordination would provide for better service geographically. Any RETAC may apply for additional moneys and may receive such moneys if the request is approved by the council, so long as the moneys are used in accordance with section 25-3.5-605 for planning and, to the extent possible, coordination of emergency medical and trauma services in the county and between counties when such coordination would provide for better service geographically.

(II) A county may request to the council that the county's representative fifteen thousand dollars be divided between two different RETACs pursuant to section 25-3.5-704 (2) (c) (IV) (B).

(c) To the direct and indirect costs of planning, developing, implementing, maintaining, and improving the statewide emergency medical and trauma services system. These costs include:

(I) Providing technical assistance and support to local governments, local emergency medical and trauma service providers, and RETACs operating a statewide data collection system, coordinating local and state programs, providing assistance in selection and purchasing of medical and communication equipment, administering the EMTS grant program, and establishing and maintaining scope of practice for certified medical service providers; and

(II) The costs of the department of revenue in collecting the additional motor vehicle registration fee pursuant to section 42-3-304 (21), C.R.S.

Source: **L. 89:** Entire part added, p. 1149, § 2, effective July 1. **L. 92:** Entire section amended, p. 1143, § 2, effective May 29. **L. 94:** (1)(a) and (2)(c)(III) amended, p. 2559, § 61, effective January 1, 1995. **L. 2000:** IP(2), (2)(a)(I), (2)(a)(II)(A), (2)(b), IP(2)(c), (2)(c)(I), and (2)(c)(II) amended and (3) added, p. 533, § 12, effective July 1. **L. 2005:** (1)(a) and (3)(c)(II) amended, p. 1183, § 33, effective August 8; (1)(b) and (2) amended, p. 280, § 13, effective August 8. **L. 2009:** (1)(a) amended, (HB 09-1275), ch. 278, p. 1245, § 2, effective May 19. **L. 2010:** (3)(c)(I) amended, (HB 10-1260), ch. 403, p. 1947, § 11, effective July 1. **L. 2012:** (1)(a), IP(3), IP(3)(a)(II), (3)(a)(II)(B), IP(3)(c), and (3)(c)(I) amended, (HB 12-1059), ch. 271, p. 1437, § 21, effective July 1.

Editor's note: (1) Subsection (3) was originally enacted as subsection (2.5) in Senate Bill 00-180 but was renumbered on revision for ease of location.

(2) Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending subsection (1)(a), the introductory portions to subsections (3) and (3)(a)(II), subsection (3)(a)(II)(B), the introductory portion to subsection (3)(c), and subsection (3)(c)(I) applies to acts committed on or after July 1, 2012.

25-3.5-604. EMTS grant program - EMS account - role of council and department - rules - awards. (1) (a) The council shall make recommendations to the department concerning the application for and distribution of moneys from the EMS account for the development, maintenance, and improvement of emergency medical and trauma services in Colorado and for the establishment of priorities for emergency medical and trauma services grants.

(b) Any rules that relate to the distribution of grants shall provide that awards shall be made on the basis of a substantiated need and that priority shall be given to those applicants that have underdeveloped or aged emergency medical and trauma services equipment or systems.

(c) The department, upon recommendations from the council, shall allocate moneys pursuant to section 25-3.5-603.

(2) (a) Applications for grants shall be made to the department commencing January, 2001, and each January thereafter, except as otherwise provided in section 25-3.5-603 (3).

(b) The department shall review each application and make awards in accordance with the rules promulgated pursuant to subsection (1) of this section.

(c) Grants awarded under this section shall require local matching funds, unless such requirement is waived by the council upon demonstration that local sources of matching funds are not available.

(3) Grants shall be awarded July 1 of each year.

(4) The council shall review the adequacy of funding for each RETAC for the period beginning July 1, 2002. The review shall be completed by December 31, 2005. The council may recommend any necessary changes to the department as a result of the review conducted pursuant to this subsection (4).

Source: L. 89: Entire part added, p. 1150, § 2, effective July 1. L. 92: Entire section amended, p. 1145, § 3, effective May 29. L. 2000: (1), (2)(a), and (2)(b) amended and (4) added, p. 535, § 13, effective July 1.

Editor's note: "EMS account" referenced in subsection (1) refers to the "emergency medical services account" created in § 25-3.5-603.

25-3.5-605. Improvement of county emergency medical and trauma services - eligibility for county funding - manner of distributing funds. (1) Moneys in the emergency medical services account shall be apportioned pursuant to subsection (2.5) of this section.

(2) In order to qualify for moneys under this section, a county must:

(a) Comply with all provisions of part 3 of this article regarding the inspection and licensing of ambulances that are based in the county;

(b) Require all licensed ambulance services to utilize the statewide emergency medical and trauma services uniform prehospital care reporting system operated by the department;

(c) Repealed.

(d) Ensure that all moneys received under this section are expended on developing and updating the emergency medical and trauma services plan and other emergency medical and trauma services needs of the county such as:

(I) Training and certification of emergency medical service providers;

(II) Assisting local emergency medical and trauma providers in applying for grants under section 25-3.5-604;

(III) Improving the emergency medical and trauma services system on a county wide or regional basis and implementing the county emergency medical and trauma services plan;

(e) Repealed.

(2.5) (a) On or before October 1, 2003, and on or before October 1 each year thereafter, each RETAC shall submit to the council an annual financial report that details the expenditure of moneys received. Such report shall be in a format specified by the council and the department. In instances where the council finds such report inadequate, the RETAC shall resubmit the report to the council by December 1 of the same year.

(b) On or before July 1, 2003, and on or before July 1 each odd-numbered year thereafter, each RETAC shall submit to the council a biennial plan that details the RETAC's EMTS plan and any revisions pursuant to section 25-3.5-704 (2) (c) (I) (B). If the RETAC includes a county that has been divided geographically pursuant to section 25-3.5-704 (2) (c) (IV), the plan shall include an evaluation of such division. Such plan shall be in a format specified by the council and the department. In instances where the council finds such plan inadequate, the RETAC shall resubmit the plan to the council by September 14 of the same year.

(c) On or before October 15, 2003, and on or before October 15 each odd-numbered year thereafter, the council shall submit to the department a plan for all RETACs in the state. On or before November 1, 2003, and on or before November 1 each odd-numbered year thereafter, the department, in consultation with the council, shall approve a plan for all RETACs in the state.

(3) Funds distributed to counties and RETACs pursuant to this section shall be used in planning the improvement of existing county emergency medical and trauma service programs and shall not be used to supplant moneys already allocated by the county for emergency medical and trauma services.

(4) (a) Failure to comply with the requirements of subsection (2) of this section shall render a county ineligible to receive moneys from the emergency medical services account until the following January.

(b) At the end of any fiscal year, moneys which are not distributed to a county shall remain in the emergency medical services account until the following January.

Source: L. 89: Entire part added, p. 1151, § 2, effective July 1. L. 92: Entire section amended, p. 1145, § 4, effective May 29. L. 2002: (1), (2), and (3) amended and (2.5) added, p. 697, § 3, effective May 29. L. 2005: (1) amended, p. 281, § 14, effective August 8. L. 2012: IP(2), IP(2)(d), and (2)(d)(1) amended, (HB 12-1059), ch. 271, p. 1438, § 22, effective July 1.

Editor's note: (1) Subsection (2)(c)(II) provided for the repeal of subsection (2)(c) and subsection (2)(e)(II) provided for the repeal of subsection (2)(e), effective October 1, 2002. (See L. 2002, p. 697.)

(2) Section 18 of chapter 271, Session Laws of Colorado 2012, provides that the act amending the introductory portions to subsections (2) and (2)(d) and subsection (2)(d)(I) applies to acts committed on or after July 1, 2012.

25-3.5-606. Annual report. No later than January 1, 1991, and prior to November 1 of each year thereafter, the department, in cooperation with the council, shall submit a report to the health, environment, welfare, and institutions committees and the joint budget committee of the general assembly on the moneys credited to the emergency medical services account and on the expenditure of such moneys during the preceding fiscal year. Such report shall contain a listing of the grant recipients, proposed projects, and a statement of the short-term and long-term planning goals of the department and the council to further implement the provisions of this part 6.

Source: L. 89: Entire part added, p. 1152, § 2, effective July 1. L. 92: Entire section amended, p. § 1147, § 5, effective May 29. L. 2000: Entire section amended, p. 537, § 15, effective July 1; entire section amended, p. 461, § 3, effective August 2.

Editor's note: Amendments to this section by Senate Bill 00-180 and House Bill 00-1297 were harmonized.

25-3.5-607. Repeal of part. (Repealed)

Source: L. 89: Entire part added, p. 1152, § 2, effective July 1. L. 92: Entire section amended, p. 1147, § 6, effective May 29. L. 96: Entire section repealed, p. 170, § 1, effective April 8.

PART 7

STATEWIDE TRAUMA SYSTEM

Editor's note: This part 7 was repealed and reenacted in 1994 and was subsequently repealed and reenacted in 1995, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 7 prior to 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

25-3.5-701. Short title. This part 7 shall be known and may be cited as the "Statewide Trauma Care System Act".

Source: L. 95: Entire part R&RE, p. 1351, § 3, effective July 1.

25-3.5-702. Legislative declaration. (1) The general assembly hereby finds and declares that trauma is the greatest single cause of death and disability in Colorado for persons under the age of forty-five years and that trauma care is a unique type of emergency medical service.

(2) The general assembly further finds that a trauma system task force made up of various emergency health and trauma care entities submitted a report to the general assembly in 1993 indicating a compelling need to develop and implement a statewide trauma care system in order to assure that appropriate resources are available to trauma victims from the point of injury through rehabilitative care. In addition, a statewide system is essential to provide Colorado residents and visitors with a greater probability of surviving a life-threatening injury and to reduce trauma-related morbidity and mortality in this state.

(3) The general assembly, therefore, declares that it is necessary to enact legislation directing the board of health to adopt rules that govern the implementation and oversight of the trauma care system. The general assembly further declares that to ensure the availability and coordination of resources necessary to provide essential care, it is necessary to enact legislation that directs the department of public health and environment to collaborate with existing agencies and organizations, including governing bodies for counties and cities and counties, in implementing and monitoring a statewide trauma care system.

Source: L. 95: Entire part R&RE, p. 1351, § 3, effective July 1.

25-3.5-703. Definitions. As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2000, p. 537, § 16, effective July 1, 2000.)

(2) "Board" means the state board of health.

(3) Repealed.

(3.5) "Council" means the state emergency medical and trauma services advisory council created by section 25-3.5-104.

(4) "Designation" means the process undertaken by the department to assign a status to a health care facility based on the level of trauma services the facility is capable of and committed to providing to injured persons. Facilities may be designated at one of the following levels:

(a) Nondesignated, which is for facilities that do not meet the criteria required for level I to V facilities, but that receive and are accountable for injured persons, which accountability includes having a transfer agreement to transfer persons to level I to V facilities as determined by rules promulgated by the board;

(a.5) Level V, which is for basic trauma care in rural areas, including resuscitation, stabilization, and arrangement for the transfer of all patients with potentially life- or limb-threatening injuries, consistent with triage and transport protocols as recommended by the council and adopted by the board. Level V facilities shall transfer patients within their own region or to a higher level facility in another region, as described in paragraphs (c), (d), and (e) of this subsection (4).

(b) Level IV, which is for basic trauma care, including resuscitation, stabilization, and arrangement for appropriate transfer of persons requiring a higher level of care based upon patient criticality and triage practices within each facility, which are consistent with triage criteria and transport protocols as recommended by the council and adopted by the board. These facilities must transfer appropriate patients to a higher level facility within their own region or to a higher level facility in another region, as described in paragraphs (d) and (e) of this subsection (4).

(c) Level III, which is for general trauma care, including resuscitation, stabilization, and assessment of injured persons, and either the provision of care for the injured person or arrangement for appropriate transfer based upon patient criticality and triage practices within each facility, which are consistent with triage criteria and transport protocols as recommended by the council and adopted by the board. The facilities must transfer appropriate patients to a higher level facility within its own region or to a higher level facility in another region, as described in paragraphs (d) and (e) of this subsection (4).

(d) Level II, which is for major trauma care based upon patient criticality and triage practices within each facility, which are consistent with triage criteria and transport protocols as recommended by the council and adopted by the board. This type of facility may serve as a resource for lower level facilities when a level I facility, as described in paragraph (e) of this subsection (4), is not available within its region, but it is not a facility required to conduct research or provide comprehensive services through subspecialty units such as, but not limited to, burn units, spinal cord injury centers, eye trauma centers, and reimplantation centers.

(e) Level I, which is for comprehensive trauma care, including the acute management of the most severely injured patients, which is a facility that may serve as the ultimate resource for lower level facilities or as the key resource facility for a trauma area and which is a facility that provides education in trauma-related areas for health care professionals and performs trauma research;

(f) Regional pediatric trauma center, which is a facility that provides comprehensive pediatric trauma care, including acute management of the most severely injured pediatric trauma patients, and is a facility that may serve as an ultimate resource for lower level facilities on pediatric trauma care, and which is a facility that performs pediatric trauma research and provides pediatric trauma education for health care professionals. No facility shall be deemed a regional pediatric trauma center unless the facility predominately serves children and is a facility where at least eighty-five percent of hospital admissions are for individuals who are under eighteen years of age. A separate administrative unit within a general hospital or hospital system shall not be deemed a regional pediatric trauma center.

(5) (Deleted by amendment, L. 2000, p. 537, § 16, effective July 1, 2000.)

(6) "Interfacility transfer" means the movement of a trauma victim from one facility to another.

(6.5) "Key resource facility" means a level I or level II certified trauma facility that provides consultation and technical assistance to a RETAC, as such term is defined in subsection (6.8) of this section, regarding education, quality, training, communication, and other trauma issues described in this part 7 that relate to the development of the statewide trauma care system.

(6.8) "Regional emergency medical and trauma services advisory council" or "RETAC" means the representative body appointed by the governing bodies of counties or cities and counties for the purpose of providing recommendations concerning regional area emergency medical and trauma service plans for such counties or cities and counties.

(7) Repealed.

(8) "Statewide trauma registry" means a statewide data base of information concerning injured persons and licensed facilities receiving injured persons, which information is used to evaluate and improve the quality of patient management and care and the quality of trauma education, research, and injury prevention programs. The data base integrates medical and trauma systems information related to patient diagnosis and provision of care. Such information includes epidemiologic and demographic information.

(9) "Trauma" means an injury or wound to a living person caused by the application of an external force or by violence. Trauma includes any serious life-threatening or limb-threatening situations.

(10) “Trauma care system” means an organized approach to providing quality and coordinated care to trauma victims throughout the state on a twenty-four-hour per day basis by transporting a trauma victim to the appropriate trauma designated facility.

(11) “Trauma transport protocols” means written standards adopted by the board that address the use of appropriate resources to move trauma victims from one level of care to another on a continuum of care.

(12) “Triage” means the assessment and classification of an injured person in order to determine the severity of trauma injury and to prioritize care for the injured person.

(13) “Verification process” means a procedure to evaluate a facility’s compliance with trauma care standards established by the board and to make recommendations to the department concerning the designation of a facility.

Source: **L. 95:** Entire part R&RE, p. 1352, § 3, effective July 1. **L. 99:** (4) amended, p. 412, § 1, effective April 22. **L. 2000:** (1), (4)(a), (4)(b), (4)(c), (4)(d), (4)(f), (5), and (6.5) amended and (3.5), (4)(a.5), and (6.8) added, pp. 537, 538, §§ 16, 17, effective July 1; (3) and (7) repealed, p. 547, § 26, effective January 1, 2001.

25-3.5-704. Statewide emergency medical and trauma care system - development and implementation - duties of department - rules adopted by board. (1) The department shall develop, implement, and monitor a statewide emergency medical and trauma care system in accordance with the provisions of this part 7 and with rules adopted by the state board. The system shall be implemented statewide no later than July 1, 1997. In addition, the board shall cooperate with the department of personnel in adopting criteria for adequate communications systems that counties shall be required to identify in regional emergency medical and trauma system plans in accordance with subsection (2) of this section. Pursuant to section 24-50-504 (2), C.R.S., the department may contract with any public or private entity in performing any of its duties concerning education, the statewide trauma registry, and the verification process as set forth in this part 7.

(2) The board shall adopt rules for the statewide emergency medical and trauma care system, including but not limited to the following:

(a) **Minimum services in rendering patient care.** These rules ensure the appropriate access through designated centers to the following minimum services:

- (I) Prehospital care;
- (II) Hospital care;
- (III) Rehabilitative care;
- (IV) Injury prevention;
- (V) Disaster medical care;
- (VI) Education and research; and
- (VII) Trauma communications.

(b) **Transport protocols.** The board shall set forth trauma transport protocols in these rules, which include but are not limited to a requirement that a facility that receives an injured person provide the appropriate available care, which may include stabilizing an injured person before transferring that person to the appropriate facility based on the person’s injury. These rules ensure that when the most appropriate trauma facility for an injured person is not easily accessible in an area, that person will be transferred as soon as medically feasible to the nearest appropriate facility, which may be in or out of the state. These rules shall conform with applicable federal law governing the transfer of patients.

(c) **Regional emergency medical and trauma advisory councils - plans established - process.** (1) These rules provide for the implementation of regional emergency medical and trauma system plans that describe methods for providing the appropriate service and care to persons who are ill or injured in areas included under a regional emergency medical and trauma system plan. In these rules, the board shall specify that:

(A) The governing body of each county or city and county throughout the state shall establish a regional emergency medical and trauma advisory council (RETAC) with the governing body of four or more other counties, or with the governing body of a city and county, to form a multicounty RETAC. The number of members on a RETAC shall be defined by the participating counties. Membership shall reflect, as equally as possible,

representation between hospital and prehospital providers and from each participating county and city and county. There shall be at least one member from each participating county and city and county in the RETAC. Each county within a RETAC shall be located in reasonable geographic proximity to the other counties and city and counties within the same RETAC. In establishing a RETAC, the governing body shall obtain input from health care facilities and providers within the area to be served by the RETAC. If the governing body for a county or city and county fails to establish a RETAC by July 1, 2002, two counties with a combined population of at least seven hundred fifty thousand residents may apply to the council for establishment of a RETAC of fewer than four counties. The council shall conduct a hearing with all counties that may be affected by the establishment of a RETAC with fewer than four counties before deciding whether to grant such application. The decision on such an application shall be completed within sixty days after the date of application. For all other counties that do not qualify as a two-county RETAC and that have not established a RETAC by July 1, 2002, the council shall designate an established RETAC to serve as the county's or city and county's RETAC.

(B) No later than July 1, 2003, each RETAC with approval from the governing bodies for a multicounty RETAC shall submit a regional emergency medical and trauma system plan to the council for approval by the department. If the governing body for a county or city and county fails to submit a plan, if a county or city and county is not included in a multicounty plan, or, if a multicounty plan is not approved pursuant to a procedure established by the board for approving plans, the department shall design a plan for the county, city and county, or multicounty area.

(II) In addition to any issues the board requires to be addressed, every regional emergency medical and trauma system plan shall address the following issues:

(A) The provision of minimum services and care at the most appropriate facilities in response to the following factors: Facility-established triage and transport plans; interfacility transfer agreements; geographical barriers; population density; emergency medical services and trauma care resources; and accessibility to designated facilities;

(B) The level of commitment of counties and city and counties under a regional emergency medical and trauma system plan to cooperate in the development and implementation of a statewide communications system and the statewide emergency medical and trauma care system;

(C) The methods for ensuring facility and county or city and county adherence to the regional emergency medical and trauma system plan, compliance with board rules and procedures, and commitment to the continuing quality improvement system described in paragraph (h) of this subsection (2);

(D) A description of public information, education, and prevention programs to be provided for the area;

(E) A description of the functions that will be contracted services; and

(F) The identification of regional emergency medical and trauma system needs through the use of a needs assessment instrument developed by the department; except that the use of such instrument shall be subject to approval by the counties and city and counties included in a RETAC.

(III) The board shall specify in regional emergency medical and trauma system plan rules the time frames for approving regional emergency medical and trauma system plans and for resubmitting plans, as well as the number of times the plans may be resubmitted by a governing body before the department designs a plan for a multicounty area. The department shall provide technical assistance to any RETAC for preparation, implementation, and modification, as necessary, of regional emergency medical and trauma system plans.

(IV) (A) A county may request that the county be included in two separate RETACs because of geographical concerns. The council shall review and approve any request that a county be divided prior to inclusion within two separate RETACs if the county demonstrates such a division will not adversely impact the emergency medical and trauma needs for the county, that such a division is beneficial to both RETACs, and that such division does not create a RETAC with fewer than five contiguous counties, except for RETACs that

contain two counties with a combined population of at least seven hundred fifty thousand residents pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (c).

(B) A county that is included in two separate RETACs may request that the council allocate any portion of the fifteen thousand dollars received by a RETAC, pursuant to section 25-3.5-603, between the two separate RETACs.

(d) **Designation of facilities.** The designation rules shall provide that every facility in this state required to be licensed in accordance with article 3 of this title and that receives ambulance patients shall participate in the statewide emergency medical and trauma care system. Each such facility shall submit an application to the department requesting designation as a specific level trauma facility or requesting nondesignation status. A facility that is given nondesignated status shall not represent that it is a designated facility, as prohibited in section 25-3.5-707. The board shall include provisions for the following:

(I) The criteria to be applied for designating and periodically reviewing facilities based on level of care capability providing trauma care. In establishing such criteria, the board shall take into consideration recognized national standards including, but not limited to, standards on trauma resources for optimal care of the injured patient adopted by the American college of surgeons' committee and the guidelines for trauma care systems adopted by the American college of emergency physicians.

(II) A verification process;

(III) The length of a designation period;

(IV) The process for evaluating, reviewing, and designating facilities, including an ongoing periodic review process for designated facilities, which process shall take into account the national standards referenced in subparagraph (I) of this paragraph (d). Each facility shall be subject to review in accordance with rules adopted pursuant to this paragraph (d). In the event a certified facility seeks to be designated at a different level or seeks nondesignation status, the facility shall comply with the board's procedures for initial designation.

(V) Disciplinary sanctions, which shall be limited to the revocation of a designation, temporary suspension while the facility takes remedial steps to correct the cause of the discipline, redesignation, or assignment of nondesignation status to a facility;

(VI) A designation fee established in accordance with section 25-3.5-705; and

(VII) An appeals process concerning department decisions in connection with evaluations, reviews, designations, and sanctions.

(e) **Communications system.** (I) The communications system rules shall require that a regional emergency medical and trauma system plan ensure citizen access to emergency medical and trauma services through the 911 telephone system or its local equivalent and that the plan include adequate provisions for:

(A) Public safety dispatch to ambulance service and for efficient communication from ambulance to ambulance and from ambulance to a designated facility;

(B) Efficient communications among the trauma facilities and between trauma facilities and other medical care facilities;

(C) Efficient communications among service agencies to coordinate prehospital, day-to-day, and disaster activities; and

(D) Efficient communications among counties and RETACs to coordinate prehospital, day-to-day, and disaster activities.

(II) In addition, the board shall require that a regional emergency medical and trauma system plan identify the key resource facilities for the area. The key resource facilities shall assist the RETAC in resolving trauma care issues that arise in the area and in coordinating patient destination and interfacility transfer policies to assure that patients are transferred to the appropriate facility for treatment in or outside of the area.

(f) **Statewide trauma registry.** (I) The registry rules shall require the department to establish and oversee the operation of a statewide trauma registry. The rules shall allow for the provision of technical assistance and training to designated facilities within the various trauma areas in connection with requirements to collect, compile, and maintain information for the statewide central registry. Each licensed facility, clinic, or prehospital provider that provides any service or care to or for persons with trauma injury in this state shall collect the information described in this subparagraph (I) about any such person who is admitted

to a hospital as an inpatient or transferred from one facility to another or who dies from trauma injury. The facility, clinic, or prehospital provider shall submit the following information to the registry:

- (A) Admission and readmission information;
- (B) Number of trauma deaths;
- (C) Number and types of transfers to and from the facility or the provider; and
- (D) Injury cause, type, and severity.

(II) In addition to the information described in subparagraph (I) of this paragraph (f), facilities designated as level I, II, or III shall provide such additional information as may be required by board rules.

(III) The registry rules shall include provisions concerning access to information in the registry that does not identify patients or physicians. Any data maintained in the registry that identifies patients or physicians shall be strictly confidential and shall not be admissible in any civil or criminal proceeding.

(g) **Public information, education, and injury prevention.** The department and county, district, and municipal public health agencies may operate injury prevention programs, but the public information, education, and injury prevention rules shall require the department and county, district, and municipal public health agencies to consult with the state and regional emergency medical and trauma advisory councils in developing and implementing area and state-based injury prevention and public information and education programs including, but not limited to, a pediatric injury prevention and public awareness component. In addition, the rules shall require that regional emergency medical and trauma system plans include a description of public information and education programs to be provided for the area.

(h) (I) **Continuing quality improvement system (CQI).** These rules require the department to oversee a continuing quality improvement system for the statewide emergency medical and trauma care system. The board shall specify the methods and periods for assessing the quality of regional emergency medical and trauma systems and the statewide emergency medical and trauma care system. These rules include, but are not limited to, the following requirements:

(A) That RETACs assess periodically the quality of their respective regional emergency medical and trauma system plans and that the state assess periodically the quality of the statewide emergency medical and trauma care system to determine whether positive results under regional emergency medical and trauma system plans and the statewide emergency medical and trauma care system can be demonstrated;

(B) That all facilities comply with the trauma registry rules;

(C) That reports concerning regional emergency medical and trauma system plans include results for the emergency medical and trauma area, identification of problems under the regional emergency medical and trauma system plan, and recommendations for resolving problems under the plan. In preparing these reports, the RETACs shall obtain input from facilities, counties included under the regional emergency medical and trauma system plan, and service agencies.

(D) That the names of patients or information that identifies individual patients shall be kept confidential and shall not be publicly disclosed without the patient's consent;

(E) That the department be allowed access to prehospital, hospital, and coroner records of emergency medical and trauma patients to assess the continuing quality improvement system for the area and state-based injury prevention and public information and education programs pursuant to paragraph (g) of this subsection (2). All information provided to the department shall be confidential pursuant to subparagraph (II) of this paragraph (h). To the greatest extent possible, patient-identifying information shall not be gathered. If patient-identifying information is necessary, the department shall keep such information strictly confidential, and such information may only be released outside of the department upon written authorization of the patient. The department shall prepare an annual report that includes an evaluation of the statewide emergency medical and trauma services system. Such report shall be distributed to all designated trauma centers, ambulance services, and service agencies and to the chairpersons of the health and human services committees of the house of representatives and the senate, or any successor committees.

(II) Any data or information related to the identification of individual patient's, provider's, or facility's care outcomes collected as a result of the continuing quality improvement system and any records or reports collected or compiled as a result of the continuing quality improvement system are confidential and are exempt from the open records law in part 2 of article 72 of title 24, C.R.S. Such data, information, records, or reports shall not be subject to subpoena or discovery and shall not be admissible in any civil action, except pursuant to a court order that provides for the protection of sensitive information about interested parties. Nothing in this subparagraph (II) shall preclude the patient or the patient's representative from obtaining the patient's medical records as provided in section 25-1-801. Nothing in this subparagraph (II) shall be construed to allow access to confidential professional review committee records or reviews conducted under article 36.5 of title 12, C.R.S.

(III) That reports concerning regional emergency medical and trauma system plans include results for the emergency medical and trauma area, identification of problems under the regional emergency medical and trauma system plan, and recommendations for resolving problems under the plan. In preparing these reports, the RETACs shall obtain input from facilities, counties included under the regional emergency medical and trauma system plan, and service agencies.

(i) **Trauma care for pediatric patients.** The trauma care for pediatric patient rules shall provide for the improvement of the quality of care for pediatric patients.

(3) The board shall adopt rules that take into consideration recognized national standards for emergency medical and trauma care systems, such as the standards on trauma resources for optimal care of the injured patient adopted by the American college of surgeons' committee on trauma and the guidelines for emergency medical and trauma care systems adopted by the American college of emergency physicians and the American academy of pediatrics.

(4) The board shall adopt and the department shall use only cost-efficient administrative procedures and forms for the statewide emergency medical and trauma care system.

(5) In adopting its rules, the board shall consult with and seek advice from the council, as defined in section 25-3.5-703 (3.5), where appropriate, and from any other appropriate agency. In addition, the board shall obtain input from appropriate health care agencies, institutions, facilities, and providers at the national, state, and local levels and from counties and city and counties.

Source: **L. 95:** Entire part R&RE, p. 1354, § 3, effective July 1. **L. 96:** (1) amended, p. 1471, § 19, effective June 1. **L. 99:** IP(2) and (2)(h) amended, p. 413, § 2, effective April 22. **L. 2002:** (1), IP(2), (2)(c), IP(2)(d), (2)(d)(IV), (2)(d)(V), (2)(e), (2)(f)(III), (2)(g), IP(2)(h)(I), (2)(h)(I)(A), (2)(h)(I)(C), (2)(h)(III), (3), (4), and (5) amended and (2)(h)(I)(E) added, p. 699, § 4, effective May 29. **L. 2003:** (2)(d)(I) and (2)(d)(IV) amended, p. 2057, § 1, effective May 22; (2)(h)(I)(E) amended, p. 2007, § 85, effective May 22. **L. 2004:** (1) amended, p. 1693, § 27, effective July 1, 2005. **L. 2005:** IP(2)(d) amended, p. 281, § 15, effective August 8. **L. 2007:** (2)(h)(I)(E) amended, p. 2041, § 66, effective June 1. **L. 2010:** (2)(g) amended, (HB 10-1422), ch. 419, p. 2092, § 88, effective August 11.

25-3.5-705. Creation of fee - creation of trauma system cash fund. (1) The board is authorized, by rule, to establish a schedule of fees based on the direct and indirect costs incurred in designating facilities. In addition, the department is authorized to collect the appropriate fee on the schedule. The board may adjust fees in amounts necessary to cover such costs. The fees collected pursuant to this section shall be deposited in the trauma system cash fund created by subsection (2) of this section.

(2) There is hereby created in the state treasury a statewide trauma care system cash fund. All moneys in the fund shall be subject to appropriation by the general assembly for allocation to the department to administer the trauma system. Any moneys in the fund not appropriated shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All interest derived from the deposit and investment of moneys in the fund shall remain in the fund.

Source: L. 95: Entire part R&RE, p. 1359, § 3, effective July 1.

25-3.5-706. Immunity from liability. The department, the board, the council as defined in section 25-3.5-703 (3.5), a RETAC as defined in section 25-3.5-703 (6.8), the emergency medical practice advisory council created in section 25-3.5-206, key resource facilities, any other public or private entity acting on behalf of or under contract with the department, and counties and cities and counties shall be immune from civil and criminal liability and from regulatory sanction for acting in compliance with the provisions of this part 7. Nothing in this section shall be construed as providing any immunity to such entities or any other person in connection with the provision of medical treatment, care, or services that are governed by the medical malpractice statutes, article 64 of title 13, C.R.S.

Source: L. 95: Entire part R&RE, p. 1360, § 3, effective July 1. L. 2000: Entire section amended, p. 545, § 19, effective July 1. L. 2010: Entire section amended, (HB 10-1260), ch. 403, p. 1948, § 12, effective July 1.

25-3.5-707. False representation as trauma facility - penalty. (1) No facility, or agent or employee of a facility, shall represent that the facility functions as a level I, II, III, IV, or V trauma facility unless the facility possesses a valid certificate of designation issued pursuant to section 25-3.5-704 (2) (d). In addition, no facility, provider, or person shall violate any rule adopted by the board.

(2) Any facility, provider, or person who violates the provisions of subsection (1) of this section is subject to a civil penalty, which the board shall establish by rule, but which shall not exceed five hundred dollars. The penalty shall be assessed and collected by the department. Before a fee is collected, a facility, provider, or person shall be provided an opportunity for review of the assessed penalty. The procedures for review shall be in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and board rules. Any penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the statewide trauma care system cash fund created in section 25-3.5-705.

Source: L. 95: Entire part R&RE, p. 1360, § 3, effective July 1. L. 2000: (1) amended, p. 545, § 20, effective July 1.

25-3.5-708. Financing for statewide trauma system. (1) The implementation of the statewide trauma system shall be subject to the availability of:

(a) Federal transportation highway safety seed moneys that the department of transportation transfers to the department of public health and environment pursuant to an intergovernmental agreement between the two agencies;

(b) Moneys from the emergency medical services account within the highway users tax fund that are unexpended portions of state administrative funds that may be allocated pursuant to section 25-3.5-603 (2) (c). Nothing in this paragraph (b) shall be construed to authorize moneys that may be allocated pursuant to section 25-3.5-603 (2) (a) (I) or (2) (b) to be used for the financing of the administration of the statewide trauma system.

(c) Moneys from the statewide trauma care system cash fund created in section 25-3.5-705.

(2) In addition to any funds available pursuant to subsection (1) of this section, the executive director of the department of public health and environment is hereby authorized to accept any grants, donations, gifts, or contributions from any other private or public entity for the purpose of implementing this part 7.

Source: L. 95: Entire part R&RE, p. 1360, § 3, effective July 1.

25-3.5-709. Annual report. No later than January 1, 1999, and prior to November 1 of each year thereafter, the department, in cooperation with the council, as defined in section 25-3.5-703 (3.5), shall submit a report to the health, environment, welfare, and institutions

committees and the joint budget committee of the general assembly on the quality of the statewide emergency medical and trauma care system. Such report shall include an evaluation of each component of the statewide emergency medical and trauma care system and any recommendation for legislation concerning the statewide emergency medical and trauma care system or any component thereof.

Source: **L. 95:** Entire part R&RE, p. 1361, § 3, effective July 1. **L. 2000:** Entire section amended, p. 545, § 21, effective July 1; entire section amended, p. 462, § 4, effective August 2.

Editor's note: Amendments to this section by Senate Bill 00-180 and House Bill 00-1297 were harmonized.

PART 8

TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS

25-3.5-801. Short title. This part 8 shall be known and may be cited as the "Tobacco Education, Prevention, and Cessation Act".

Source: **L. 2000:** Entire part added, p. 613, § 13, effective May 18.

25-3.5-802. Legislative declaration. (1) The general assembly hereby finds that:

(a) The use of all types of tobacco products, including smokeless tobacco, results in a high incidence of addiction, disease, illness, and death;

(b) Persons who begin using and become addicted to tobacco products in their youth often face a lifetime of struggle and recurring illness in coping with and attempting to overcome addiction to tobacco products;

(c) Experimentation with tobacco products by youth is often a first step toward more serious drug experimentation and creates a greater likelihood that the youth who experiment with tobacco will at some point be addicted to even more harmful substances;

(d) Implementation of aggressive tobacco and substance abuse prevention, education, and cessation programs for school-age children is necessary to assist young people in avoiding and ending tobacco use;

(e) School districts, schools, and other entities that provide tobacco and substance abuse prevention, education, and cessation programs for school-age children should reach out to parents and encourage them to participate, either as students or role models, in implementing said programs.

(2) The general assembly hereby finds that persons with mental illness are more likely to abuse tobacco products than any other segment of society. The general assembly further finds that the unusually heavy pattern of tobacco abuse engaged in by persons with mental illness requires special treatment strategies that are not provided by other alcohol, drug, or tobacco abuse programs. It is therefore the general assembly's intent that the programs funded pursuant to this part 8 include comprehensive programs to prevent and treat tobacco addiction among persons with mental illness.

(3) The general assembly also finds that:

(a) Each year, thousands of people in this state die from diseases that have been clinically proven to be caused by or directly related to tobacco use;

(b) Once a person starts using tobacco, he or she usually becomes addicted to the nicotine contained in the tobacco, which makes it terribly difficult for the person to quit using tobacco even when the person is aware of the significant health risks that accompany tobacco use;

(c) Studies show that a child is at a substantially greater risk of starting to use tobacco if the child's parents or older siblings use tobacco. Therefore, reducing tobacco use by adults may significantly reduce the risk that children will begin using tobacco.

(d) Annual direct medical costs from tobacco use in Colorado currently exceed one billion dollars;

(e) Comprehensive tobacco education, prevention, and cessation programs may result in millions of dollars in savings to the state and individual residents of the state for generations.

Source: **L. 2000:** Entire part added, p. 613, § 13, effective May 18. **L. 2005:** (3)(d) amended, p. 932, § 22, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (3)(d), see section 1 of chapter 241, Session Laws of Colorado 2005.

25-3.5-803. Definitions. As used in this part 8, unless the context otherwise requires:

(1) “Division” means the division within the department of public health and environment responsible for prevention services.

(2) “Entity” means any local government, county, district, or municipal public health agency, political subdivision of the state, county department of social services, state agency, state institution of higher education that offers a teacher education program, school, school district, or board of cooperative services or any private nonprofit or not-for-profit community-based organization. “Entity” also means a for-profit organization that applies for a grant for the sole purpose of providing a statewide public information campaign concerning tobacco use prevention and cessation.

(3) “Master settlement agreement” means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.

(4) “Program” means the tobacco education, prevention, and cessation grant program created in section 25-3.5-804.

(5) “State board” means the state board of health created in section 25-1-103.

Source: **L. 2000:** Entire part added, p. 614, § 13, effective May 18. **L. 2005:** (2) amended, p. 932, § 23, effective June 2. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1970, § 85, effective August 5. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2092, § 89, effective August 11.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (2), see section 1 of chapter 241, Session Laws of Colorado 2005.

25-3.5-804. Tobacco education, prevention, and cessation programs - review committee - grants. (1) There is hereby created the tobacco education, prevention, and cessation grant program to provide funding for community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to secondhand smoke. Any such tobacco programs may be presented in combination with other substance abuse programs. The program shall be administered by the division within the department and coordinated with efforts pursuant to part 5 of article 35 of title 24, C.R.S. The state board shall award grants to selected entities from moneys appropriated to the department from the tobacco education programs fund created in section 24-22-117, C.R.S.

(2) The state board shall adopt rules that specify, but are not necessarily limited to, the following:

(a) The procedures and timelines by which an entity may apply for program grants;

(b) Grant application contents;

(c) Criteria for selecting those entities that shall receive grants and determining the amount and duration of said grants;

(d) Reporting requirements for entities that receive grants pursuant to this part 8.

(3) (a) The division shall review the applications received pursuant to this part 8 and make recommendations to the state board regarding those entities that may receive grants and the amounts of said grants. On and after October 1, 2005, the review committee shall review the applications received pursuant to this part 8 and submit to the state board and the director of the department recommended grant recipients, grant amounts, and the duration of each grant. Within thirty days after receiving the review committee's recommendations, the director shall submit his or her recommendations to the state board. The review committee's recommendations regarding grantees of the Tony Grampsas youth services program, section 25-20.5-201, pursuant to section 25-3.5-805 (5) shall be submitted to the state board and the Tony Grampsas youth services board. Within thirty days after receiving the review committee's recommendations, the Tony Grampsas youth services board shall submit its recommendations to the state board. The state board shall have the final authority to approve the grants under this part 8. If the state board disapproves a recommendation for a grant recipient, the review committee may submit a replacement recommendation within thirty days. In reviewing grant applications for programs to provide tobacco education, prevention, and cessation programs for persons with mental illness, the division or the review committee shall consult with the programs for public psychiatry at the university of Colorado health sciences center, the national alliance for the mentally ill, the mental health association of Colorado, and the department of human services.

(b) The state board shall award grants to the selected entities, specifying the amount and duration of the award. No grant awarded pursuant to this part 8 shall exceed three years without renewal. Of the amount awarded each year pursuant to the provisions of this part 8, the state board shall award at least one-third of the amount to entities that provide tobacco education, prevention, and cessation programs, solely or in combination with substance abuse programs, to school-age children.

(4) In implementing the program, the division shall survey the need for trained teachers, health professionals, and others involved in providing tobacco education, prevention, and cessation programs. To the extent the division determines there is a need, the division may provide technical training and assistance to entities that receive program grants pursuant to this part 8.

(5) (a) There is hereby created the tobacco education, prevention, and cessation grant program review committee, referred to in this part 8 as the "review committee". The review committee is established in the division. The review committee is responsible for ensuring that program priorities are established consistent with the Colorado tobacco prevention and control strategic plan, overseeing program strategies and activities, and ensuring that the program grants are in compliance with section 25-3.5-805.

(b) The review committee shall consist of the following sixteen members:

(I) The director of the department or the director's designee;

(II) Five members who shall be appointed by the director of the department, one of whom shall include the director of the tobacco education, prevention, and cessation program within the division and four of whom shall be staff of the program with expertise in tobacco prevention among youth, reducing exposure to secondhand smoke, tobacco cessation, or public education.

(III) Eight members who shall be appointed by the state board as follows:

(A) One member who is a member of the state board;

(B) One member who is a representative of a local public health agency;

(C) One member who is a representative of a statewide association representing physicians;

(D) One member who is a representative of an association representing family physicians;

(E) One member who is a representative of the Colorado department of education;

(F) One member who is a representative of the university of Colorado health sciences center who has expertise in evaluation;

(G) One member who represents a socio-demographic disadvantaged population in Colorado; and

(H) One member who is a representative of a statewide nonprofit organization with a demonstrated expertise in and commitment to tobacco control.

(IV) The president of the senate shall appoint one member of the senate.

(V) The speaker of the house of representatives shall appoint one member of the house of representatives.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), members of the review committee shall serve three-year terms; except that of the members initially appointed to the review committee, five members appointed by the state board shall serve two-year terms. Members of the review committee appointed pursuant to subparagraph (III) of paragraph (b) of this subsection (5) shall not serve more than two consecutive terms.

(II) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in subparagraphs (IV) and (V) of paragraph (b) of this subsection (5). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(d) The composition of the review committee shall reflect, to the extent practical, Colorado's ethnic, racial, and geographic diversity.

(e) Members of the review committee shall serve without compensation but shall be reimbursed from moneys deposited in the tobacco education programs fund created in section 24-22-117, C.R.S., for their actual and necessary expenses incurred in the performance of their duties pursuant to this part 8.

(f) The review committee shall elect from its membership a chair and a vice-chair of the committee.

(g) The division shall provide staff support to the review committee.

(h) If a member of the review committee has an immediate personal, private, or financial interest in any matter pending before the review committee, the member shall disclose the fact and shall not vote upon such matter.

Source: **L. 2000:** Entire part added, p. 615, § 13, effective May 18. **L. 2005:** (1) amended, p. 911, § 16, effective June 2; (1) and (3)(a) amended and (5) added, p. 932, § 24, effective June 2. **L. 2007:** (5)(c) amended, p. 187, § 23, effective March 22. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1970, § 86, effective August 5.

Editor's note: Amendments to subsection (1) by House Bill 05-1261 and House Bill 05-1262 were harmonized.

Cross references: For the legislative declaration contained in the 2005 act amending subsections (1) and (3)(a) and enacting subsection (5), see section 1 of chapter 241, Session Laws of Colorado 2005.

25-3.5-805. Tobacco education, prevention, and cessation programs - requirements. (1) An entity that applies for a grant pursuant to the provisions of this part 8 shall in the application demonstrate that the tobacco education, prevention, or cessation program provides at least one of the following:

(a) Education designed for school-age children that, at a minimum, addresses tobacco use prevention and cessation strategies and the dangers of tobacco use; or

(b) Education programs, including but not limited to school, work site, mass media, and health-care setting programs, designed to prevent or reduce the use of all types of tobacco products or help reduce exposure to secondhand smoke; or

(c) Counseling regarding the use of all types of tobacco products; or

(d) Programs that address prevention and cessation of the abuse of various types of drugs, with an emphasis on prevention and cessation of tobacco use; or

(e) (Deleted by amendment, L. 2005, p. 935, § 25, effective June 2, 2005.)

(f) Tobacco use and substance abuse prevention and cessation services addressed to specific population groups such as adolescents and pregnant women and provided within specific ethnic and low-income communities; or

(g) Training of teachers, health professionals, and others in the field of tobacco use and prevention; or

(h) Tobacco addiction prevention and treatment strategies that are designed specifically for persons with mental illness; or

(i) Activities to prevent the sale or furnishing by other means of cigarettes or tobacco products to minors; or

(j) Programs that are designed to eliminate health disparities among segments of the population that have higher than average tobacco burdens.

(1.5) Notwithstanding the requirements of subsection (1) of this section, an entity may apply for a grant for the purpose of evaluating the entire statewide program or individual components of the program.

(2) If the entity applying for a grant pursuant to the provisions of this part 8 is a school district or board of cooperative services, in addition to the information specified in subsection (1) of this section, the entity shall demonstrate in the application that the tobacco education, prevention, and cessation program to be operated with moneys received from the grant is a program that has not been previously provided by the school district or board of cooperative services. The entity shall also demonstrate that the program is specifically designed to appeal to and address the concerns of the age group to which the program will be presented.

(3) In adopting criteria for awarding grants, the state board shall adopt such criteria as will ensure that the implementation of a comprehensive program is consistent with the Colorado tobacco prevention and control strategic plan, that tobacco education, prevention, and cessation programs are available throughout the state, and that the programs are available to serve persons of all ages.

(4) At least fifteen percent of the moneys annually awarded to grantees pursuant to this section shall be for the purposes of providing funding to eliminate health disparities among minority populations and high-risk populations that have higher-than-average tobacco burdens.

(5) Up to fifteen percent of the moneys annually awarded pursuant to this section shall be allocated to grantees of the Tony Gramsas youth services program, section 25-20.5-201, for proven tobacco prevention and cessation programs.

(6) The majority of moneys annually awarded to grantees that qualify pursuant to subsections (1), (2), and (5) of this section shall be for evidence-based programs and programs that prevent and reduce tobacco use among youth and young adults.

Source: L. 2000: Entire part added, p. 616, § 13, effective May 18. L. 2005: Entire section amended, p. 935, § 25, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

25-3.5-806. Tobacco education, prevention, and cessation programs - reporting requirements. (1) In adopting rules specifying the reporting requirements for entities that receive grants pursuant to this part 8, the state board shall ensure that such reports, at a minimum, include:

(a) An evaluation of the implementation of the program, including but not limited to the number of persons served and the services provided;

(b) The results achieved by the program, specifying the goals of the program and the criteria used in measuring attainment of the goals;

(c) An explanation of how the results achieved by the program contribute to the achievement of the program goals as stated in section 25-3.5-802.

(2) The division shall compile the annual reports received from entities pursuant to this section and the department shall include the compilation and any other necessary information in the annual report on programs that are funded by moneys received by the state pursuant to the master settlement agreement prepared pursuant to section 25-1-108.5 (3).

(3) (a) The division shall annually review the reports received from entities receiving grants pursuant to this part 8 and shall make recommendations to the state board concerning whether the amount received by an entity should be continued, reduced, or increased. The division may also recommend that the grant for an entity be immediately terminated or not renewed if the tobacco education, prevention, and cessation program funded by the grant does not demonstrate a sufficient level of success, as determined by the division.

(b) The division may contract with one or more public or private entities to review and compile the reports received pursuant to this section and prepare the recommendations pursuant to paragraph (a) of this subsection (3).

Source: L. 2000: Entire part added, p. 617, § 13, effective May 18.

25-3.5-807. Tobacco program fund - created. (Repealed)

Source: L. 2000: Entire part added, p. 618, § 13, effective May 18. L. 2003: (2)(a) amended, p. 465, § 10, effective March 5; (2)(a) amended, p. 2564, § 7, effective June 5. L. 2004: (2)(a) amended and (2)(b) repealed, pp. 1709, 1713, §§ 7, 16, effective June 4. L. 2005: Entire section repealed, p. 912, § 17, effective June 2.

25-3.5-807.5. Transfer of balance of tobacco program fund - repeal. (Repealed)

Source: L. 2009: Entire section added, (SB 09-208), ch. 149, p. 624, § 21, effective April 20.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2009. (See L. 2009, p. 624.)

25-3.5-808. Administration - limitation. The prevention services division of the department may receive up to five percent of the moneys annually appropriated by the general assembly from the tobacco education programs fund created in section 24-22-117, C.R.S., for the actual costs incurred in administering the program, including the hiring of sufficient staff within the division to effectively administer the program and reimbursement of review committee members pursuant to section 25-3.5-804 (5).

Source: L. 2005: Entire section added, p. 936, § 26, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act enacting this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

25-3.5-809. Tobacco education, prevention, and cessation programs - funding. The programs under this part 8 shall be funded by moneys annually appropriated by the general assembly to the department from the tobacco education programs fund created in section 24-22-117, C.R.S.

Source: L. 2005: Entire section added, p. 912, § 18, effective June 2.

Editor's note: This section was originally numbered as § 25-3.5-808 in House Bill 05-1261 but has been renumbered on revision for ease of location.

DISEASE CONTROL

ARTICLE 4

Disease Control

Cross references: For cancer cure control, see article 30 of title 12; for programs of the department of public health and environment for the control of environmental and chronic diseases, see § 25-1.5-102.

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		25-4-403.	Medicine sold only on prescription. (Repealed)
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25-4-110.	Prosecutions - disposition of fines.	25-4-501.	Tuberculosis declared to be an infectious and communicable disease.
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25-4-201.	Pregnant woman to take blood test.	25-4-505.	Laboratories to report. (Deleted by amendment)
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25-4-203.	Birth certificate - blood test.	25-4-507.	Isolation order - enforcement - court review.
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RABIES CONTROL

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 25-4-2503. Cervical cancer immunization program - rules.
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PART 1

SANITARY REGULATIONS

25-4-101. Premises sanitation - food defined. Every building, room, basement, enclosure, or premises occupied, used, or maintained as a bakery, confectionery, cannery,

packing house, slaughterhouse, creamery, cheese factory, restaurant, hotel, grocery, meat market factory, shop, or warehouse, or any public place or manufacturing place used for the preparation, manufacture, packing, storage, sale, or distribution of any food, as defined in this section, which is intended for sale shall be properly and adequately lighted, drained, plumbed, and ventilated and shall be conducted with strict regard to the influence of such conditions upon the health of operatives, employees, clerks, or other persons therein employed and the purity and wholesomeness of the food therein produced, prepared, manufactured, packed, stored, sold, or distributed. For the purposes of this part 1, "food" includes all articles used for food, drink, confectionery, or condiment, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

Source: L. 13: p. 510, § 1. C.L. § 1015. CSA: C. 69, § 21. CRS 53: § 66-13-1. C.R.S. 1963: § 66-13-1.

Cross references: For safety inspections, see articles 1 and 4 of title 9; for the "Slaughter, Processing, and Sale of Meat Animals Act", see article 33 of title 35.

ANNOTATION

Law reviews. For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965).

25-4-102. Sanitary regulations. The floors, sidewalls, ceilings, furniture, receptacles, utensils, dishes, implements, and machinery of every restaurant, hotel kitchen, and establishment or place where such food intended for sale is produced, prepared, manufactured, packed, stored, sold, or distributed and all cars, trucks, and vehicles used in the transportation of such food products shall at no time be kept or permitted to remain in an unclean, unhealthful, or unsanitary condition. For the purpose of this part 1, unclean, unhealthful, and unsanitary conditions shall be deemed to exist if food in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation is not securely protected from flies, dust, dirt, and all other foreign or injurious contamination, as far as may be necessary by all reasonable means; or if the refuse, dirt, or waste products incident to the manufacture, preparation, packing, selling, distributing, or transportation of such food are not removed daily; or if all trucks, trays, boxes, buckets, or other receptacles or the chutes, platforms, racks, tables, shelves, and knives, saws, cleavers, or other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, or other processes are not thoroughly cleaned daily; or if the clothing of operatives, employees, clerks, or other persons therein employed is unclean; or if all dishes, cups, glasses, knives, forks, and spoons are not thoroughly washed in hot or running water and rinsed after each usage; or if dishes, cups, or glasses are used which are so cracked, chipped, or broken as to be detrimental to health; or if all ice-cream cones and straws are not securely covered.

Source: L. 13: p. 511, § 2. L. 21: p. 675, § 1. C.L. § 1016. CSA: C. 69, § 22. CRS 53: § 66-13-2. C.R.S. 1963: § 66-13-2.

25-4-103. Construction requirements. The sidewalls, floors, and ceilings of every bakery, confectionery, creamery, cheese factory, and hotel or restaurant kitchen and every building, room, basement, or enclosure occupied or used for the preparation, manufacture, packing, storage, sale, or distribution of food shall be so constructed that they can easily be kept clean.

Source: L. 13: p. 511, § 3. C.L. § 1017. CSA: C. 69, § 23. CRS 53: § 66-13-3. C.R.S. 1963: § 66-13-3.

25-4-104. Protection from dirt. All such factories, buildings, and other places containing food shall be provided with proper doors and screens necessary and adequate to protect against the contamination of the product from flies, dust, or dirt.

Source: L. 13: p. 511, § 4. L. 21: p. 676, § 2. C.L. § 1018. CSA: C. 69, § 24. CRS 53: § 66-13-4. C.R.S. 1963: § 66-13-4.

25-4-105. Toilet rooms and lavatories. Every such building, room, basement, enclosure, or premises occupied, used, or maintained for the production, preparation, manufacture, canning, packing, storage, sale, or distribution of such food shall have adequate and convenient toilet rooms or lavatories. The toilet rooms shall be separate and apart from the rooms where the process of production, preparation, manufacture, packing, storing, canning, selling, and distributing is conducted. The floors of such toilet rooms shall be of cement, tile, wood, brick, or other nonabsorbent material and shall be washed and scoured daily. Such toilets shall be furnished with separate ventilating flues and pipes discharging into soil pipes or shall be on the outside of and well removed from the building. Lavatories and washrooms shall be maintained in a sanitary condition.

Source: L. 13: p. 511, § 5. C.L. § 1019. CSA: C. 69, § 25. CRS 53: § 66-13-5. C.R.S. 1963: § 66-13-5.

25-4-106. Nuisances - misdemeanor. If any such building, room, basement, enclosure, or premises occupied, used, or maintained for the purposes stated in sections 25-4-101 to 25-4-105 or if the floors, sidewalls, ceilings, furniture, receptacles, utensils, implements, appliances, or machinery of any such establishment shall be constructed, kept, maintained, or permitted to remain in a condition contrary to any of the provisions of sections 25-4-101 to 25-4-105, the same is declared a nuisance. Any toilet room, lavatory, or washroom which shall be constructed, kept, maintained, or permitted to remain in a condition contrary to the requirements of section 25-4-105 is declared a nuisance. Any car, truck, or vehicle used in the moving or transportation of any food product which shall be kept or permitted to remain in an unclean, unhealthful, or unsanitary condition is declared a nuisance. Whoever unlawfully maintains, or allows or permits to exist, a nuisance as defined in this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 25-4-111.

Source: L. 13: p. 512, § 6. L. 21: p. 677, § 3. C.L. § 1020. CSA: C. 69, § 26. CRS 53: § 66-13-6. C.R.S. 1963: § 66-13-6.

25-4-107. Rooms not used for sleeping. It is unlawful for any person to sleep or to allow or permit any person to sleep in any workroom of a bakeshop, kitchen, dining room, confectionery, creamery, cheese factory, or other place where food is prepared for sale, served, or sold unless all foods therein handled are at all times in hermetically sealed packages.

Source: L. 13: p. 512, § 7. C.L. § 1021. CSA: C. 69, § 27. CRS 53: § 66-13-7. C.R.S. 1963: § 66-13-7.

25-4-108. Work by diseased persons forbidden. It is unlawful for any employer to permit any person who works in food preparation and is affected with any contagious or infectious disease that is spread by food to work, or for any person so affected to work, in any capacity in which there is a likelihood that the employee would contaminate food or food-contact surfaces with pathogenic organisms or transmit disease to other persons.

Source: L. 13: p. 512, § 8. C.L. § 1022. CSA: C. 69, § 28. CRS 53: § 66-13-8. C.R.S. 1963: § 66-13-8. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 467, § 1, effective April 9.

25-4-109. Enforcement. (1) It is the duty of the department of public health and environment to enforce this part 1, and, for that purpose, the department has full power at all times to enter every such building, room, basement, enclosure, or premises occupied or used or suspected of being occupied or used for the production, preparation, or manufacture for sale, or the storage, sale, distribution, or transportation of such food, to inspect the premises and all utensils, fixtures, furniture, and machinery used pursuant to the provisions of this subsection (1). Any refusal to permit such inspection shall be deemed a violation of this part 1. If upon inspection any such food producing or distributing establishment, conveyance, or employer, employee, clerk, driver, or other person is found to be violating any of the provisions of this part 1, or if the production, preparation, manufacture, packing, storage, sale, distribution, or transportation of such food is being conducted in a manner detrimental to the health of the employees and operatives or to the character or quality of the food therein produced, prepared, manufactured, packed, stored, sold, distributed, or conveyed, the department of public health and environment shall issue a written order to the person, firm, or corporation responsible for the violation or condition to abate such condition or violation or to make such changes or improvements as may be necessary to abate them within a reasonable time. Notice of such order may be served by delivering a copy thereof to said person, firm, or corporation or by sending a copy thereof by registered mail, and the receipt thereof through the post office shall be prima facie evidence that notice of said order has been received.

(2) Such person, firm, or corporation has the right to appear in person or by attorney before the department of public health and environment, or the person appointed by it for such purpose, within the time limited in the order and shall be given an opportunity to be heard and to show why such order or instructions should not be obeyed. Such hearing shall be under such rules and regulations as may be prescribed by the department. If after such hearing it appears that the provisions or requirements of this part 1 have not been violated, said order shall be rescinded. If it appears that the requirements or provisions of this part 1 are being violated and that the person, firm, or corporation notified is responsible therefor, said previous order shall be confirmed or amended, as the facts shall warrant, and shall thereupon be final, but such additional time as is necessary may be granted within which to comply with said final order. If such person, firm, or corporation is not present or represented when such final order is made, notice thereof shall be given as provided in subsection (1) of this section. Upon failure of the parties to comply with the first order of the department within the time prescribed when no hearing is demanded or upon failure to comply with the final order within the time specified, the department of public health and environment shall certify the facts to the district attorney of the county in which such violation occurred, and such district attorney shall proceed against the parties for the fines and penalties provided by this part 1 and also for the abatement of the nuisance. The proceedings prescribed in this section for the abatement of nuisance as defined in section 25-4-106 shall not in any manner relieve the violator from prosecution in the first instance for any such violation or from the penalties for such violation prescribed by section 25-4-111.

Source: L. 13: p. 513, § 9. L. 21: p. 677, § 4. C.L. § 1023. CSA: C. 69, § 29. CRS 53: § 66-13-9. C.R.S. 1963: § 66-13-9. L. 94: Entire section amended, p. 2758, § 423, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-110. Prosecutions - disposition of fines. All fines collected under the provisions of this part 1 shall be paid to the county treasurer of the county in which the prosecution is brought, and it is the duty of the district attorneys in the respective counties to prosecute all persons violating or refusing to obey the provisions of this part 1.

Source: L. 13: p. 514, § 10. C.L. § 1024. CSA: C. 69, § 30. CRS 53: § 66-13-10. C.R.S. 1963: § 66-13-10.

25-4-111. Penalty. Any person who violates any of the provisions of this part 1 or refuses to comply with any lawful order or requirement of the department of public health and environment, duly made in writing as provided in section 25-4-109, is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than two hundred dollars and for the second and subsequent offenses by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. Each day of noncompliance after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate such conditions, as ordered by the department of public health and environment, constitutes a separate offense.

Source: L. 13: p. 514, § 11. L. 21: p. 679, § 5. C.L. § 1025. CSA: C. 69, § 31. CRS 53: § 66-13-11. C.R.S. 1963: § 66-13-11. L. 94: Entire section amended, p. 2759, § 424, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-112. Rules. The state board of health, created in section 25-1-103, may adopt rules as necessary for the implementation of this article.

Source: L. 2009: Entire section added, (SB 09-179), ch. 112, p. 467, § 2, effective April 9.

PART 2

PRENATAL EXAMINATIONS

25-4-201. Pregnant woman to take blood test. (1) Every licensed health care provider authorized to provide care to a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of blood of the woman at the time of the first professional visit or during the first trimester for testing pursuant to this section. The blood specimen obtained shall be submitted to an approved laboratory for a standard serological test for syphilis and HIV. Every other person permitted by law to attend pregnant women in this state but not permitted by law to take blood samples shall cause a sample of blood of each pregnant woman to be taken by a licensed health care provider authorized to take blood samples and shall have the sample submitted to an approved laboratory for a standard serological test for syphilis and HIV. A pregnant woman may decline to be tested as specified in this subsection (1), in which case the licensed health care provider shall document that fact in her medical record.

(2) If a pregnant woman entering a hospital for delivery has not been tested for HIV during her pregnancy, the hospital shall notify the woman that she will be tested for HIV unless she objects and declines the test. If the woman declines to be tested, the hospital shall document that fact in the pregnant woman's medical record.

Source: L. 39: p. 413, § 1. CSA: C. 78, § 170(1). CRS 53: § 66-11-1. C.R.S. 1963: § 66-11-1. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 467, § 3, effective April 9.

25-4-202. Tests approved by department. (Repealed)

Source: L. 39: p. 413, § 2. CSA: C. 78, § 170(2). CRS 53: § 66-11-2. C.R.S. 1963: § 66-11-2. L. 94: Entire section amended, p. 2760, § 425, effective July 1. L. 2009: Entire section repealed, (SB 09-179), ch. 112, p. 468, § 4, effective April 9.

25-4-203. Birth certificate - blood test. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the certificate whether a blood test for syphilis and HIV has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. In no event shall the birth certificate state the result of the test.

Source: L. 39: p. 413, § 3. CSA: C. 78, § 170(3). CRS 53: § 66-11-3. C.R.S. 1963: § 66-11-3. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 468, § 5, effective April 9.

Cross references. For a certificate of birth, see § 25-2-112.

25-4-204. Penalty. Any licensed physician and surgeon or other person engaged in attendance upon a pregnant woman during the period of gestation or at delivery or any representative of a laboratory who violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars. Every licensed physician and surgeon or other person engaged in attendance upon a pregnant woman during the period of gestation or at delivery who requests such specimen in accordance with the provisions of section 25-4-201 and whose request is refused is not guilty of a misdemeanor.

Source: L. 39: p. 414, § 4. CSA: C. 78, § 170(4). CRS 53: § 66-11-4. C.R.S. 1963: § 66-11-4.

25-4-205. District attorneys to prosecute. The district attorneys in the several districts in the state shall prosecute for violation of this part 2 as for other crimes and misdemeanors.

Source: L. 39: p. 414, § 5. CSA: C. 78, § 170(5). CRS 53: § 66-11-5. C.R.S. 1963: § 66-11-5.

PART 3

BLINDNESS IN NEWLY BORN

25-4-301. Inflammation of eyes. (1) Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eyes of such infant, independent of the nature of the infection, if any, occurring at any time within two weeks after the birth of such infant shall be known as “inflammation of the eyes of the newly born” (ophthalmia neonatorum).

(2) It is the duty of any physician, nurse, or other person who assists or is in charge at the birth of an infant or is charged with the care of the infant after birth to treat the eyes of the infant with a prophylaxis in accordance with current standard of care. Such treatment shall be given as soon as practicable after the birth of the infant and always within one hour. If any redness, swelling, inflammation, or gathering of pus appears in the eyes of such infant, or upon the lids or about the eyes, within two weeks after birth, any person charged with care of the infant shall report the same to some competent practicing physician or advanced practice nurse within six hours after its discovery.

(3) Nothing in this section requires medical treatment for the minor child of any person who is a member of a well-recognized church or religious denomination and whose religious convictions, in accordance with the tenets or principles of his or her church or religious denomination, are against medical treatment for disease.

Source: L. 37: p. 618, § 1. CSA: C. 22, § 69. CRS 53: § 66-6-1. C.R.S. 1963: § 66-6-1. L. 2012: (2) and (3) added, (HB 12-1058), ch. 71, p. 244, § 1, effective March 24.

25-4-302. Duties of department. (Repealed)

Source: L. 37: p. 618, § 2. CSA: C. 22, § 70. CRS 53: § 66-6-2. C.R.S. 1963: § 66-6-2. L. 77: (1)(d) and (1)(e) amended, p. 284, § 49, effective July 1. L. 94: IP(1) and (1)(c) amended, p. 2760, § 426, effective July 1. L. 2010: (1)(c) amended, (HB 10-1422), ch. 419, p. 2093, § 90, effective August 11. L. 2012: Entire section repealed, (HB 12-1058), ch. 71, p. 244, § 2, effective March 24.

25-4-303. Duty to treat eyes. (Repealed)

Source: L. 37: p. 619, § 3. CSA: C. 22, § 71. CRS 53: § 66-6-3. C.R.S. 1963: § 66-6-3. L. 77: Entire part added, p. 284, § 50, effective July 1. L. 94: Entire section amended, p. 2760, § 427, effective July 1. L. 2012: Entire section repealed, (HB 12-1058), ch. 71, p. 245, § 3, effective March 24.

25-4-304. Duties of county, district, or municipal public health director. (Repealed)

Source: L. 37: p. 619, § 4. CSA: C. 22, § 72. CRS 53: § 66-6-4. C.R.S. 1963: § 66-6-4. L. 2010: IP(1) amended, (HB 10-1422), ch. 419, p. 2093, § 91, effective August 11. L. 2012: Entire section repealed, (HB 12-1058), ch. 71, p. 245, § 4, effective March 24.

25-4-305. Penalty. (Repealed)

Source: L. 37: p. 620, § 5. CSA: C. 22, § 73. CRS 53: § 66-6-5. C.R.S. 1963: § 66-6-5. L. 77: Entire section amended, p. 285, § 51, effective July 1. L. 2012: Entire section repealed, (HB 12-1058), ch. 71, p. 245, § 5, effective March 24.

PART 4**SEXUALLY TRANSMITTED INFECTIONS****25-4-401. Sexually transmitted infections - definitions. (1) As used in this part 4:**

(a) "Department" means the department of public health and environment created in section 25-1-102.

(b) "Health officer" means the executive director of the department, the chief medical officer appointed pursuant to section 25-1-105, or a county or district public health director.

(c) "Sexually transmitted infection" means syphilis, gonorrhea, and any other type of sexually transmitted infection designated by the state board by rule as contagious, upon making a finding that the particular sexually transmitted infection is contagious; except that cases of AIDS, HIV-related illness, and HIV infections shall be governed solely by the requirements of part 14 of this article.

(d) "State board" means the state board of health created in section 25-1-103.

(2) Sexually transmitted infections are declared to be contagious, sexually transmitted, and dangerous to the public health.

(3) It is unlawful for any person who has knowledge or reasonable grounds to suspect that he or she is infected with a sexually transmitted infection to willfully expose to or infect another person with the sexually transmitted infection or to knowingly perform an act that exposes or infects another person to or with a sexually transmitted infection.

Source: L. 19: p. 247, § 1. C.L. § 1075. CSA: C. 78, § 163. L. 47: p. 519, § 1. CRS 53: § 66-9-1. C.R.S. 1963: § 66-9-1. L. 91: (1) amended, p. 945, § 3, effective May 6. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 468, § 6, effective April 9.

25-4-402. Sexually transmitted infections reported - physician's immunity.

(1) Any physician, intern, or other person who makes a diagnosis in, prescribes for, or

treats a sexually transmitted infection and any superintendent or manager of a state, county, or city hospital, dispensary, or charitable or penal institution in which there is a sexually transmitted infection shall make a report of such infection to the health authorities in accordance with the provisions of section 25-1-122 (1).

(2) (Deleted by amendment, L. 91, p. 945, § 4, effective May 6, 1991.)

(3) Reports of sexually transmitted infection shall be made in accordance with the requirements set forth in section 25-1-122 (1).

(4) Any physician, upon consultation by a minor as a patient and with the consent of the minor patient, may make a diagnostic examination for sexually transmitted infection and may prescribe for and treat the minor patient for sexually transmitted infection without the consent of or notification to the parent or guardian of the minor patient or to any other person having custody of or parental responsibilities with respect to the minor patient. In any such case, the physician shall not be civilly or criminally liable for making the diagnostic examination or rendering the treatment, but the immunity from liability shall not apply to any negligent acts or omissions of the physician.

Source: L. 19: p. 248, § 3. C.L. § 1077. L. 25: p. 420, § 1. CSA: C. 78, § 165. CRS 53: § 66-9-2. C.R.S. 1963: § 66-9-2. L. 67: p. 287, § 1. L. 91: Entire section amended, p. 945, § 4, effective May 6. L. 98: (4) amended, p. 1411, § 78, effective February 1, 1999. L. 2009: (1), (3), and (4) amended, (SB 09-179), ch. 112, p. 469, § 7, effective April 9.

ANNOTATION

Law reviews. For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

Applied in *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

25-4-403. Medicine sold only on prescription. (Repealed)

Source: L. 19: p. 248, § 4. C.L. § 1078. L. 25: p. 421, § 2. CSA: C. 78, § 166. L. 47: p. 519, § 2. CRS 53: § 66-9-3. C.R.S. 1963: § 66-9-3. L. 2008: (1)(a) and (2) amended, p. 131, § 12, effective January 1, 2009. L. 2009: Entire section repealed, (SB 09-179), ch. 112, p. 474, § 18, effective April 9.

25-4-404. Examination of suspected cases. (1) Health officers or their authorized assistants or deputies within their respective jurisdictions are directed, when in their judgment it is necessary to protect the public health, to:

(a) Require a person reasonably suspected of having a sexually transmitted infection to be examined and to detain the person until the results of the examination are known;

(b) Require the examiner to give a written report of the examination to the confining health officer;

(c) Require persons with sexually transmitted infections to report for treatment to a qualified physician and continue treatment until cured; and

(d) Isolate persons with sexually transmitted infections.

(2) The examination and treatment of any person with a sexually transmitted infection shall be conducted by a qualified physician of the person's own choice, but, if the person is unable to retain a private physician, he or she shall submit to examination and treatment provided at public expense.

(3) It is the duty of all health officers to investigate sources of sexually transmitted infection, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

Source: L. 19: p. 249, § 5. C.L. § 1079. CSA: C. 78, § 167. CRS 53: § 66-9-4. L. 59: p. 477, § 1. C.R.S. 1963: § 66-9-4. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 469, § 8, effective April 9.

25-4-405. Examination of persons confined. (1) All persons who are confined, detained, or imprisoned in any state, county, or city hospital or institution for persons with mental illness, any home for dependent children, any reformatory or prison, or any private or charitable institution where any person may be confined, detained, or imprisoned by order of court in this state shall be examined for and, if infected, treated for sexually transmitted infections by the health authorities having jurisdiction. The managing authorities of any such institutions are directed to make available to the health authorities such portion of their respective institutions as may be necessary for a clinic or hospital, wherein all persons who may be confined or detained or imprisoned in any such institution and who are infected with sexually transmitted infections may be treated in a manner as prescribed by the appropriate health officer.

(2) (Deleted by amendment, L. 2009, (SB 09-179), ch. 112, p. 470, § 9, effective April 9, 2009.)

Source: L. 19: p. 250, § 6. L. 21: p. 657, § 1. C.L. § 1080. CSA: C. 78, § 168. CRS 53: § 66-9-5. C.R.S. 1963: § 66-9-5. L. 75: (1) amended, p. 929, § 38, effective July 1. L. 79: (1) amended, p. 1639, § 46, effective July 19. L. 85: (1) amended, p. 710, § 9, effective March 30. L. 94: Entire section amended, p. 2760, § 428, effective July 1. L. 2005: (1) amended, p. 281, § 16, effective August 8. L. 2006: (1) amended, p. 1405, § 65, effective August 7. L. 2008: (2) amended, p. 131, § 13, effective January 1, 2009. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 470, § 9, effective April 9.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-406. Rules - provision of services. (1) The department, through the state board, shall adopt rules it deems necessary to carry out the provisions of this part 4, including rules providing for the control and treatment of persons isolated under section 25-4-405 and other rules not in conflict with this part 4 that the department deems advisable concerning the control of sexually transmitted infection and the care, treatment, and isolation of persons with sexually transmitted infections. The rules shall be binding upon all public health agencies, health officers, and other persons affected by this part 4 and shall have the force and effect of law.

(2) Notwithstanding any other provision of this part 4 to the contrary, programs and services that provide for the investigation, identification, testing, preventive care, or treatment of sexually transmitted infections shall be available to a person regardless of his or her race, religion, gender, sexual orientation, ethnicity, national origin, or immigration status.

Source: L. 19: p. 250, § 7. C.L. § 1081. CSA: C. 78, § 169. CRS 53: § 66-9-6. C.R.S. 1963: § 66-9-6. L. 94: Entire section amended, p. 2761, § 429, effective July 1. L. 2006, 1st Ex. Sess.: Entire section amended, p. 25, § 3, effective July 31. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 471, § 10, effective April 9.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, “2006 Immigration Legislation in Colorado”, see 35 Colo. Law. 79 (October 2006).

25-4-407. Penalty. (1) Except as provided in subsection (2) of this section, any person, firm, or corporation that violates a provision of this part 4, other than section 25-4-408, or any lawful rule adopted by the state board pursuant to the authority granted in this part 4, or fails or refuses to obey any lawful order issued by any health officer pursuant

to the authority granted in this part 4, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(2) If the person who commits a violation of this part 4 or a lawful rule of the state board or who fails or refuses to obey a lawful order of a health officer is a licensed or certified health care professional, the health officer may bring an action in the district court of the judicial district in which the violation or failure or refusal occurs to seek a civil penalty of not more than three hundred dollars per violation, failure, or refusal. A person subject to the penalties specified in this subsection (2) shall not be subject to the penalties described in subsection (1) of this section.

Source: L. 19: p. 251, § 8. C.L. § 1082. CSA: C. 78, § 170. CRS 53: § 66-9-7. C.R.S. 1963: § 66-9-7. L. 83: Entire section amended, p. 1057, § 3, effective July 1. L. 94: Entire section amended, p. 2761, § 430, effective July 1. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 471, § 11, effective April 9.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-408. Distribution of information. The department shall prepare, for free distribution among the residents of the state, printed information and instructions concerning the dangers of sexually transmitted infections, their prevention, and the necessity for treatment. It is the duty of every physician who, during the course of an examination, discovers the existence of a sexually transmitted infection or who treats a person for a sexually transmitted infection to inform the person about the measures for preventing the spread of the infection and the necessity for treatment until cured, when appropriate.

Source: L. 83: Entire section added, p. 1057, § 2, effective July 1. L. 94: Entire section amended, p. 2761, § 431, effective July 1. L. 2009: Entire section amended, (SB 09-179), ch. 112, p. 472, § 12, effective April 9.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 5

TUBERCULOSIS

Editor's note: This part 5 was numbered as article 12 of chapter 66, C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 1967, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1967, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

25-4-500.3. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Active tuberculosis" means a diagnosis of tuberculosis demonstrated by clinical, bacteriologic, or diagnostic imaging evidence, or a combination thereof. A person who has been diagnosed as having active tuberculosis and has not completed a course of antituberculosis treatment is still considered to have active tuberculosis and may be infectious.

(2) "Board of health" means the state board of health created in section 25-1-103.

(3) "Contact" means a person who has shared the same air space with a person who has active tuberculosis.

(4) "Contagious" means having a disease that may be transmitted from one living person to another through direct or indirect contact.

(5) "Department" means the department of public health and environment.

(6) "Health officer" means the executive director of the department, the state chief medical officer, and county or district public health directors.

(7) “Infectious” means contagious.

(8) “Isolation” means separation of a person infected, or suspected to be infected, with tuberculosis from other persons to prevent the spread of tuberculosis.

(9) “Latent tuberculosis infection” means that tuberculosis organisms are present in a person’s body, but the person does not have tuberculosis or symptoms, nor is the person infectious. Such a person usually has a positive reaction to the tuberculin skin test.

(10) “Local health officer” means the chief medical health officer of a county, district, or municipal public health agency or the health officer for a public health nursing service.

(11) “Multidrug-resistant tuberculosis” means tuberculosis caused by tuberculosis organisms that are resistant to at least the drugs isoniazid and rifampin.

(12) “Screening” means measures used to identify persons who have active tuberculosis or latent tuberculosis infection.

(13) “State chief medical officer” means the chief medical officer of the department, as described in section 25-1-105, or the executive director of the department.

(14) “Suspected case of active tuberculosis”, “suspected case of tuberculosis”, “suspected tuberculosis”, or “suspected tuberculosis case” means a diagnosis of tuberculosis is being considered for a person, whether or not antituberculosis therapy has been started.

(15) “Tubercle bacilli” means tuberculosis organisms.

(16) “Tuberculosis” means a potentially fatal contagious disease caused by the bacterial microorganisms of the mycobacterium tuberculosis complex that can affect almost any part of the body but most commonly affects the lungs.

Source: L. 2008: Entire part amended, p. 313, § 1, effective April 7; (13) amended, p. 1906, § 99, effective August 5. L. 2009: (6) amended, (SB 09-179), ch. 112, p. 472, § 13, effective April 9. L. 2010: (10) amended, (HB 10-1422), ch. 419, p. 2093, § 92, effective August 11.

25-4-501. Tuberculosis declared to be an infectious and communicable disease. It is hereby declared that tuberculosis is an infectious and communicable disease, that it endangers the population of this state, and that the treatment and control of such disease is a state and local responsibility. It is further declared that the emergence of multidrug-resistant tuberculosis requires that this threat be addressed with a coherent and consistent strategy in order to protect the public health. To the end that tuberculosis may be brought better under control and multidrug-resistant tuberculosis prevented, it is further declared that the department and local public health agencies shall, within available resources, cooperatively promote control and treatment of persons suffering from tuberculosis.

Source: L. 67: R&RE, p. 723, § 1. C.R.S. 1963: § 66-12-1. L. 73: p. 695, § 1. L. 94: Entire section amended, p. 2762, § 432, effective July 1. L. 2002: Entire section amended, p. 1313, § 1, effective August 7. L. 2008: Entire part amended, p. 313, § 1, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-502. Tuberculosis to be reported. (1) Every attending physician and other persons either treating or having knowledge of active or suspected tuberculosis in this state shall make a report to the department in accordance with section 25-1-122 (1) on every person known by said physician or other person to have active or suspected tuberculosis.

(2) Any health care facility or other similar private or public institution in this state shall make a report to the department in accordance with section 25-1-122 (1) on every person having active or suspected tuberculosis who comes into its care or observation.

(3) All clinical laboratories rendering diagnostic service shall report to the department in accordance with section 25-1-122 (1), within twenty-four hours after diagnosis, the full name and other available data relating to the person whose sputa or other specimens submitted for examination reveal the presence of tubercle bacilli.

Source: L. 67: R&RE, p. 723, § 1. C.R.S. 1963: § 66-12-2. L. 91: Entire section amended, p. 946, § 5, effective May 6. L. 94: (1) and (2) amended, p. 2762, § 433, effective July 1. L. 2008: Entire part amended, p. 315, § 1, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-503. Examination of sputum. (Deleted by amendment)

Source: L. 67: R&RE, p. 724, § 1. C.R.S. 1963: § 66-12-3. L. 94: Entire section amended, p. 2762, § 434, effective July 1. L. 2008: Entire part amended, p. 315, § 1, effective April 7.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 315.)

25-4-504. Statistical case register. (Deleted by amendment)

Source: L. 67: R&RE, p. 724, § 1. C.R.S. 1963: § 66-12-4. L. 94: Entire section amended, p. 2763, § 435, effective July 1. L. 2008: Entire part amended, p. 315, § 1, effective April 7.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 315.)

25-4-505. Laboratories to report. (Deleted by amendment)

Source: L. 67: R&RE, p. 724, § 1. C.R.S. 1963: § 66-12-5. L. 94: Entire section amended, p. 2763, § 436, effective July 1. L. 2008: Entire part amended, p. 316, § 1, effective April 7.

Editor's note: This section was deleted by amendment in 2008. (See L. 2008, p. 316.)

25-4-506. Investigation and examination of suspected or known tuberculosis cases.
(1) The state chief medical officer and all local health officers are directed to use every available means to investigate immediately and ascertain the existence of all reported or suspected cases of active tuberculosis within the health officer's jurisdiction, to determine the sources of such infections, and to identify and evaluate the contacts of such cases and offer treatment as appropriate. In carrying out such investigations, such health officer is invested with full powers of inspection and examination of all persons known to be infected with active tuberculosis and is directed to make or cause to be made such examinations as are deemed necessary of persons who, on reasonable grounds, are suspected of having active tuberculosis in an infectious form.

(2) Whenever a health officer determines on reasonable grounds that an examination of any person is necessary for the preservation and protection of the public health, the health officer shall issue a written order directing medical examination, setting forth the name of the person to be examined, the time and place of the examination, and such other terms and conditions as the health officer may deem necessary. A copy of such order shall be served upon the person. Such an examination may be made by a licensed physician or advanced practice nurse of the person's own choice under such terms and conditions as the health officer shall specify.

(3) Any person who depends exclusively on prayer for healing in accordance with the teachings of any well-recognized religious sect, denomination, or organization, and claims exemptions on such grounds, shall nevertheless be subject to examination, and the provisions of this part 5 regarding compulsory reporting of communicable diseases and isolations shall apply where there is probable cause to suspect that such person has active tuberculosis. Such person shall not be required to submit to any medical treatment or to go to or be

confined in a hospital or other medical institution if the person can safely be isolated in the person's own home or other suitable place of the person's choice.

(4) A health officer may conduct screening programs of populations that are at increased risk of developing tuberculosis or having latent tuberculosis infection and offer treatment as appropriate. Such screening programs may be implemented by a local health officer with the approval of the state chief medical officer.

Source: L. 67: R&RE, p. 724, § 1. C.R.S. 1963: § 66-12-6. L. 2002: (1) amended, p. 1313, § 2, effective August 7. L. 2004: (1)(a) amended, p. 1201, § 66, effective August 4. L. 2008: Entire part amended, p. 316, § 1, effective April 7; (2) amended, p. 132, § 14, effective January 1, 2009.

Editor's note: Amendments to subsection (2) by House Bill 08-1061 and House Bill 08-1199 were harmonized, effective January 1, 2009.

25-4-507. Isolation order - enforcement - court review. (1) (a) Whenever a health officer determines that isolation of a person in a particular tuberculosis case is necessary for the preservation and protection of the public health, the health officer shall make an isolation order in writing.

(b) When a health officer is determining whether to issue an isolation order for a person, the health officer shall consider, but is not limited to, the following factors:

(I) Whether the person has active tuberculosis;

(II) If the person is violating the rules promulgated by the board of health or the orders issued by the appropriate health officer to comply with rules or orders; and

(III) Whether the person presents a substantial risk of exposing other persons to an imminent danger of infection.

(c) All isolation orders shall set forth the name of the person to be isolated and the initial period, not to exceed six months, during which the order shall remain effective, the place of isolation, and such other terms and conditions as may be immediately necessary to protect the public health. The isolation order shall advise the person being detained that he or she has the right to request release from detention by contacting a person designated in the order and that the detention shall not continue for more than five business days after the request for release, unless the detention is authorized by court order. The health officer shall serve a copy of the isolation order upon the person. The person shall be reexamined at the time the initial order expires to ascertain whether or not the tuberculous condition continues to be infectious. When it has been medically determined that the person no longer has active tuberculosis, the person shall be relieved from all further liability or duty imposed by this part 5, and the health officer shall rescind the order.

(d) A health officer may detain a person who is the subject of an isolation order issued pursuant to this subsection (1) without a prior court order. The health officer may detain the person in a hospital or other appropriate place for examination or treatment.

(2) In a case of a person with multidrug-resistant tuberculosis, the health officer may issue an isolation order to such person if it is determined that the person has ceased taking prescribed medications against medical advice. Such order may be issued even if the person is no longer contagious so long as the person has not completed an entire course of therapy.

(3) (a) If a person detained pursuant to an isolation order requests to be released, the detaining authority shall release the person not later than five business days after the person requests the release, absent a court order authorizing detention. Upon receipt of a request for release, the detaining authority shall apply for a court order authorizing continued detention of the person. The detaining authority shall make the application within seventy-two hours after the person requests release or, if the seventy-two-hour period ends on a Saturday, Sunday, or legal holiday, by the end of the first business day following the Saturday, Sunday, or legal holiday. The application shall include a request for an expedited hearing.

(b) In any court proceeding to enforce an isolation order, the health officer shall prove the particular circumstances constituting the necessity for the detention by clear and

convincing evidence. Any person who is subject to an isolation order has the right to be represented by counsel and, upon request, counsel shall be provided to the person.

(c) The request for release or filing of an application for a court order to continue an isolation order shall not stay the isolation order.

(d) In reviewing the application to continue the isolation order, the court shall not conduct a de novo review. The court shall consider the existing administrative record and any supplemental evidence the court deems relevant.

(e) Upon completion of the hearing, the court shall issue an order continuing, modifying, or dismissing the isolation order.

(f) A hearing conducted pursuant to this section shall be closed and confidential, and any transcripts relating to the hearing shall be confidential.

Source: L. 67: R&RE, p. 725, § 1. C.R.S. 1963: § 66-12-7. L. 2002: (3) added, p. 1314, § 3, effective August 7. L. 2008: Entire part amended, p. 317, § 1, effective April 7. L. 2009: (1)(c) amended and (1)(d) and (3) added, (SB 09-179), ch. 112, pp. 472, 473, §§ 14, 15, effective April 9.

25-4-508. Inspection of records. Authorized department personnel may inspect and have access to all medical records of all medical practitioners, hospitals, institutions, and clinics, both public and private, where persons with known or suspected tuberculosis are treated and shall provide consultation services regarding the control of tuberculosis and the care of persons having tuberculosis to health care providers or any other persons having responsibility for the care of persons with tuberculosis. Authorized department personnel shall also have access to laboratory records of persons tested for tuberculosis.

Source: L. 67: R&RE, p. 725, § 1. C.R.S. 1963: § 66-12-8. L. 91: Entire section amended, p. 947, § 6, effective May 6. L. 94: Entire section amended, p. 2763, § 437, effective July 1. L. 2008: Entire part amended, p. 318, § 1, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-509. Violations - penalty. (1) Any person who, after service upon him or her of an order of a health officer directing his or her isolation or examination as provided in sections 25-4-506 and 25-4-507, violates or fails to comply with the order is guilty of a misdemeanor and, upon conviction thereof, in addition to any and all other penalties that may be imposed by law upon such convictions, the court may make an appropriate order providing for examination, isolation, or treatment.

(2) Any person, firm, or corporation that fails to make the reports required by this part 5 or knowingly makes any false report is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

(3) Upon the receipt of information that any examination, isolation, or treatment order made and served as provided in this part 5 has been violated, the health officer shall advise the district attorney of the judicial district in which such violation occurred of the pertinent facts relating to the violation.

Source: L. 67: R&RE, p. 725, § 1. C.R.S. 1963: § 66-12-9. L. 2008: Entire part amended, p. 318, § 1, effective April 7.

25-4-510. Jurisdiction. District courts shall have original jurisdiction under this part 5.

Source: L. 67: R&RE, p. 726, § 1. C.R.S. 1963: § 66-12-10. L. 2008: Entire part amended, p. 318, § 1, effective April 7.

Editor's note: This section was not amended in 2008, although it was contained in a 2008 act that amended this entire part 5.

25-4-511. Duties of board of health and department - confidentiality of records - rules. (1) The board of health is authorized to adopt such rules as are deemed necessary, appropriate, and consistent with good medical practice in the state of Colorado for the treatment and control of persons with tuberculosis.

(2) Subject to available appropriations, the department may contract with local public health agencies to provide assistance with tuberculosis treatment and control. The department shall retain the authority to, when necessary:

(a) Direct any program of investigation and examination of suspected tuberculosis cases, including persons who have had contact with a person who has suspected or confirmed active tuberculosis, and the administration of antituberculosis chemotherapy or the treatment of a latent tuberculosis infection on an outpatient basis where appropriate;

(b) Perform such other duties and have such other powers with relation to the provisions, objects, and purposes of this part 5 as the board of health shall prescribe.

(3) Except as otherwise provided by law, all records kept by the department and by local public health agencies and all records retained in a county coroner's office in accordance with section 30-10-606 (4) (c), C.R.S., as a result of the investigation of tuberculosis shall be kept strictly confidential and shall only be shared to the extent necessary for the investigation, treatment, control, and prevention of tuberculosis; except that every effort shall be made to limit disclosure of personal identifying information to the minimal amount necessary to accomplish the public health purpose.

Source: L. 73: p. 695, § 2. C.R.S. 1963: § 66-12-11. L. 94: (1)(a), IP(2), and (3) amended, p. 2763, § 438, effective July 1. L. 2002: (2)(a) and (2)(b) amended, p. 1314, § 4, effective August 7. L. 2008: Entire part amended, p. 318, § 1, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1)(a), the introductory portion to subsection (2), and subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-512. Nondiscrimination in the provision of general services. Notwithstanding any other provision of this part 5 to the contrary, programs and services that provide for the investigation, identification, testing, preventive care, or treatment of tuberculosis shall be available to a person regardless of his or her race, religion, gender, ethnicity, national origin, or immigration status.

Source: L. 73: p. 696, § 2. C.R.S. 1963: § 66-12-12. L. 2002: Entire section amended, p. 1314, § 5, effective August 7. L. 2006 1st Ex. Sess.: (1)(c) amended and (2) added, p. 26, § 4, effective July 31. L. 2008: Entire part amended, p. 319, § 1, effective April 7.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

25-4-513. Funding. The department shall provide funding to local public health agencies for tuberculosis treatment and control and shall consider the number of active, suspected, and latent tuberculosis cases undergoing therapy in each agency's jurisdiction when determining funding levels.

Source: L. 73: p. 696, § 2. C.R.S. 1963: § 66-12-13. L. 2008: Entire part amended, p. 320, § 1, effective April 7.

PART 6

RABIES CONTROL

25-4-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "County board of health" means the body acting as the county or district board of health under the provisions of section 25-1-508.

(2) "Health department" means the department of public health and environment or any county or district public health agency organized and maintained under the provisions of part 5 of article 1 of this title.

(3) "Health officer" means the person appointed as the public health director of a district, county, city, or town under the provisions of section 25-1-509.

(4) "Inoculation against rabies" means the administration of the antirabies vaccine as approved by the department of public health and environment or the county or district department of health.

(5) "Owner" means any person who has a right of property in a dog, cat, other pet animal, or other mammal, or who keeps or harbors a dog, cat, other pet animal, or other mammal, or who has it in his care or acts as its custodian.

Source: L. 63: p. 545, § 1. CRS 53: § 66-25-1. C.R.S. 1963: § 66-23-1. L. 91: (2) and (5) amended, p. 947, § 7, effective May 6. L. 94: (4) amended, p. 2764, § 439, effective July 1. L. 2008: (1), (2), and (3) amended, p. 2053, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-602. Notice to health department or officer if animal affected or suspected of being affected by rabies. Whenever a dog, cat, other pet animal, or other mammal is affected by rabies or suspected of being affected by rabies or has been bitten by an animal known or suspected to be affected by rabies, the owner of the dog, cat, other pet animal, or other mammal, or any person having knowledge thereof, shall forthwith notify the health department or health officer in the county, city, or town in which such animal is located, stating precisely where such animal may be found.

Source: L. 63: p. 546, § 1. CRS 53: § 66-25-2. C.R.S. 1963: § 66-23-2. L. 91: Entire section amended, p. 947, § 8, effective May 6.

25-4-603. Report of person bitten by animal to health department or health officer. Every physician after his first professional attendance upon a person bitten by a dog, cat, other pet animal, or other mammal, or any person having knowledge thereof, shall report to the health department or health officer in accordance with the provisions of section 25-1-122 (1).

Source: L. 63: p. 546, § 1. CRS 53: § 66-25-3. C.R.S. 1963: § 66-23-3. L. 91: Entire section amended, p. 947, § 9, effective May 6.

25-4-604. Animal attacking or biting person to be confined - examination. The health department or health officer shall serve notice upon the owner of a dog, cat, other pet animal, or other mammal which has attacked or bitten a person to confine the animal at the expense of the owner upon his premises or at a pound or other place designated in the notice for a period designated by the department of public health and environment. The health department, health officer, or his representative shall be permitted by the owner of such dog, cat, other pet animal, or other mammal to examine the animal at any time within the period of confinement to determine whether such animal shows symptoms of rabies. No person shall obstruct or interfere with the authorized person in making such examination.

Source: L. 63: p. 546, § 1. CRS 53: § 66-25-4. C.R.S. 1963: § 66-23-4. L. 91: Entire section amended, p. 948, § 10, effective May 6. L. 94: Entire section amended, p. 2764, § 440, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-605. Animals bitten by animals known or suspected of having rabies to be confined. The health department or health officer shall serve notice in writing upon the owner of a dog, cat, other pet animal, or other mammal known to have been bitten by an animal known or suspected of having rabies requiring the owner to immediately treat and confine such animal by procedures outlined by the department of public health and environment.

Source: L. 63: p. 546, § 1. CRS 53: § 66-25-5. C.R.S. 1963: § 66-23-5. L. 91: Entire section amended, p. 948, § 11, effective May 6. L. 94: Entire section amended, p. 2765, § 441, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-606. Animals to be confined to prevent spread of rabies. Whenever the board of health of a health department or the county board of health has reason to believe or has been notified by the department of public health and environment that there is imminent danger that rabies may spread within that county or district, such board shall serve public notice by publication in a newspaper of general circulation in such county or district covered by such department requiring the owners of dogs, cats, other pet animals, or other mammals specified to confine such dogs, cats, pet animals, or mammals for such period as may be necessary to prevent the spread of rabies in such county or district.

Source: L. 63: p. 546, § 1. CRS 53: § 66-25-6. C.R.S. 1963: § 66-23-6. L. 91: Entire section amended, p. 948, § 12, effective May 6. L. 94: Entire section amended, p. 2765, § 442, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-607. Order of board of health requiring inoculation of animals - veterinarian waiver of order. (1) (a) When it is deemed advisable in the interest of public health and safety, the board of health of an organized health department or a county board of health may order that all dogs, cats, other pet animals, or other mammals in the county or district be vaccinated against rabies, such vaccination to be performed by a licensed veterinarian.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), a board of health of an organized health department or a county board of health shall not order the inoculation of dogs, cats, or ferrets against rabies any more frequently than is recommended in the "Compendium of Animal Rabies Control" as promulgated by the national association of state public health veterinarians.

(2) A veterinarian, with the written consent of an animal's owner, may issue a written waiver pursuant to the rules of the health department, exempting an animal from a rabies vaccination order if the veterinarian, in his or her professional opinion, determines that the rabies inoculation is contraindicated due to the animal's medical condition.

(3) (a) The executive director of the health department shall enact rules allowing for the exemption of an animal from a rabies vaccination due to the medical condition of the animal.

(b) The owner of an animal seeking an exemption from a rabies vaccination for his or her animal must provide the veterinarian with written consent for the exemption.

(c) A veterinarian supplying a waiver exempting an animal from a rabies vaccination, county, district, and municipal health departments, their assistants and employees, the health department, health officers, and anyone enforcing this part 6 shall not be liable for any subsequent accident, disease, injury, or quarantine that may occur as a result of an animal exempted from a rabies vaccination pursuant to the rules of the health department.

(4) A waiver executed pursuant to this section shall be accepted and recognized by any local or regional authority issuing licenses for the ownership of animals.

Source: L. 63: p. 547, § 1. CRS 53: § 66-25-7. C.R.S. 1963: § 66-23-7. L. 91: Entire section amended, p. 948, § 13, effective May 6. L. 99: Entire section amended, p. 275, § 2, effective July 1. L. 2008: Entire section amended, p. 1629, § 1, effective May 29. L. 2010: (3)(c) amended, (HB 10-1422), ch. 419, p. 2093, § 93, effective August 11.

25-4-608. Notice of order requiring inoculation of animals. The order of a board of health of a health department or a county board of health requiring inoculation of all dogs, cats, other pet animals, or other mammals shall not become effective until twenty-four hours after notice of adoption of the order requiring inoculation of all dogs, cats, other pet animals, or other mammals has been published in a newspaper of general circulation in the county or district.

Source: L. 63: p. 547, § 1. CRS 53: § 66-25-8. C.R.S. 1963: § 66-23-8. L. 91: Entire section amended, p. 949, § 14, effective May 6.

25-4-609. Effect of order requiring inoculation of animals. Sections 25-4-610 and 25-4-611 shall be in force and effect only in those counties, districts, or portions of counties or districts where an order requiring inoculation of all dogs, cats, other pet animals, or other mammals is in effect.

Source: L. 63: p. 547, § 1. CRS 53: § 66-25-9. C.R.S. 1963: § 66-23-9. L. 91: Entire section amended, p. 949, § 15, effective May 6.

25-4-610. Uninoculated animals not to run at large - impounding and disposition of animals. It is unlawful for any owner of any dog, cat, other pet animal, or other mammal which has not been inoculated as required by the order of the county board of health or board of health of a health department to allow it to run at large. The health department or health officer may capture and impound any such dog, cat, other pet animal, or other mammal found running at large and dispose of such animal in accordance with local program policy. Such power to impound and dispose shall extend to any and all animals unclaimed and found or suspected to be affected by rabies, whether wild or domestic. The division of parks and wildlife shall cooperate with and aid the health department or health officer in the enforcement of this section as it affects animals found or suspected to be affected by rabies when such animals are in its care, jurisdiction, or control.

Source: L. 63: p. 547, § 1. CRS 53: § 66-25-10. C.R.S. 1963: § 66-23-10. L. 91: Entire section amended, p. 949, § 16, effective May 6.

25-4-611. Report to state department. Each health department or health officer shall furnish information to the department of public health and environment concerning all cases of rabies and the prevalence of rabies within the county at any time such information is requested by the department of public health and environment.

Source: L. 63: p. 548, § 1. CRS 53: § 66-25-11. C.R.S. 1963: § 66-23-11. L. 94: Entire section amended, p. 2765, § 443, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-612. Enforcement of part 6. The health officer or health department shall enforce the provisions of this part 6, and the sheriff and his deputies and the police officers in each incorporated municipality and the division of parks and wildlife shall be aides and are instructed to cooperate with the health department or health officer in carrying out the provisions of this part 6.

Source: L. 63: p. 548, § 1. CRS 53: § 66-25-12. C.R.S. 1963: § 66-23-12.

25-4-613. Liability for accident or subsequent disease from inoculation. The health departments, their assistants and employees, the department of public health and environment, health officers, or anyone enforcing the provisions of this part 6 shall not be held responsible for any accident or subsequent disease that may occur in connection with the administration of this part 6.

Source: L. 63: p. 548, § 1. CRS 53: § 66-25-13. C.R.S. 1963: § 66-23-13. L. 94: Entire section amended, p. 2765, § 444, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-614. Penalties. Any person who refuses to comply with or who violates any of the provisions of this part 6 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days for each offense.

Source: L. 63: p. 548, § 1. CRS 53: § 66-25-14. C.R.S. 1963: § 66-23-14.

25-4-615. Further municipal restrictions not prohibited. (1) Nothing in this part 6 shall be construed to limit the power of any municipality within this state to prohibit dogs from running at large, whether or not they have been inoculated as provided in this part 6; and nothing in this part 6 shall be construed to limit the power of any municipality to regulate and control and to enforce other and additional measures for the restriction and control of rabies.

(2) Notwithstanding subsection (1) of this section, a municipality shall not require a dog, cat, or ferret to be inoculated against rabies any more frequently than is recommended in the "Compendium of Animal Rabies Control" as promulgated by the national association of state public health veterinarians, and a veterinarian may issue a written waiver exempting an animal from a rabies vaccination order as provided in section 25-4-607.

Source: L. 63: p. 548, § 1. CRS 53: § 66-25-15. C.R.S. 1963: § 66-23-15. L. 99: Entire section amended, p. 275, § 3, effective July 1. L. 2008: (2) amended, p. 1630, § 2, effective May 29.

Cross references: For control and licensing of dogs by counties, see part 1 of article 15 of title 30, and for other municipal restrictions, see § 31-15-401 (1)(b) and (1)(m)(I).

PART 7

PET ANIMAL AND PSITTACINE BIRD FACILITIES

Editor's note: This part 7 was numbered as article 19 of chapter 66, C.R.S. 1963. The substantive provisions of this part 7 were repealed and reenacted in 1983, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 7 prior to 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

25-4-701. Definitions. As used in this part 7, unless the context otherwise requires:

- (1) "Board" means the state board of health.
- (2) "Department" means the department of public health and environment.
- (3) "Pet animal facility" means any place or premises used in whole or in part for the keeping of pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or transferring such animals.
- (4) "Psittacine birds" includes all birds of the order psittaciformes.

Source: **L. 83:** Entire part R&RE, p. 1059, § 1, effective March 1. **L. 94:** Entire section R&RE, p. 1296, § 1, effective July 1; (2) amended, p. 2619, § 31, effective July 1.

Editor's note: (1) This section is similar to former § 25-4-701 as it existed prior to 1983.

(2) Amendments to this section by Senate Bill 94-023 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-702. Board to establish rules - department to administer. (1) The board may establish rules that are necessary to carry out the provisions of this part 7. Such rules shall set forth procedures to be followed by pet animal facilities in the event of an outbreak of disease or quarantine. Such rules may include provisions pertaining to the breeding and sale of psittacine birds that are necessary to prevent or minimize the danger of transmission of psittacosis to handlers, the general public, and other pet birds.

(2) This part 7 shall be administered by the department; except that county, district, and municipal public health agencies and animal control personnel may be authorized by the department to assist it in performing its powers and duties pursuant to this part 7.

(3) (Deleted by amendment, L. 94, p. 1296, § 2, effective July 1, 1994.)

Source: **L. 83:** Entire part R&RE, p. 1060, § 1, effective March 1. **L. 87:** (3) amended, p. 971, § 81, effective March 13. **L. 94:** Entire section amended, p. 1296, § 2, effective July 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2093, § 94, effective August 11.

Editor's note: This section is similar to former § 25-4-705 as it existed prior to 1983.

25-4-703. License required - fee. (Repealed)

Source: **L. 83:** Entire part R&RE, p. 1060, § 1, effective March 1.

Editor's note: (1) Prior to its repeal in 1994, this section was similar to former §§ 25-4-704 and 25-4-706 as they existed prior to 1983.

(2) Section 25-4-715 provided for the repeal of this section effective July 1, 1994. (See L. 91, p. 688.)

25-4-704. Hobby breeders of psittacine birds. (Repealed)

Source: **L. 83:** Entire part R&RE, p. 1061, § 1, effective March 1. **L. 94:** Entire section repealed, p. 1313, § 17, effective July 1.

25-4-705. Importation for resale prohibited - when. (Repealed)

Source: **L. 83:** Entire part R&RE, p. 1061, § 1, effective March 1.

Editor's note: (1) Prior to its repeal in 1994, this section is similar to former § 25-4-703 as it existed prior to 1983.

(2) Section 25-4-715 provided for the repeal of this section effective July 1, 1994. (See L. 91, p. 688.)

25-4-706. Pet animal and psittacine bird dealers - duties. (Repealed)

Source: L. 83: Entire part R&RE, p. 1062, § 1, effective March 1.

Editor's note: Section 25-4-715 provided for the repeal of this section effective July 1, 1994. (See L. 91, p. 688.)

25-4-707. Psittacine birds - sale or transfer - requirements. (Repealed)

Source: L. 83: Entire part R&RE, p. 1062, § 1, effective March 1. L. 94: Entire section repealed, p. 1313, § 17, effective July 1.

Editor's note: Prior to its repeal in 1994, this section was similar to former § 25-4-702 as it existed prior to 1983.

25-4-708. Nonpsittacine birds - when regulated. (Repealed)

Source: L. 83: Entire part R&RE, p. 1063, § 1, effective March 1.

Editor's note: (1) Prior to its repeal in 1994, this section was similar to former § 25-4-717 as it existed prior to 1983.

(2) Section 25-4-715 provided for the repeal of this section effective July 1, 1994. (See L. 91, p. 688.)

25-4-709. Quarantine. If at any time it appears to the department that any pet animal is, or was during its lifetime, infected with a disease dangerous to the public health, it may place an embargo on said pet animal and may trace, or cause to be traced, the whereabouts of said animal and determine the identity and whereabouts of any other animals which may have been exposed to such disease. If the department determines that the interest of the public health requires, it may: Cause any pet animal facility to be quarantined for such time as the department determines to be necessary to protect the public health; prohibit the sale or importation into this state of such pet animals from such places or areas where such danger exists; and require the euthanasia and the proper disposal of infected animals.

Source: L. 83: Entire part R&RE, p. 1063, § 1, effective March 1. L. 94: Entire section amended, p. 1297, § 3, effective July 1.

Editor's note: This section is similar to former § 25-4-710 as it existed prior to 1983.

25-4-710. Right of entry - inspections. It is lawful for any employee of the department, any employee of any county, district, or municipal public health agency or animal control agency authorized by the department, or any authorized official of the United States department of agriculture when conducting an official disease investigation of a pet animal facility to enter such facility and to inspect the same, any animals, or any health or transaction records relating to the investigation.

Source: L. 83: Entire part R&RE, p. 1063, § 1, effective March 1. L. 94: Entire section amended, p. 1297, § 4, effective July 1. L. 2010: Entire section amended, (HB 10-1422), ch. 419, p. 2094, § 95, effective August 11.

Editor's note: This section is similar to former § 25-4-711 as it existed prior to 1983.

25-4-711. Suspension or revocation of license. (Repealed)

Source: L. 83: Entire part R&RE, p. 1063, § 1, effective March 1.

Editor's note: (1) Prior to its repeal in 1994, this section was similar to former §§ 25-4-713 and 25-4-715 as they existed prior to 1983.

(2) Section 25-4-715 provided for the repeal of this section effective July 1, 1994. (See L. 91, p. 688.)

25-4-712. Unlawful acts. (1) It is unlawful for any person:

- (a) To make a material misstatement or provide false information to the department during an official disease investigation;
- (b) To violate a provision of this part 7 or a rule promulgated pursuant to this part 7;
- (c) To aid or abet another in a violation of this part 7 or a rule promulgated pursuant to this part 7;
- (d) To refuse to permit entry or inspection in accordance with section 25-4-710.
- (e) to (k) (Deleted by amendment, L. 94, p. 1298, § 5, effective July 1, 1994.)

Source: L. 83: Entire part R&RE, p. 1063, § 1, effective March 1. L. 94: Entire section amended, p. 1298, § 5, effective July 1.

25-4-713. Penalty for violations - assessments. (1) Any person who violates any of the provisions of this part 7 is guilty of a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) (Deleted by amendment, L. 94, p. 1299, § 6, effective July 1, 1994.)

Source: L. 83: Entire part R&RE, p. 1064, § 1, effective March 1. L. 94: Entire section amended, p. 1299, § 6, effective July 1. L. 2002: (1) amended, p. 1536, § 265, effective October 1.

Editor's note: This section is similar to former § 25-4-716 as it existed prior to 1983.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-4-714. Exemptions from part 7. (Repealed)

Source: L. 83: Entire part R&RE, p. 1065, § 1, effective March 1. L. 94: Entire section repealed, p. 1313, § 17, effective July 1.

25-4-715. Repeal of sections - review of functions. (Repealed)

Source: L. 88: Entire section added, p. 930, § 14, effective April 28. L. 91: Entire section amended, p. 688, § 54, effective April 20. L. 94: Entire section amended, p. 1299, § 7, effective July 1. L. 97: Entire section repealed. p. 1023, § 43, effective August 6.

PART 8

PHENYLKETONURIA

25-4-801. Legislative declaration. The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic defects in order to prevent mental retardation resulting therefrom and that the people of this state should be extensively informed as to the nature and effects of such defects.

Source: L. 65: p. 721, § 1. C.R.S. 1963: § 66-27-1.

25-4-802. Tests for metabolic defects. (1) It is the duty of either the chief medical staff officer or other person in charge of each institution caring for newborn infants or, if a

newborn infant is not born in an institution or is discharged therefrom prior to the time prescribed for the taking of the specimen designated in this section, the person responsible for the signing of the birth certificate of such child to cause to be obtained from every such infant a specimen of the type designated by the state board of health, which specimen shall be forwarded to the department of public health and environment or other laboratory approved by it for testing for phenylketonuria and testing for such other metabolic defects which may be prescribed from time to time by the state board of health to be conducted with respect to such specimen.

(2) The state board of health has the duty to prescribe from time to time effective tests and examinations designed to detect phenylketonuria and such other metabolic disorders or defects likely to cause mental retardation as accepted medical practice indicates.

(3) The performance of such tests and the reporting of results shall be done at such times and places and in such manner as may be prescribed by the department of public health and environment.

(4) It is the duty of the department of public health and environment to contact as soon as possible all cases suspected of having any such disorders or defects and to do any additional testing required to confirm or disprove the suspected disorder or defect.

Source: L. 65: p. 721, § 2. C.R.S. 1963: § 66-27-2. L. 94: (1), (3), and (4) amended, p. 2765, § 446, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1), (3), and (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-803. Rules and regulations. (1) The state board of health shall promulgate rules and regulations concerning the obtaining of samples or specimens from newborn infants required for the tests prescribed by the state board of health for the handling and delivery of the same and for the testing and examination thereof to detect phenylketonuria or other metabolic disorders found likely to cause mental retardation.

(2) The department of public health and environment shall furnish all physicians, public health nurses, hospitals, maternity homes, county departments of social services, and the state department of human services available medical information concerning the nature and effects of phenylketonuria and other metabolic disorders and defects found likely to cause mental retardation.

Source: L. 65: p. 722, § 3. C.R.S. 1963: § 66-27-3. L. 94: (2) amended, p. 2766, § 447, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-804. Exceptions. Nothing in the provisions of this part 8 shall be construed to require the testing or medical treatment for the minor child of any person who is a member of a well-recognized church or religious denomination and whose religious convictions in accordance with the tenets or principles of his church or religious denomination are against medical treatment for disease or physical defects.

Source: L. 65: p. 722, § 4. C.R.S. 1963: § 66-27-4.

PART 9

SCHOOL ENTRY IMMUNIZATION

Editor's note: This part 9 was numbered as article 40 of chapter 66, C.R.S. 1963. The substantive provisions of this part 9 were repealed and reenacted in 1978, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 9 prior to 1978, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

25-4-901. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Certificate of immunization" means one of the following forms of documentation that include the dates and types of immunizations administered to a student:

(a) A paper document that includes information transferred from the records of a licensed physician, registered nurse, or public health official; or

(b) An electronic file or a hard copy of an electronic file provided to the school directly from the immunization tracking system, established pursuant to section 25-4-2403.

(1.5) "Child" means any student less than eighteen years of age.

(2) (a) "School" means, except as otherwise provided in paragraph (b) of this subsection (2), a public, private, or parochial nursery school, day care center, child care facility, family child care home, foster care home, head start program, kindergarten, elementary or secondary school through grade twelve, or college or university.

(b) "School" does not include:

(I) A public services short-term child care facility as defined in section 26-6-102 (6.7), C.R.S.;

(I.5) A guest child care facility as defined in section 26-6-102 (5), C.R.S., or a ski school as defined in section 26-6-103.5 (6), C.R.S.; or

(II) College or university courses of study that are offered off-campus, or are offered to nontraditional adult students, as defined by the governing board of the institution, or are offered at colleges or universities that do not have residence hall facilities.

(3) "Student" means any person enrolled in a Colorado school as defined in subsection (2) of this section.

Source: **L. 78:** Entire part, R&RE, p. 427, § 1, effective April 4. **L. 91:** Entire section amended, p. 931, § 1, effective April 16. **L. 92:** Entire section amended, p. 1273, § 1, effective April 9. **L. 96:** (2) amended, p. 266, § 20, effective July 1. **L. 98:** (1) amended and (1.5) added, p. 19, § 1, effective August 5. **L. 2007:** (1)(b) amended, p. 664, § 7, effective April 26; (2) amended, p. 867, § 5, effective May 14.

Editor's note: This section is similar to former § 25-4-901 as it existed prior to 1978.

25-4-902. Immunization prior to attending school - standardized immunization information. (1) Except as provided in section 25-4-903, no child shall attend any school in the state of Colorado on or after the dates specified in section 25-4-906 (4) unless he or she has presented the following to the appropriate school official:

(a) An up-to-date certificate of immunization from a licensed physician, a licensed advanced practice nurse, or authorized representative of the department of public health and environment or county, district, or municipal public health agency stating that the child has received immunization against communicable diseases as specified by the state board of health, based on recommendations of the advisory committee on immunization practices of the United States department of health and human services or the American academy of pediatrics; or

(b) A written authorization signed by one parent or guardian or an authorization signed by the emancipated child requesting that local health officials administer the immunizations.

(c) (Deleted by amendment, L. 97, p. 408, § 1, effective July 1, 1997.)

(2) If the student's certificate of immunization is not up-to-date according to the requirements of the state board of health, the parent or guardian or the emancipated student or the student eighteen years of age or older shall submit to the school, within fourteen days after receiving direct personal notification that the certificate is not up-to-date, documentation that the next required immunization has been given and a written plan for completion of all required immunizations. The scheduling of immunizations in the written plan shall follow medically recommended minimum intervals approved by the state board of health.

If the student begins but does not continue or complete the written plan, he or she shall be suspended or expelled pursuant to this part 9.

(3) Notwithstanding the provisions of subsection (1) of this section, a school shall enroll a student who is in out-of-home placement within five school days after receiving the student's education information and records as required in section 22-32-138, C.R.S., regardless of whether the school has received the items specified in subsection (1) of this section. Upon enrolling the student, the school shall notify the student's legal guardian that, unless the school receives the student's certificate of immunization or a written authorization for administration of immunizations within fourteen days after the student enrolls, the school shall suspend the student until such time as the school receives the certificate of immunization or the authorization.

(4) On or before March 1, 2011, the department of public health and environment shall develop and provide to the department of education a standardized document regarding childhood immunizations. The department of education shall post the standardized immunization document on its web site on or before January 15, 2011, and each year thereafter. The standardized document shall be updated annually and shall include, but need not be limited to:

(a) A list of the immunizations required for enrollment in a school and the age at which the immunization is required; and

(b) A list of immunizations currently recommended for children by the center for disease control advisory committee on immunization practices and the recommended age at which each immunization should be given.

(5) The document created pursuant to subsection (4) of this section shall comply with the provisions of section 25-4-903 (4) regarding allowable exemptions from required immunizations.

Source: **L. 78:** Entire part R&RE, p. 427, § 1, effective April 4. **L. 94:** Entire section amended, p. 2766, § 448, effective July 1. **L. 95:** Entire section amended, p. 916, § 14, effective May 25. **L. 97:** Entire section amended, p. 408, § 1, effective July 1. **L. 2008:** (3) added, p. 472, § 4, effective April 17; (1)(a) amended, p. 132, § 15, effective January 1, 2009. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2094, § 96, effective August 11; (4) and (5) added, (SB 10-056), ch. 50, p. 192, § 5, effective August 11.

Editor's note: This section is similar to former § 25-4-902 as it existed prior to 1978.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2008 act enacting subsection (3), see section 1 of chapter 147, Session Laws of Colorado 2008.

25-4-902.5. Immunization prior to attending a college or university - tuberculosis screening process development. (1) Except as provided in section 25-4-903, no student shall attend any college or university in the state of Colorado on or after the dates specified in section 25-4-906 (4) unless such student can present to the appropriate official of the school a certificate of immunization from a licensed physician, a licensed advanced practice nurse, or authorized representative of the department of public health and environment or county, district, or municipal public health agency stating that the student has received immunization against communicable diseases as specified by the state board of health or a written authorization signed by one parent or guardian or the emancipated student or the student eighteen years of age or older requesting that local health officials administer the immunizations or a plan signed by one parent or guardian or the emancipated student or the student eighteen years of age or older for receipt by the student of the required inoculation or the first or the next required of a series of inoculations within thirty days.

(2) (Deleted by amendment, L. 94, p. 695, §2, effective April 19, 1994.)

(3) (a) Each college and university in Colorado may work to create a tuberculosis screening process with the goal of making the process as uniform as possible for all colleges and universities in the state. The department of public health and environment may attend and participate in any meetings held by the universities and colleges regarding the screening

process. The screening process may include a tuberculosis risk questionnaire, a tuberculosis education policy, a clinical review process for each completed questionnaire, and follow-up testing procedures for students who are determined to be at risk for tuberculosis. On or before January 1, 2009, the colleges and universities that work to create a tuberculosis screening process pursuant to this subsection (3) shall report to the health and human services committees of the senate and the house of representatives, or their successor committees, regarding any legislative recommendations necessary regarding a tuberculosis screening process.

(b) This subsection (3) shall not apply to a university or college that provides course work solely online.

Source: **L. 91:** Entire section added, p. 931, § 2, effective April 16. **L. 94:** Entire section amended, p. 695, § 2, effective April 19; (1) amended, p. 2766, § 449, effective July 1. **L. 2008:** (3) added, p. 982, § 1, effective July 1; (1) amended, p. 132, § 16, effective January 1, 2009. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2094, § 97, effective August 11.

Editor's note: Amendments to this section by Senate Bill 94-045 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-903. Exemptions from immunization.

(1) (Deleted by amendment, L. 97, p. 409, § 2, effective July 1, 1997.)

(2) It is the responsibility of the parent or legal guardian to have his or her child immunized unless the child is exempted pursuant to this section. A student shall be exempted from receiving the required immunizations in the following manner:

(a) By submitting to the student's school certification from a licensed physician or advanced practice nurse that the physical condition of the student is such that one or more specified immunizations would endanger his or her life or health or is medically contraindicated due to other medical conditions; or

(b) By submitting to the student's school a statement of exemption signed by one parent or guardian or the emancipated student or student eighteen years of age or older that the parent, guardian, or student is an adherent to a religious belief whose teachings are opposed to immunizations or that the parent or guardian or the emancipated student or student eighteen years of age or older has a personal belief that is opposed to immunizations.

(3) The state board of health may provide, by regulation, for further exemptions to immunization based upon sound medical practice.

(4) All information distributed to parents by school districts regarding immunization shall inform them of their rights under subsection (2) of this section.

Source: **L. 78:** Entire part R&RE, p. 428, § 1, effective April 4. **L. 91:** (1) and (2) amended, p. 932, § 3, effective April 16. **L. 93:** (1) amended, p. 380, § 3, effective April 12. **L. 97:** Entire section amended, p. 409, § 2, effective July 1. **L. 2008:** (2)(a) amended, p. 132, § 17, effective January 1, 2009.

Editor's note: This section is similar to former § 25-4-903 as it existed prior to 1978.

25-4-904. Rules and regulations - immunization rules - rule-making authority of state board of health. (1) The state board of health shall establish rules and regulations for administering this part 9. Such rules and regulations shall establish which immunizations shall be required and the manner and frequency of their administration and shall conform to recognized standard medical practices. Such rules and regulations may also require the reporting of statistical information and names of noncompliers by the schools. The department of public health and environment shall administer and enforce the immunization requirements.

(2) All rule-making authority granted to the state board of health under the provisions of this article is granted on the condition that the general assembly reserves the power to delete or rescind any rule of the board. All rules promulgated pursuant to this subsection (2) shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-4-108, C.R.S.

Source: L. 78: Entire part R&RE, p. 428, § 1, effective April 4. L. 80: (2) amended, p. 788, § 23, effective June 5. L. 94: (1) amended, p. 2767, § 450, effective July 1.

Editor's note: This section is similar to former § 25-4-905 as it existed prior to 1978.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-905. Immunization of indigent children. (1) The county, district, or municipal public health agency, a public health or school nurse under the supervision of a licensed physician, or the department of public health and environment in the absence of a county, district, or municipal public health agency or public health nurse shall provide, at public expense to the extent that funds are available, immunizations required by this part 9 to each child whose parents or guardians cannot afford to have the child immunized or, if emancipated, who cannot himself or herself afford immunization and who has not been exempted. The department of public health and environment shall provide all vaccines necessary to comply with this section as far as funds will permit. Nothing in this section shall preclude the department of public health and environment from distributing vaccines to physicians, advanced practice nurses, or others as required by law or the rules of the department. No indigent child shall be excluded, suspended, or expelled from school unless the immunizations have been available and readily accessible to the child at public expense.

(2) Notwithstanding any other provision of this part 9 to the contrary, programs and services that provide immunizations to children for communicable diseases shall be available to a child regardless of his or her race, religion, gender, ethnicity, national origin, or immigration status.

Source: L. 78: Entire part R&RE, p. 428, § 1, effective April 4. L. 94: Entire section amended, p. 2767, § 451, effective July 1. L. 2006, 1st Ex. Sess.: Entire section amended, p. 26, § 5, effective July 31. L. 2008: (1) amended, p. 133, § 18, effective January 1, 2009. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2094, § 98, effective August 11.

Editor's note: This section is similar to former § 25-4-906 as it existed prior to 1978.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

25-4-906. Certificate of immunization - forms. (1) The department of public health and environment shall provide official certificates of immunization to the schools, private physicians, and county, district, and municipal public health agencies. Upon the commencement of the gathering of epidemiological information pursuant to section 25-4-2403 to implement the immunization tracking system, such form shall include a notice that informs a parent or legal guardian that he or she has the option to exclude his or her infant's, child's, or student's immunization information from the immunization tracking system created in section 25-4-2403. Any immunization record provided by a licensed physician, registered nurse, or public health official may be accepted by the school official as certification of immunization if the information is transferred to the official certificate of immunization and verified by the school official.

(2) Each school shall maintain on file an official certificate of immunization for every student enrolled. The certificate shall be returned to the parent or guardian or the emancipated student or student eighteen years of age or older when a student withdraws, transfers, is promoted, or otherwise leaves the school, or the school shall transfer the certificate with the student's school record to the new school. Upon a college or university student's request, the official certificate of immunization shall be forwarded as specified by the student.

(3) The department of public health and environment may examine, audit, and verify the records of immunizations maintained by each school.

(4) All students enrolled in any school in Colorado on and after August 15, 1979, shall furnish the required certificate of immunization or shall be suspended or expelled from school. Students enrolling in school in Colorado for the first time on and after July 1, 1978, shall provide a certificate of immunization or shall be excluded from school except as provided in section 25-4-903.

Source: **L. 78:** Entire part R&RE, p. 429, § 1, effective April 4. **L. 91:** (2) and (4) amended, p. 932, § 4, effective April 16. **L. 92:** (2) amended, p. 1273, § 2, effective April 9. **L. 94:** (1) and (3) amended, p. 2767, § 452, effective July 1. **L. 98:** (1) amended, p. 19, § 2, effective August 5. **L. 2001:** (1) amended, p. 825, § 3, effective August 8. **L. 2007:** (1) amended, p. 665, § 8, effective April 26. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2095, § 99, effective August 11.

Editor's note: This section is similar to former § 25-4-907 as it existed prior to 1978.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-907. Noncompliance. (1) A school official of each school shall suspend or expel from school, pursuant to the provisions of section 22-33-105, C.R.S., or the provisions established by the school official of a college or university or private school, any student not otherwise exempted under this part 9 who fails to comply with the provisions of this part 9. No student shall be suspended or expelled for failure to comply with the provisions of this part 9 unless there has been a direct personal notification by the appropriate school authority to the student's parent or guardian or to the emancipated student or the student eighteen years of age or older of the noncompliance with this part 9 and of such person's rights under sections 25-4-902, 25-4-902.5, and 25-4-903.

(2) In the event of suspension or expulsion of a student, school officials shall notify the state department of public health and environment or the county, district, and municipal public health agency. An agent of said department shall then contact the parent or guardian or the emancipated student or student eighteen years of age or older in an effort to secure compliance with this part 9 in order that the student may be reenrolled in school.

(3) Any student expelled for failure to comply with the provisions of this part 9 shall not be included in calculating the dropout rate for the school from which such student was expelled or the school district in which such student was enrolled prior to being expelled. Such student shall be included in the annual report of the number of expelled students prepared pursuant to section 22-33-105, C.R.S.

Source: **L. 78:** Entire part R&RE, p. 429, § 1, effective April 4. **L. 91:** Entire section amended, p. 933, § 5, effective April 16. **L. 94:** (2) amended, p. 2768, § 453, effective July 1. **L. 97:** Entire section amended, p. 410, § 3, effective July 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2095, § 100, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-908. When exemption from immunization not recognized. If at any time there is, in the opinion of the state department of public health and environment or the county,

district, or municipal public health agency, danger of an epidemic from any of the communicable diseases for which an immunization is required pursuant to the rules and regulations promulgated pursuant to section 25-4-904, no exemption or exception from immunization against such disease shall be recognized. Quarantine by the state department of public health and environment or the county, district, or municipal public health agency is hereby authorized as a legal alternative to immunization.

Source: **L. 78:** Entire part R&RE, p. 429, § 1, effective April 4. **L. 94:** Entire section amended, p. 2768, § 454, effective July 1. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2095, § 101, effective August 11.

Editor's note: This section is similar to former § 25-4-904 as it existed prior to 1978.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-909. Vaccine-related injury or death - limitations on liability. (1) The general assembly finds, determines, and declares that immunization of the population of this state is vital to the health of Colorado citizens and has demonstrated such finding by requiring such immunization pursuant to the provisions of sections 25-4-901 to 25-4-908.

(2) No person who administers a vaccine which is required under the provisions of this part 9 to an infant or child whose age is greater than twenty days shall be held liable for injuries sustained pursuant to such vaccine if:

- (a) The vaccine was administered using generally accepted clinical methods;
- (b) The vaccine was administered according to the schedule of immunization as published by the communicable disease control administration of the federal government; and

(c) There were no clinical symptoms nor clinical history present under which prudent health care professionals would not have administered such vaccine.

(3) An action shall not be maintained for a vaccine-related injury or death until action for compensation for such alleged injury has been exhausted under the terms of the "National Childhood Vaccine Injury Act of 1986", 42 U.S.C. secs. 300aa-10 to 300aa-33, as such law is from time to time amended.

(4) If the injury or death which is sustained does not fall within the parameters of the vaccine injury table as defined in 42 U.S.C. sec. 300aa-14, as enacted on November 14, 1986, a rebuttable presumption is established that the injury sustained or the death was not due to the administration of vaccine. Such presumption shall be overcome by a preponderance of the evidence.

Source: **L. 88:** Entire section added, p. 624, § 3, effective July 1.

ANNOTATION

Law reviews. For article, "1988 Update on Colorado Tort Reform Legislation — Part I", see 17 Colo. Law. 1790 (1988).

PART 10

NEWBORN SCREENING AND GENETIC COUNSELING AND EDUCATION ACT

25-4-1001. Short title. This part 10 shall be known and may be cited as the "Newborn Screening and Genetic Counseling and Education Act".

Source: **L. 81:** Entire part added, p. 1300, § 1, effective July 1.

25-4-1002. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) State policy regarding newborn screening and genetic counseling and education should be made with full public knowledge, in light of expert opinion, and should be constantly reviewed to consider changing medical knowledge and ensure full public protection;

(b) Participation of persons in genetic counseling programs in this state should be wholly voluntary and that all information obtained from persons involved in such programs or in newborn screening programs in the state should be held strictly confidential.

Source: L. 81: Entire part added, p. 1300, § 1, effective July 1.

25-4-1003. Powers and duties of executive director - newborn screening programs - genetic counseling and education programs - rules. (1) The executive director of the department of public health and environment shall have the authority to:

(a) Establish and administer state programs for newborn screening and genetic counseling and education;

(b) Promulgate rules, regulations, and standards for the provision of newborn screening programs and genetic counseling and education programs;

(c) Designate such personnel as are necessary to carry out the provisions of this part 10, disburse and collect such funds as are available to the administration of this part 10, and fix reasonable fees to be charged for services pursuant to this part 10;

(d) Gather and disseminate information to further the public's understanding of newborn screening and genetic counseling and education programs;

(e) Establish systems for recording information obtained in newborn screening and genetic counseling and education programs.

(2) The executive director of the department of public health and environment shall comply with the following provisions:

(a) Newborn screening shall be provided in the most efficient and cost-effective manner possible and newborn screening and diagnostic services should be carried out under adequate standards of supervision and quality control;

(b) No program for genetic counseling shall require mandatory participation, restriction of childbearing, or be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participation in, any other program;

(c) Genetic counseling services shall be available to persons in need, such counseling shall be nondirective, and such counseling shall emphasize informing the client and not require restriction of childbearing;

(d) The extremely personal decision to bear children shall remain the free choice and responsibility of the individual, and such free choice and responsibility shall not be restricted by any of the genetic services of the state;

(e) All information gathered by the department of public health and environment, or by other agencies, entities, and individuals conducting programs and projects on newborn screening and genetic counseling and education, other than statistical information and information which the individual allows to be released through his informed consent, shall be confidential. Public and private access to individual patient data shall be limited to data compiled without the individual's name.

(f) Information on the operation of all programs on newborn screening and genetic counseling and education within the state, except for confidential information obtained from participants in such programs, shall be open and freely available to the public;

(g) All participants in programs on genetic counseling and education shall be informed of the nature of possible risks involved in participation in such a program or project, and shall be informed of the nature and cost of available therapies or maintenance programs for those affected by hereditary disorders, and shall be informed of the possible benefits and risks of such therapies and programs;

(h) Nothing in this section shall be construed to require any hospital or other health facility or any physician or other health professional to provide genetic counseling beyond the usual and customary and accepted practice nor shall any hospital or other health facility be held liable for not providing such genetic counseling.

Source: **L. 81:** Entire part added, p. 1300, § 1, effective July 1. **L. 94:** IP(1), IP(2), and (2)(e) amended, p. 2768, § 455, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portions to subsections (1) and (2) and subsection (2)(e), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1004. Newborn screening.

(1) (a) Repealed.

(b) On or after April 1, 1989, all infants born in the state of Colorado shall be tested for the following conditions: Phenylketonuria, hypothyroidism, abnormal hemoglobins, galactosemia, cystic fibrosis, biotinidase deficiency, and such other conditions as the board of health may determine meet the criteria set forth in paragraph (c) of this subsection (1). Appropriate specimens for such testing shall be forwarded by the hospital in which the child is born to the laboratory operated or designated by the department of public health and environment for such purposes. The physician, nurse, midwife, or other health professional attending a birth outside a hospital shall be responsible for the collection and forwarding of such specimens. The results of the testing shall be forwarded directly to the physician or other primary health care provider for the provision of such information to the parent or parents of the child. The results of any testing or follow-up testing pursuant to section 25-4-1004.5 may be sent to the immunization tracking system authorized by section 25-4-2403 and accessed by the physician or other primary health care provider. The state board of health may discontinue testing for any condition listed in this paragraph (b) if, upon consideration of criteria set forth in paragraph (c) of this subsection (1), the board finds that the public health is better served by not testing infants for that condition.

(c) The board of health shall use the following criteria to determine whether or not to test infants for conditions which are not specifically enumerated in this subsection (1):

(I) The condition for which the test is designed presents a significant danger to the health of the infant or his family and is amenable to treatment;

(II) The incidence of the condition is sufficiently high to warrant screening;

(III) The test meets commonly accepted clinical standards of reliability, as demonstrated through research or use in another state or jurisdiction; and

(IV) The cost-benefit consequences of screening are acceptable within the context of the total newborn screening program.

(2) The executive director of the department of public health and environment shall assess a fee which is sufficient to cover the costs of such testing and to accomplish the other purposes of this part 10. Hospitals shall assess a reasonable fee to be charged the parent or parents of the infant to cover the costs of handling the specimens, the reimbursement of laboratory costs, and the costs of providing other services necessary to implement the purposes of this part 10.

Source: **L. 81:** Entire part added, p. 1302, § 1, effective July 1. **L. 83:** (2) amended, p. 1070, § 1, effective May 20. **L. 87:** (1) amended, p. 1128, § 1, effective July 1. **L. 88:** (1) amended, p. 1009, § 1, effective July 1. **L. 91:** (1) amended, p. 949, § 17, effective May 6. **L. 94:** (1)(b) and (2) amended, p. 2769, § 456, effective July 1. **L. 96:** (1)(b) amended, p. 1107, § 1, effective July 1. **L. 2007:** (1)(b) amended, p. 654, § 2, effective April 26.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective April 1, 1989. (See L. 88, p. 1009.)

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1)(b) and (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1004.5. Follow-up testing and treatment - second screening - legislative declaration - fee - rules. (1) The general assembly finds that:

(a) Newborn screening authorized by section 25-4-1004 is provided for every newborn in the state;

(b) Newborn testing is designed to identify metabolic disorders that cause mental retardation and other health problems unless they are diagnosed and treated early in life;

(c) In order to ensure that children with metabolic disorders are able to lead as normal a life as possible and to minimize long-term health care costs for such children, it is necessary to provide centralized follow-up testing and treatment services;

(d) For over twenty-five years the follow-up testing and treatment services were provided by a federal grant that was discontinued June 30, 1993. Since that time, follow-up testing and treatment services have been limited. If alternative sources of funding are not provided, those services will be eliminated.

(e) A nominal increase of the fee on newborn screening to cover the costs of providing follow-up and referral services would allow for those services to be continued;

(f) Over the past ten years, many children with serious health conditions have received timely diagnosis and treatment as a result of the newborn screening required by this part 10. Such screening has averted the possibility of life-long institutionalization of some children and substantial related health care costs. The general assembly further finds, however, that many infants who are screened early in life may exhibit false or inaccurate results on certain newborn screening tests. The general assembly therefore finds and declares that subsequent newborn screening will provide more accurate and reliable test results for the timely and effective diagnosis and treatment of certain health conditions in newborn infants and the best interests of children in Colorado will be served by a new screening program that routinely tests all newborns twice.

(2) (a) Repealed.

(b) On and after July 1, 1994, the executive director of the department of public health and environment shall increase the newborn screening fee as provided in section 25-4-1004 (2) so that the fee is sufficient to include the costs of providing follow-up and referral services to families with a newborn whose test results under a newborn screening indicate a metabolic disorder. Follow-up services include comprehensive diagnostic testing. The increase shall not exceed five dollars; except that it may be adjusted annually to reflect any change in the Denver-Boulder consumer price index. Any fees collected shall be subject to the provisions of section 25-4-1006.

(3) (a) On and after July 1, 1996, all infants born in the state of Colorado who receive newborn screening pursuant to section 25-4-1004 (1) shall have a second specimen taken to screen for the following conditions:

(I) Phenylketonuria;

(II) Hypothyroidism;

(III) Galactosemia;

(IV) Cystic fibrosis; and

(V) Such other conditions as the state board of health may determine meet the criteria set forth in section 25-4-1004 (1) (c) and require a second screening for accurate test results.

(b) The executive director of the department of public health and environment is authorized to promulgate rules, regulations, and standards for the implementation of the second specimen testing specified in this subsection (3), including but not limited to the following:

(I) Identification of those conditions for which a second specimen shall be required;

(II) The age of the infant at which the second screening may be administered;

(III) The method by which the parent or parents of a newborn shall be advised of the necessity for a second specimen test;

(IV) The procedure to be followed in administering the second specimen test;

(V) Any exceptions to the necessity for a second specimen test and the procedures to be followed in such cases; and

(VI) The standards of supervision and quality control that shall apply to second specimen testing.

(c) On and after July 1, 1996, the executive director of the department of public health and environment may adjust the newborn screening fee set forth in section 25-4-1004 (2) so that the fee is sufficient to cover the costs associated with the second screening described in this subsection (3). Any increase shall be in addition to the fee described in subsection (2) of this section and shall not initially exceed five dollars and seventy-five cents but may

be adjusted annually to reflect any actual cost increase associated with the administration of the second screening. Any fees collected pursuant to this paragraph (c) shall be subject to the provisions of section 25-4-1006.

(4) The provisions of section 25-4-1003 (2) shall apply to second newborn screenings.

Source: **L. 94:** Entire section added, p. 833, § 1, effective April 28. **L. 96:** (1)(f), (3), and (4) added, p. 1108, §§ 2, 3, effective July 1.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective July 1, 1994. (See L. 94, p. 833.)

25-4-1004.7. Newborn hearing screening - legislative declaration - advisory committee - report - rules - repeal. (1) (a) The general assembly finds, determines, and declares:

(I) That hearing loss occurs in newborn infants more frequently than any other health condition for which newborn infant screening is required;

(II) That eighty percent of the language ability of a child is established by the time the child is eighteen months of age and that hearing is vitally important to the healthy development of such language skills;

(III) That early detection of hearing loss in a child and early intervention and treatment has been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability;

(IV) That children with hearing loss who do not receive such early intervention and treatment frequently require special educational services and that such services are publicly funded for the vast majority of children with hearing needs in the state;

(V) That appropriate testing and identification of newborn infants with hearing loss will facilitate early intervention and treatment and may therefore serve the public purposes of promoting the healthy development of children and reducing public expenditure; and

(VI) That consumers should be entitled to know whether the hospital at which they choose to deliver their infant provides newborn hearing screening.

(b) For these reasons the general assembly hereby determines that it would be beneficial and in the best interests of the development of the children of the state of Colorado that newborn infants' hearing be screened.

(2) (a) (I) There is hereby established an advisory committee on hearing in newborn infants for the purpose of collecting the informational data specified in paragraph (b) of subsection (3) of this section, and for the purpose of providing recommendations to hospitals, other health care institutions, the department of public health and environment, and the public concerning, but not necessarily limited to, the following:

(A) Appropriate methodologies to be implemented for hearing screening of newborn infants, which methodologies shall be objective and physiologically based and which shall not include a requirement that the initial newborn hearing screening be performed by an audiologist;

(B) The number of births sufficient to qualify a hospital or health institution to arrange otherwise for hearing screenings; and

(C) Guidelines for reporting and the means to assure that identified children receive referral for appropriate follow-up services.

(II) The advisory committee on hearing in newborn infants shall consist of at least seven members who shall be appointed by the executive director of the department of public health and environment. Members appointed to the committee shall have training, experience, or interest in the area of hearing conditions in children.

(III) The members of the advisory committee on hearing in newborn infants shall serve without compensation.

(IV) Repealed.

(b) This subsection (2) is repealed, effective July 1, 2013. Prior to such repeal, the advisory committee on hearing in newborn infants shall be reviewed as provided for in section 2-3-1203, C.R.S.

(3) (a) It is the intent of the general assembly that newborn hearing screening be conducted on no fewer than ninety-five percent of the infants born in hospitals, using procedures recommended by the advisory committee on hearing in newborn infants, created in subsection (2) of this section. Toward that end, every licensed or certified hospital shall educate the parents of infants born in such hospitals of the importance of screening the hearing of newborn infants and follow-up care. Education shall not be considered a substitute for the hearing screening described in this section. Every licensed or certified hospital shall report annually to the advisory committee concerning the following:

- (I) The number of infants born in the hospital;
- (II) The number of infants screened;
- (III) The number of infants who passed the screening, if administered; and
- (IV) The number of infants who did not pass the screening, if administered.

(b) The advisory committee on hearing in newborn infants shall determine which hospitals or other health care institutions in the state of Colorado are administering hearing screening to newborn infants on a voluntary basis and the number of infants screened.

(I) to (IV) Repealed.

(c) Repealed.

(4) (a) If the number of infants screened falls below eighty-five percent, the board of health shall promulgate rules requiring hearing screening of newborn infants pursuant to section 24-4-103, C.R.S., of the "State Administrative Procedure Act".

(b) Such rules, if promulgated, shall address those hospitals with a low volume of births, as determined by the state board of health based upon recommendations by the advisory committee on hearing in newborn infants, which may arrange otherwise for newborn infant hearing screening.

(5) A physician, nurse, midwife, or other health professional attending a birth outside a hospital or institution shall provide information, as established by the department, to parents regarding places where the parents may have their infants' hearing screened and the importance of such screening.

(6) The department shall encourage the cooperation of county, district, and municipal public health agencies, health care clinics, school districts, and any other appropriate resources to promote the screening of newborn infants' hearing for those infants born outside a hospital or institution.

Source: **L. 97:** Entire section added, p. 1118, § 1, effective July 1. **L. 2005:** (2)(a)(I), (2)(b), (3)(a), IP(3)(b), and (4)(a) amended and (2)(a)(IV), (3)(b)(I) to (3)(b)(IV), and (3)(c) repealed, p. 252, §§ 3, 4, 5, effective July 1. **L. 2008:** (2)(b) amended, p. 1906, § 100, effective August 5. **L. 2010:** (6) amended, (HB 10-1422), ch. 419, p. 2096, § 102, effective August 11.

25-4-1005. Exceptions. Nothing in the provisions of this part 10 shall be construed to require the testing or medical treatment for the minor child of any person or of any person who is a member of a well-recognized church or religious denomination and whose religious convictions in accordance with the tenets or principles of his church or religious denomination are against medical treatment for disease or physical defects or has a personal objection to the administration of such tests or treatment.

Source: **L. 81:** Entire part added, p. 1302, § 1, effective July 1.

25-4-1006. Cash funds. (1) All moneys received from fees collected pursuant to this part 10 shall be transmitted to the state treasurer who shall credit the same to the newborn screening and genetic counseling cash funds, which funds are hereby created. Such moneys shall be utilized for expenditures authorized or contemplated by and not inconsistent with the provisions of this part 10 relating to newborn screening, follow-up care, and genetic counseling and education programs and functions. All moneys credited to the newborn screening and genetic counseling cash funds shall be used as provided in this part 10 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(2) Notwithstanding any provision of this section to the contrary, for the fiscal year beginning July 1, 1988, the state treasurer shall transfer to the general fund out of any unappropriated moneys in the newborn screening and genetic counseling cash funds the sum of five hundred thousand dollars.

Source: **L. 81:** Entire part added, p. 1302, § 1, effective July 1. **L. 88:** Entire section amended, p. 1011, § 1, effective May 23. **L. 94:** Entire section amended, p. 834, § 2, effective April 28.

PART 11

KENNELS

25-4-1101 to 25-4-1111. (Repealed)

Source: **L. 94:** Entire part repealed, p. 1313, § 17, effective July 1.

Editor's note: (1) This part 11 was added in 1983. For amendments to this part 11 prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Prior to the enactment of this part 11 in 1983, substantive provisions concerning pet shops and boarding kennels were found in article 57 of title 12.

PART 12

STREPTOCOCCUS CONTROL

25-4-1201. Powers and duties of executive director. (1) The executive director of the department of public health and environment shall have the authority to:

- (a) Establish and administer a culture-testing program to test for streptococcus;
- (b) Designate such personnel as are necessary to carry out the provisions of this part 12, disburse and collect such funds as are available for the administration of this part 12, and fix reasonable fees to be charged for services pursuant to this part 12.

Source: **L. 84:** Entire part added, p. 766, § 1, effective April 5. **L. 94:** IP(1) amended, p. 2769, § 458, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1202. Streptococcus cash fund. (1) The executive director of the department of public health and environment shall establish the fees to be collected for any streptococcus culture test performed by the department.

(2) (a) All moneys collected pursuant to this part 12 shall be transmitted to the state treasurer, who shall credit the same to the streptococcus cash fund, which fund is hereby created. All moneys credited to the streptococcus cash fund shall be subject to appropriation by the general assembly to be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or to any other fund.

(b) Notwithstanding any provision of paragraph (a) of this subsection (2) to the contrary, on April 20, 2009, the state treasurer shall transfer the balance of moneys in the streptococcus cash fund to the general fund.

(3) (a) The executive director of the department of public health and environment shall propose, as part of the annual budget request of the department of public health and environment, an adjustment in the amount of the fee for the streptococcus culture test which the department is authorized by law to collect. The budget request and the adjusted fees for the streptococcus culture test shall reflect direct and indirect costs.

(b) Based upon the appropriation made by the general assembly, the executive director of the department of public health and environment shall adjust the streptococcus fee so that the revenue generated from said fee approximates the department's direct and indirect costs. Such fee shall remain in effect for the fiscal year for which the budget request applies.

(c) Beginning July 1, 1984, and each July 1 thereafter, whenever moneys appropriated to the department of public health and environment for its activities pursuant to this part 12 for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the department for the next fiscal year, and such amount shall not be raised from fees collected by such department. If a supplemental appropriation is made to the department for such activities, the streptococcus fee of the department, when adjusted for the fiscal year next following the year in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Moneys to be appropriated annually to the department in the general appropriation bill for the purposes of this part 12 shall be designated as cash funds and shall not exceed the amount anticipated to be raised from such fee collected by the department.

Source: **L. 84:** Entire part added, p. 766, § 1, effective April 5. **L. 94:** (1) and (3) amended, p. 2770, § 459, effective July 1. **L. 2009:** (2) amended, (SB 09-208), ch. 149, p. 624, § 22, effective April 20.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 13

RETAIL FOOD STORE SANITATION ACT

25-4-1301. Legislative declaration. The general assembly hereby declares that the sanitary protection of bulk foods and the sanitary maintenance of equipment used to display and dispense bulk foods are matters of statewide concern and are affected with a public interest and that the provisions of this part 13 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

Source: **L. 85:** Entire part added, p. 883, § 1, effective July 1.

25-4-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Bulk foods" means unpackaged or unwrapped foods, either processed or unprocessed, in aggregate containers from which quantities desired by the consumer are withdrawn. "Bulk foods" does not include fresh fruits, fresh vegetables, nuts in the shell, salad bars, bulk pet foods, potentially hazardous foods, and bulk nonfood items.

(2) "Department" means the department of public health and environment.

(3) "Display area" means a location, including physical facilities and equipment, where bulk foods are offered for customer self-service.

(4) "Potentially hazardous foods" includes any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other food products or ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include refrigerated, clean, whole, uncracked, odor-free shell eggs.

(5) "Product module" means a food-contact container (multiuse or single-service) designed for customer self-service of bulk foods by either direct or indirect means.

(6) "Servicing area" means a designated location equipped for cleaning, sanitizing, drying, or refilling product modules or for preparing bulk foods.

Source: **L. 85:** Entire part added, p. 883, § 1, effective July 1. **L. 89:** (4) amended, p. 1154, § 1, effective April 21. **L. 94:** (2) amended, p. 2770, § 460, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1303. Labeling - product modules - take-home containers. (1) Product modules shall be labeled with either:

(a) The manufacturer's or processor's bulk food container labeling plainly in view; or
(b) A counter card, a counter sign, or any other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in their proper order of predominance, and a declaration of artificial color or flavor and chemical preservatives if contained in the product.

(2) Any unpackaged bulk food need not comply with the labeling requirements of this section if the unpackaged bulk food is manufactured on the premises of a store or manufactured by the same store at a different location and if the manufactured bulk food is offered for retail sale on the store's premises and if there are no state requirements.

(3) Labels or marking pens shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

Source: L. 85: Entire part added, p. 884, § 1, effective July 1.

25-4-1304. Bulk food protection. (1) Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling, and storage.

(2) Containers of bulk pet foods and bulk nonfood items shall be separated from product modules by a barrier or open space.

(3) Bulk foods returned to stores by customers shall not be offered for resale.

(4) Only containers provided by stores in their display areas shall be filled with bulk foods; except that any customer may fill or refill his own container with vended or dispensed water; however, the risk that the customer's own container is unsafe, unpure, contaminated, or in a nonsterile condition when it is filled or refilled by the customer, shall be borne solely by the customer, and, except for warranties, no liability shall attach thereto to the manufacturer, seller, or dispenser of such container.

Source: L. 85: Entire part added, p. 884, § 1, effective July 1. L. 89: (4) amended, p. 1154, § 2, effective April 21.

25-4-1305. Bulk food display. (1) Bulk foods shall be dispensed only from product modules which are protected by close-fitting, individual covers. If any product module is to be opened by customers, the cover shall be self-closing and shall remain closed when not in use.

(2) Customer access to bulk foods in product modules shall be limited and controlled to avoid the introduction of contaminants. All product modules shall have an access height of thirty inches or more above the floor and a depth of eighteen inches or less.

(3) Potentially hazardous foods shall not be made available for customer self-service.

Source: L. 85: Entire part added, p. 884, § 1, effective July 1.

25-4-1306. Dispensing utensils. (1) Manual handling of bulk foods by customers during dispensing shall be discouraged. Mechanical dispensing devices shall be used, including gravity dispensers, pumps, extruders, and augers. Manual dispensing utensils shall also be used, including tongs, scoops, ladles, and spatulas.

(2) If the dispensing devices and utensils listed in subsection (1) of this section do not discourage manual customer handling of bulk foods, such bulk foods must be wrapped or sacked prior to display.

(3) Manual dispensing utensils shall be protected against becoming contaminated and serving as vehicles for introducing contamination into bulk foods. A tether of easily cleanable material shall be attached to such a utensil and shall be of such length that the

utensil cannot contact the floor. A sleeve or protective housing attached or adjacent to the display unit shall be available for storing a utensil when not in use.

(4) Ladles and spatulas shall be stored in bulk foods with handles extending to the outside of product modules. Handles shall not prevent lids from being self-closing.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1307. Materials. Product modules and utensils shall be constructed of safe materials and shall be corrosion resistant, nonabsorbent, smooth, easily cleanable, and durable under conditions of normal use. Wood shall not be used as a food-contact surface.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1308. Food-contact surfaces. Product modules, lids, dispensing units, and utensils shall be designed and fabricated to meet the requirements for food-contact surfaces, as provided in section 25-4-1307.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1309. Non-food-contact surfaces. Surfaces of product module display units, tethers, and display equipment which are not intended for food contact but which are exposed to splash, food debris, or other soiling shall be designed and fabricated to be smooth, cleanable, durable under conditions of normal use, and free of unnecessary ledges, projections, and crevices. The materials for non-food-contact surfaces shall be nonabsorbent or made nonabsorbent by being finished and sealed with a cleanable coating.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1310. Accessibility. Individual product modules shall be designed to be easily removable from a display unit for servicing unless the product modules are so designed and fabricated that they can be effectively cleaned and sanitized when necessary through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect bulk foods or equipment in any adjoining display areas.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1311. Equipment sanitization. (1) Tongs, scoops, ladles, spatulas, and other appropriate utensils and tethers used by customers shall be cleaned and sanitized at least daily or at more frequent intervals based on the type of bulk food and the amount of food particle accumulation or soiling.

(2) When soiled, product modules, lids, and other equipment shall be cleaned and sanitized prior to restocking or at intervals of a schedule based on the type of bulk food and the amount of food particle accumulation.

(3) Food-contact surfaces shall be cleaned and sanitized immediately if contamination is observed or suspected.

(4) Facilities and equipment shall be available, either in a servicing area or in place, to provide for the proper cleaning and sanitizing of all food-contact surfaces, including product modules, lids, and dispensing utensils.

(5) Take-home containers, including but not limited to bags, cups, and lids, which are provided in a display area for customer use shall be stored and dispensed in a sanitary manner.

Source: L. 85: Entire part added, p. 885, § 1, effective July 1.

25-4-1312. Violation - penalty. Any retail food store owner violating any of the provisions of this part 13 is guilty of a misdemeanor and, upon conviction thereof, shall be

punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. It is the duty of the district attorneys of the several districts of this state to prosecute for violations of this part 13 as for other crimes and misdemeanors.

Source: L. 85: Entire part added, p. 886, § 1, effective July 1.

25-4-1313. Rules and regulations. The department has the power to promulgate rules and regulations for the implementation of this part 13.

Source: L. 85: Entire part added, p. 886, § 1, effective July 1.

25-4-1314. Limitation. The provisions of this part 13 shall be expressly limited to retail food store outlets.

Source: L. 85: Entire part added, p. 886, § 1, effective July 1.

PART 14

HIV INFECTION AND ACQUIRED IMMUNE DEFICIENCY SYNDROME

Cross references: For prostitution with knowledge of being infected with AIDS, see § 18-7-201.7; for patronizing a prostitute with knowledge of being infected with AIDS, see § 18-7-205.7.

Law reviews: For article, "Medical and Legal Aspects of AIDS", see 15 Colo. Law. 812 (1986); for article, "AIDS: Malpractice and Transmission Liability", see 58 U. Colo. L. Rev. 63 (1986-87); for article, "The Legal Risks of AIDS: Moving Beyond Discrimination", see 18 Colo. Law. 605 (1989); for comment, "Liability Without Fault and the AIDS Plague Compel a New Approach to Cases of Transfusion - Transmitted Disease", see 61 U. Colo. L. Rev. 81 (1990); for article, "Employees, Privacy Rights and AIDS", see 19 Colo. Law. 1839 (1990).

25-4-1401. Legislative declaration. The general assembly hereby declares that infection with human immunodeficiency virus, the virus which causes acquired immune deficiency syndrome (AIDS), referred to in this part 14 as "HIV", is an infectious and communicable disease that endangers the population of this state. The general assembly further declares that reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control; that efforts to control the disease should include public education, counseling, and voluntary testing; that restrictive enforcement measures should be used only when necessary to protect the public health; and that having AIDS or the HIV infection, being presumed to have the HIV infection, or seeking testing for the presence of such infection should not serve as the basis for discriminatory actions or the prevention of access to services. The general assembly further declares that the purpose of this part 14 is to protect the public health and prevent the spread of said disease.

Source: L. 87: Entire part added, p. 1130, § 1, effective June 8. **L. 90:** Entire section amended, p. 1309, § 1, effective May 24.

ANNOTATION

Applicability of part. Nothing in the statutory scheme of this part 14 demonstrates intent

on the part of the general assembly to give this part 14 retroactive effect so that it applied prior

to June 8, 1987, the effective date of the act. *Belle Bonfils Memorial Blood Center v. District Court*, 763 P.2d 1003 (Colo. 1988).

Statute does not apply to discovery in negligence action by patient infected with the AIDS virus after a blood transfusion where lawsuit

was filed in February of 1987 and the first request for discovery of information was in April of 1987. *Belle Bonfils Memorial Blood Center v. District Court*, 763 P.2d 1003 (Colo. 1988).

25-4-1402. Reports of HIV infection. (1) Every attending physician in this state shall make a report to the state department of public health and environment or local department of health, in a form and within a time period designated by the state department of public health and environment, on every individual known by said physician to have a diagnosis of AIDS, HIV-related illness, or HIV infection, including death from HIV infection.

(2) All other persons treating a case of HIV infection in hospitals, clinics, sanitariums, penal institutions, and other private or public institutions shall make a report to the state department of public health and environment or local department of health, in a form and within a time period designated by the state department of public health and environment, on every individual having a diagnosis of AIDS, HIV-related illness, or HIV infection, including death from HIV infection.

(3) Repealed.

(4) The reports required to be made under the provisions of subsections (1) and (2) of this section shall contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or other person making the report.

(5) Good faith reporting or disclosure pursuant to this section or section 25-4-1403 shall not constitute libel or slander or a violation of the right of privacy or privileged communication.

(6) Any person who in good faith complies completely with this part 14 shall be immune from civil and criminal liability for any action taken in compliance with the provisions of this part 14. Compliance by a physician with the reporting requirements of this part 14 and with any regulations promulgated by the state department of public health and environment relating thereto shall fulfill any duty of such physician to a third party.

Source: **L. 87:** Entire part added, p. 1130, § 1, effective June 8. **L. 90:** (1) and (2) amended and (3) repealed, pp. 1309, 1314, §§ 2, 10, effective May 24. **L. 94:** (1), (2), and (6) amended, p. 2770, § 461, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1), (2), and (6), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Because having AIDS or seeking testing for the presence of such infection should not serve as a basis for discriminatory actions, information concerning the plaintiff's health and possible HIV infection was not of legitimate public concern. Publication of such information

by the plaintiff's employer was sufficient to support a claim for invasion of privacy. *Borquez v. Robert C. Ozer, P.C.*, 923 P.2d 166 (Colo. App. 1995), *aff'd in part and rev'd in part* on other grounds, 940 P.2d 371 (Colo. 1997).

25-4-1402.5. Exemption from reporting. (Repealed)

Source: **L. 91:** Entire section added, p. 995, § 1, effective April 20. **L. 94:** (4) repealed, p. 696, § 3, effective April 19; (1) amended, p. 2771, § 462, effective July 1. **L. 2009:** Entire section repealed, (SB 09-179), ch. 112, p. 474, § 18, effective April 9.

25-4-1403. Reports of positive HIV tests. All laboratories or persons performing laboratory tests for HIV shall report to the state department of public health and environment or appropriate local department of health, in a form and within a time period

designated by the state department of public health and environment, the name, date of birth, sex, and address of any individual whose specimen submitted for examination tests positive for HIV as defined by the state board of health. Such report shall include the test results and the name and address of the attending physician and any other person or agency referring such positive specimen for testing.

Source: L. 87: Entire part added, p. 1131, § 1, effective June 8. L. 90: Entire section amended, p. 1310, § 3, effective May 24. L. 94: Entire section amended, p. 2771, § 463, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1404. Use of reports. (1) The public health reports required to be submitted by sections 25-4-1402 and 25-4-1403 and records resulting from compliance with section 25-4-1405 (1) and held by the state department of public health and environment, any county, district, and municipal public health agency, or any health care provider or facility, third-party payor, physician, clinic, laboratory, blood bank, or other agency shall be strictly confidential information. Such information shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under any of the following circumstances:

(a) Release may be made of such information for statistical purposes in a manner such that no individual person can be identified.

(b) Release may be made of such information to the extent necessary to enforce the provisions of this part 14 and related rules and regulations concerning the treatment, control, and investigation of HIV infection by public health officials.

(c) Release may be made of such information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.

(d) An officer or employee of the county, district, or municipal public health agency or state department of public health and environment may make a report of child abuse to agencies responsible for receiving or investigating reports of child abuse or neglect in accordance with the applicable provisions of the "Child Protection Act of 1987" set forth in part 3 of article 3 of title 19, C.R.S. However, in the event a report is made, only the following information shall be included in the report:

(I) The name, address, and sex of the child;

(II) The name and address of the person responsible for the child;

(III) The name and address of the person who is alleged to be responsible for the suspected abuse or neglect, if known; and

(IV) The general nature of the child's injury.

(e) The state department of public health and environment and any county, district, or municipal public health agency, upon being contacted by a district attorney pursuant to section 18-3-415.5, C.R.S., shall provide the information specified in said section.

(f) An officer or employee of the state department of public health and environment or of a county, district, or municipal public health agency, pursuant to section 18-3-415.5, C.R.S., shall provide, for purposes of a sentencing hearing, oral and documentary evidence limited to whether a person who has been bound over for trial for any sexual offense, as described in section 18-3-415.5, C.R.S., was provided notice that he or she had tested positive for the human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome or had discussion concerning his or her HIV infection, and the date of such notice or discussion.

(2) No officer or employee of the state department of public health and environment or of a county, district, or municipal public health agency shall be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report retained by such department pursuant to this part 14 or as to the existence of the contents of reports received pursuant to sections 25-4-1402 and 25-4-1403 or the results of investigations in section 25-4-1405. This provision shall not apply to administrative or

judicial proceedings pursuant to section 25-4-1406 or 25-4-1407 or section 18-3-415.5, C.R.S.

(3) Information regarding AIDS and HIV infection in medical records held by a facility that provides ongoing health care is considered medical information, not public health reports, and is protected from unauthorized disclosure as provided in section 18-4-412, C.R.S.

Source: **L. 87:** Entire part added, p. 1131, § 1, effective June 8. **L. 90:** (1) amended and (3) added, p. 1310, § 4, effective May 24. **L. 93:** (1)(d) added, p. 1610, § 4, effective June 6. **L. 94:** IP(1), IP(1)(d), and (2) amended, p. 2772, § 464, effective July 1. **L. 99:** (1)(e) and (1)(f) added and (2) amended, pp. 1002, 1003, §§ 7, 8, effective May 29. **L. 2010:** IP(1), IP(1)(d), (1)(e), (1)(f), and (2) amended, (HB 10-1422), ch. 419, p. 2096, § 103, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portions to subsections (1) and (1)(d) and subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 254, Session Laws of Colorado 1999.

ANNOTATION

Because reports and records concerning persons who are diagnosed with AIDS, HIV-related illness, or HIV infection are strictly confidential under this section and may be released only under specified circumstances, information concerning the plaintiff's health and possible HIV infection was not of legitimate

public concern. Publication of such information by the plaintiff's employer was sufficient to support a claim for invasion of privacy. *Borquez v. Robert C. Ozer, P.C.*, 923 P.2d 166 (Colo. App. 1995), *aff'd in part and rev'd in part* on other grounds, 940 P.2d 371 (Colo. 1997).

25-4-1405. Disease control by the state department of public health and environment and county, district, and municipal public health agencies. (1) It is the duty of the executive director or the chief medical officer of the state department of public health and environment and county, district, and municipal public health directors to investigate sources of HIV infection and to use every proper means to prevent the spread of the disease.

(2) It is the duty of the executive director or the chief medical officer of the state department of public health and environment and county, district, and municipal public health directors, as part of disease control efforts, to provide public information, risk-reduction education, confidential voluntary testing and counseling, educational materials for use in schools, and professional education to health care providers.

(3) The state department of public health and environment shall develop and implement programs under which the state department and county, district, and municipal public health agencies may perform the following tasks:

(a) Prepare and disseminate to health care providers circulars of information and presentations describing the epidemiology, testing, diagnosis, treatment, medical, counseling, and other aspects of HIV infection;

(b) Provide consultation to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control;

(c) Conduct health information programs to inform the general public of the medical and psychosocial aspects of HIV infection, including updated information on how infection is transmitted and can be prevented. The department shall prepare for free distribution among the residents of the state printed information and instructions concerning the dangers from HIV infection, its prevention, and the necessity for testing.

(d) Prepare and update an educational program on HIV infection in the workplace for use by employers;

(e) Develop and implement HIV education risk-reduction programs for specific populations at higher risk for infection; and

(f) Develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools.

(4) School districts are urged to provide every secondary school student, with parental consent, education on HIV infection and AIDS and its prevention.

(5) It is the duty of every physician who, during the course of an examination, discovers the existence of HIV infection or who treats a patient for HIV infection to inform the patient of the interpretation of laboratory results and counsel the patient on measures for preventing the infection of others, prophylaxis and treatment of opportunistic infections, treatment to prevent progression of HIV infection, and the necessity of regular medical evaluation.

(6) Any county, district, or municipal public health agency, state institution or facility, medical practitioner, or public or private hospital or clinic may examine and provide treatment for HIV infection for any minor if such physician or facility is qualified to provide such examination and treatment. The consent of the parent or guardian of such minor shall not be a prerequisite to such examination and treatment. The physician in charge or other appropriate authority of the facility or the licensed physician concerned shall prescribe an appropriate course of treatment for such minor. The fact of consultation, examination, and treatment of such a minor under the provisions of this section shall be absolutely confidential and shall not be divulged by the facility or physician to any person other than the minor except for purposes of a report required under sections 25-4-1402 and 25-4-1403 and subsection (8) of this section and a report containing the name and medical information of the minor made to the appropriate authorities if required by the "Child Protection Act of 1987", part 3 of article 3 of title 19, C.R.S. If the minor is less than sixteen years of age or not emancipated, the minor's parents or legal guardian may be informed by the facility or physician of the consultation, examination, and treatment. The physician or other health care provider shall counsel the minor on the importance of bringing his parents or guardian into the minor's confidence about the consultation, examination, or treatment.

(7) (a) When investigating HIV infection, the state department of public health and environment and county, district, and municipal public health agencies, within their respective jurisdictions, may inspect and have access to medical and laboratory records relevant to the investigation of HIV infection.

(b) Repealed.

(7.5) (a) When a public safety worker, emergency medical service provider, or staff member of a detention facility has been exposed to blood or other bodily fluid which there is a reason to believe may be infectious with HIV, the state department of public health and environment and county, district, and municipal public health agencies within their respective jurisdictions shall assist in evaluation and treatment of any involved persons by:

(I) Accessing information on the incident and any persons involved to determine whether a potential exposure to HIV occurred;

(II) Examining and testing such involved persons to determine HIV infection when the fact of an exposure has been established by the state department of public health and environment or a county, district, or municipal public health agency;

(III) Communicating relevant information and laboratory test results on the involved persons to such persons' attending physicians or directly to the involved persons if the confidentiality of such information and test results is acknowledged by the recipients and adequately protected, as determined by the state department of public health and environment or a county, district, or municipal public health agency; and

(IV) Providing counseling to the involved persons on the potential health risks and treatment resulting from exposure.

(b) The employer of an exposed person shall ensure that relevant information and laboratory test results on the involved person are kept confidential. Such information and laboratory results are considered medical information and protected from unauthorized disclosure.

(c) For purposes of this subsection (7.5), "public safety worker" includes, but is not limited to, law enforcement officers, peace officers, and firefighters.

(8) (a) No health care provider or other person, and no hospital, clinic, laboratory, or other private or public institution, shall test, or shall cause by any means to have tested, any specimen of any patient for HIV infection without the knowledge and consent of the patient; except that knowledge and consent need not be given:

(I) Where a health care provider or a custodial employee of the department of corrections or the department of human services is exposed to blood or other bodily fluids that may be infectious with HIV;

(II) When a patient's medical condition is such that knowledge and consent cannot be obtained;

(III) When the testing is done as part of seroprevalence surveys if all personal identifiers are removed from the specimens prior to the laboratory testing;

(IV) When the patient to be tested is sentenced to and in the custody of the department of corrections or is committed to the Colorado mental health institute at Pueblo and confined to the forensic ward or the minimum or maximum security ward of such institute;

(V) When a person is bound over for trial of a sexual offense as set forth in section 18-3-415 or 18-3-415.5, C.R.S., or subject to testing under section 18-7-201.5 or 18-7-205.5, C.R.S., and is tested by a health care provider or facility other than one that exclusively provides HIV testing and counseling;

(VI) When a pregnant woman is informed of the need for an HIV test and given the opportunity to decline the test as specified in section 25-4-201.

(b) Any patient tested for HIV infection pursuant to this subsection (8) without his knowledge and consent shall be given notice promptly, personally, and confidentially that a test sample was taken and that the results of such test may be obtained upon his request.

Source: **L. 87:** Entire part added, p. 1132, § 1, effective June 8; (6) amended, p. 1589, § 66, effective July 10. **L. 88:** (8)(a)(V) added, p. 729, § 2, effective July 1. **L. 90:** IP(3), (5), and (8)(a)(I) amended, (7.5) added, and (8)(a)(V) R&RE, pp. 1311, 1312, §§ 5, 6, effective May 24. **L. 91:** (7) amended, p. 996, § 2, effective April 20; (8)(a)(IV) amended, p. 1145, § 12, effective May 18. **L. 94:** IP(3) and (8)(a)(I) amended, pp. 2772, 2702, §§ 465, 256, effective July 1. **L. 99:** (8)(a)(V) amended, p. 1003, § 9, effective May 29. **L. 2001:** IP(7.5)(a) amended and (7.5)(c) added, p. 825, § 2, effective August 8. **L. 2009:** IP(8)(a) amended and (8)(a)(VI) added, (SB 09-179), ch. 112, p. 473, § 16, effective April 9. **L. 2010:** (1), (2), IP(3), (6), (7)(a), IP(7.5)(a), (7.5)(a)(II), and (7.5)(a)(III) amended, (HB 10-1422), ch. 419, p. 2097, § 104, effective August 11. **L. 2011:** (6) amended, (HB 11-1303), ch. 264, p. 1165, § 61, effective August 10.

Editor's note: Subsection (7)(b)(II) provided for the repeal of subsection (7)(b), effective July 1, 1994. (See L. 91, p. 996.)

Cross references: (1) For HIV testing of applicants for insurance, see § 10-3-1104.5; for HIV testing of persons convicted of prostitution or patronizing a prostitute, see §§ 18-7-201.5 and 18-7-205.5.

(2) For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (3) and subsection (8)(a)(I), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1999 act amending subsection (8)(a)(V), see section 1 of chapter 254, Session Laws of Colorado 1999.

ANNOTATION

Law reviews. For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

Plaintiff's claim for invasion of privacy arising out of unauthorized blood testing for HIV not precluded by subsection (8)(b). By its grant of immunity in certain circumstances, the general assembly has recognized that civil ac-

tions may occur. Further, by granting such immunity in the absence of providing a specific civil remedy, the general assembly has not evinced any intent to preclude a person from bringing a civil action. In the absence of such, the common law provides the mechanism for enforcing the violation. *Doe v. High-Tech Inst., Inc.*, 972 P.2d 1060 (Colo. App. 1998).

25-4-1405.5. Extraordinary circumstances - procedures. (1) The general assembly hereby finds, determines, and declares that the continued risk to the public health of the citizens of this state resulting from the presence and transmission of HIV infection warrants the implementation of controlled extraordinary measures to further the containment of HIV.

(2) (a) (I) The provision of confidential counseling and testing services for HIV is the preferred screening service for detection of HIV infection. However, the department shall, consistent with generally accepted practices for the protection of the public health and safety, conduct an anonymous counseling and testing program for persons considered to be at high risk for infection with HIV. Such program shall be conducted at selected HIV testing sites. The department may operate sites or contract through local boards of health to conduct such testing in conjunction with counseling and testing sites, subject to maintaining standards for performance set by the state board of health.

(II) The state board of health shall adopt rules specifying the performance standards for anonymous and confidential counseling and testing sites. Standards shall include, but are not limited to, performance standards for notifying and counseling HIV-infected persons and for partner notification.

(b) (I) The disclosure of an individual's name, address, phone number, or birth date shall not be required under the program as a condition of being tested to determine whether such person is infected with HIV. Any provision of this part 14 that requires or can be construed to require a person seeking to be tested for HIV to disclose such information shall not apply to persons seeking to be tested at said test sites.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the age and sex of a person seeking to be tested at the said test sites may be required. A person may provide personal identifying information after counseling, if the person volunteers to do so.

(c) to (e) (Deleted by amendment, L. 93, p. 539, § 1, effective July 1, 1993.)

(3) and (4) (Deleted by amendment, L. 93, p. 539, § 1, effective July 1, 1993.)

Source: L. 90: Entire section added, p. 1313, § 9, effective May 24. L. 93: Entire section amended, p. 539, § 1, effective July 1.

25-4-1406. Public health procedures for persons with HIV infection. (1) Orders directed to individuals with HIV infection or restrictive measures on individuals with HIV infection, as described in this part 14, shall be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the individual who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state department of public health and environment or the county, district, or municipal public health agency to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(2) When the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency, within his or her respective jurisdiction, knows or has reason to believe, because of medical or epidemiological information, that a person has HIV infection and is a danger to the public health, he or she may issue an order to:

(a) Require a person to be examined and tested to determine whether he has HIV infection;

(b) Require a person with HIV infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others;

(c) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others, but only if the executive director or local director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling by a qualified physician or health worker and continues to demonstrate behavior which endangers the health of others.

(3) If a person violates a cease-and-desist order issued pursuant to paragraph (c) of subsection (2) of this section and it is shown that the person is a danger to others, the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency may enforce the cease-and-desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct which endangers the health of others. Restrictions may include required partici-

pation in evaluative, therapeutic, and counseling programs. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least restrictive manner necessary to protect the public health. The executive director or the director issuing an order pursuant to this subsection (3) shall review petitions for reconsideration from the person affected by the order. Restriction orders issued by directors of county, district, or municipal public health agencies shall be submitted for review and approval of the executive director of the state department of public health and environment.

(4) (a) Upon the issuance of any order by the state department of public health and environment or the county, district, or municipal public health agency pursuant to subsection (2) or (3) of this section, such department or agency shall give notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order and notifying the person who is the subject of the order that he or she has a right to refuse to comply with such order and a right to be present at a judicial hearing in the district court to review the order and that he or she may have an attorney appear on his or her behalf in said hearing. If the person who is the subject of the order refuses to comply with such order and refuses to cooperate voluntarily with the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency, the executive director or county, district, or municipal director may petition the district court for an order of compliance with such order. The executive director or county, district, or municipal director shall request the district attorney to file such petition in the district court, but, if the district attorney refuses to act, the executive director or county, district, or municipal director may file such petition and be represented by the attorney general. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing shall be made by personal service or, if the person is not available, shall be mailed to the person who is the subject of the order by prepaid certified mail, return receipt requested, at his or her last-known address. Proof of mailing by the state department of public health and environment or the county, district, or municipal public health agency shall be sufficient notice under this section. The burden of proof shall be on the state department of public health and environment or the county, district, or municipal public health agency to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the executive director or the director of a county, district, or municipal public health agency does not petition the district court for an order of compliance within thirty days after the person who is the subject of the order refuses to comply, such person may petition the court for dismissal of the order. If the district court dismisses the order, the fact that such order was issued shall be expunged from the records of the state department of public health and environment or the county, district, or municipal public health agency.

(5) Any hearing conducted pursuant to this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

Source: **L. 87:** Entire part added, p. 1133, § 1, effective June 8. **L. 90:** (2)(c) and (3) amended, p. 1312, § 7, effective May 24. **L. 94:** (1), IP(2), (3), and (4) amended, p. 2772, § 466, effective July 1. **L. 2010:** (1), IP(2), (3), and (4) amended, (HB 10-1422), ch. 419, p. 2098, § 105, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), the introductory portion to subsection (2), and subsections (3) and (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1407. Emergency public health procedures. (1) When the procedures of section 25-4-1406 have been exhausted or cannot be satisfied as a result of threatened

criminal behavior and the executive director of the state department of public health and environment or the director of a county, district, or municipal public health agency, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has HIV infection and that such person presents an imminent danger to the public health, the executive director or the director of a county, district, or municipal public health agency may bring an action in district court, pursuant to rule 65 of the Colorado rules of civil procedure, to enjoin such person from engaging in or continuing to engage in specific conduct which endangers the public health. The executive director or county, district, or municipal director shall request the district attorney to file such action in the district court, but, if the district attorney refuses to act, the executive director or county or district director may file such action and be represented by the attorney general.

(2) Under the circumstances outlined in subsection (1) of this section, in addition to the injunction order, the district court may issue other appropriate court orders including, but not limited to, an order to take such person into custody, for a period not to exceed seventy-two hours, and place him in a facility designated or approved by the executive director. A custody order issued for the purpose of counseling and testing to determine whether such person has HIV infection shall provide for the immediate release from custody and from the facility of any person who tests negative and may provide for counseling or other appropriate measures to be imposed on any person who tests positive. The person who is the subject of the order shall be given notice of the order promptly, personally, and confidentially stating the grounds and provisions of the order and notifying such person that he has a right to refuse to comply with such order and a right to be present at a hearing to review the order and that he may have an attorney appear on his behalf in said hearing. If such person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) Any order issued by the district court pursuant to subsection (2) of this section shall be subject to review in a court hearing. Notice of the place, date, and time of the court hearing shall be given promptly, personally, and confidentially to the person who is the subject of the court order. Such hearing shall be conducted by the court no later than forty-eight hours after the issuance of the order. Such person has a right to be present at the hearing and may have an attorney appear on his behalf in said hearing. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(4) The burden of proof shall be on the state or the county, district, or municipal public health agency to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (1) or (2) of this section.

(5) Any hearing conducted by the district court pursuant to subsection (1) or (2) of this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

(6) Any order entered by the district court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health.

Source: L. 87: Entire part added, p. 1135, § 1, effective June 8. L. 94: (1) amended, p. 2774, § 467, effective July 1. L. 2010: (1) and (4) amended, (HB 10-1422), ch. 419, p. 2100, § 106, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1408. Rules and regulations. The state board of health may adopt such rules and regulations as are in its judgment necessary to carry out the provisions of this part 14.

Source: L. 87: Entire part added, p. 1136, § 1, effective June 8.

25-4-1408.5. Eligibility for services. Notwithstanding any other provision of this part 14 to the contrary, programs and services that provide for the investigation, identification,

testing, preventive care, or treatment of HIV infection or AIDS shall be available to a person regardless of his or her race, religion, gender, ethnicity, national origin, or immigration status.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 27, § 6, effective July 31.

ANNOTATION

Law reviews. For article, “2006 Immigration Legislation in Colorado”, see 35 Colo. Law. 79 (October 2006).

25-4-1409. Penalties. (1) Any attending physician or other health care provider required to make a report pursuant to section 25-4-1402 or any laboratory or person required to make a report pursuant to section 25-4-1403 who fails to make such a report commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

(2) Any physician or other health care provider, any officer or employee of the state department of public health and environment or a county, district, or municipal public health agency, or any person, firm, or corporation that violates section 25-4-1404 by releasing or making public confidential public health reports or by otherwise breaching the confidentiality requirements of said section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than six months nor more than twenty-four months, or by both such fine and imprisonment.

Source: L. 87: Entire part added, p. 1136, § 1, effective June 8. L. 90: Entire section amended, p. 1312, § 8, effective May 24. L. 94: (2) amended, p. 2774, § 468, effective July 1. L. 2010: (2) amended, (HB 10-1422), ch. 419, p. 2100, § 107, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1410. Repeal of part. (Repealed)

Source: L. 87: Entire part added, p. 1137, § 1, effective June 8. L. 90: Entire section repealed, p. 1314, § 10 effective May 24.

25-4-1411. AIDS drug assistance program - legislative declaration - no entitlement created. (1) (a) The general assembly recognizes that medical science is making strides in treating persons who have AIDS or HIV. The general assembly recognizes that new pharmaceutical products have been developed that delay the debilitating effects of AIDS and HIV, thereby allowing HIV-infected persons to maintain a higher quality of life and remain productive. The general assembly also recognizes that many persons with AIDS may eventually have their medical bills paid through some form of government assistance. The general assembly finds that the state will recognize a savings in medical assistance if persons with HIV can remain working longer.

(b) Therefore, the general assembly declares that the purpose of this section is to implement the drug treatment component of the federal “Ryan White C.A.R.E. Act of 1990”, as amended, by creating the AIDS drug assistance program to provide certain pharmaceutical products to qualifying low-income persons who have AIDS or HIV.

(c) Nothing in this section shall be construed to establish any entitlement to services from the department of public health and environment.

(2) Subject to available appropriations, the department of public health and environment is authorized to implement and administer an AIDS drug assistance program, referred to in this section as the “state program”, to provide pharmaceutical products to treat HIV

disease or prevent the serious deterioration of health arising from HIV disease in eligible individuals. The general assembly may annually appropriate moneys from the general fund to purchase pharmaceutical products for persons participating in the state program. The state program shall also be funded with federal funds available under the federal "Ryan White C.A.R.E. Act of 1990", as amended, and moneys appropriated for the implementation and administration of the state program from the AIDS and HIV prevention fund as authorized by section 25-4-1415 (1).

(3) To be eligible to participate in the state program, an individual shall:

(a) Have a medical diagnosis of HIV disease;

(b) (Deleted by amendment, L. 2001, p. 332, § 1, effective July 1, 2001.)

(c) Have a prescription from an authorized provider for a pharmaceutical product or combination of pharmaceutical products that are included on the drug formulary for the state program;

(d) Meet income eligibility requirements as determined by the department of public health and environment in consultation with the subcommittee of the advisory group on AIDS policy established in subsection (4) of this section.

(3.5) Notwithstanding any other provision of this part 14 to the contrary, if a person meets the eligibility requirements set forth in subsection (3) of this section, he or she shall be eligible for programs and services that provide for the investigation, identification, testing, preventive care, or treatment of HIV infection or AIDS regardless of his or her race, religion, gender, ethnicity, national origin, or immigration status.

(4) A subcommittee of an advisory group convened by the governor to make recommendations for AIDS policy in the state shall serve in an advisory role to the department of public health and environment in implementing the state program and shall advise and recommend to the department of public health and environment what pharmaceutical products should be listed on the drug formulary for the state program.

(5) If at any time the department of public health and environment, in consultation with the subcommittee of the advisory group on AIDS policy established in subsection (4) of this section, determines that the AIDS drug assistance program is reaching the program's fiscal limitations, the department, in consultation with the subcommittee, shall implement a policy of giving preference to applicants of lower income, who otherwise meet the eligibility requirements in subsection (3) of this section, for enrollment into the program.

(6) (a) Except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2004-05 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the general assembly shall appropriate to the department of public health and environment for the state program the amount of moneys to be received by the state program pursuant to section 24-75-1104.5 (1) (j), C.R.S. The general assembly shall appropriate the amount specified in this subsection (6) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(b) The department of public health and environment and the advisory group shall determine how the moneys appropriated for the state program pursuant to this subsection (6) are to be used.

Source: L. 98: Entire section added, p. 181, § 1, effective August 5. L. 2001: (3) amended and (5) added, p. 332, § 1, effective July 1. L. 2004: (6) added, p. 1710, § 8, effective June 4. L. 2006, 1st Ex. Sess.: (3.5) added, p. 27, § 7, effective July 31. L. 2009: (6)(a) amended, (SB 09-210), ch. 124, p. 531, § 3, effective April 16; (2) and (6)(a) amended, (SB 09-269), ch. 333, p. 1766, § 5, effective June 1.

Editor's note: Amendments to subsection (6)(a) by Senate Bill 09-269 and Senate Bill 09-210 were harmonized.

Cross references: For the "Ryan White C.A.R.E. Act of 1990", see Pub.L. 101-381, codified at 42 U.S.C. sec. 300ff et seq.

ANNOTATION

Law reviews. For article, “2006 Immigration Legislation in Colorado”, see 35 Colo. Law. 79 (October 2006).

25-4-1412. Definitions. As used in this section and sections 25-4-1413 to 25-4-1415, unless the context otherwise requires:

(1) “Program” means the Colorado HIV and AIDS prevention grant program created in section 25-4-1413.

(2) “State board” means the state board of health created in section 25-1-103.

Source: L. 2006: Entire section added, p. 1755, § 1, effective June 6.

25-4-1413. Program. (1) There is hereby created in the department the Colorado HIV and AIDS prevention grant program to address local community needs in the areas of medically accurate HIV and AIDS prevention and education through a competitive grant process. The department shall administer the program.

(2) Grant applicants shall be nonprofit organizations that are governed by a board of directors, have the benefit of tax-exempt status pursuant to section 501 (c) (3) of the federal “Internal Revenue Code of 1986” or are county, district, or municipal public health agencies.

(3) (a) Preference shall be given to grant applicants that have as one of their primary purposes HIV and AIDS prevention and education.

(b) Grants may be given to organizations that conduct HIV prevention in conjunction with other co-morbidities secondary to HIV infections.

(4) Grant applications shall include, but need not be limited to:

(a) A statement of the local HIV and AIDS prevention or education issue to be addressed, a description of the constituency that shall be served or targeted, and how the constituency will benefit;

(b) A description of the goals and objectives of the grant applicant in submitting an application under the program; and

(c) A description of the activities planned to accomplish the goals and objectives of the grant applicant and of the outcome measures that will be used by the grant applicant.

(5) Grants shall only be given for medically accurate HIV and AIDS prevention and education programs that are based in behavioral and social science theory and research and shall not be used to contribute to existing scholarships, directly to endowments, fund-raising events, annual fund drives, or debt reduction.

Source: L. 2006: Entire section added, p. 1755, § 1, effective June 6. **L. 2007:** (2) amended, p. 2041, § 67, effective June 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2100, § 108, effective August 11.

25-4-1414. Grant program - conflict of interest. (1) (a) The program shall fund medically accurate HIV and AIDS prevention and education programs through a competitive grant process that shall be overseen by the HIV and AIDS prevention grant program advisory committee, which is hereby created and referred to in this section as the “advisory committee”. The advisory committee shall consist of seven members appointed by the executive director of the department as follows:

(I) (Deleted by amendment, L. 2009, (SB 09-179), ch. 112, p. 474, § 17, effective April 9, 2009.)

(II) One member who is recommended by the department’s minority health advisory commission;

(III) Four members who are recommended by a statewide collaborative group that assists the department in the department’s comprehensive plan for HIV and AIDS prevention;

(IV) One member who has expertise in HIV and AIDS prevention and education; and
(V) One member who represents a clinic that receives moneys under part 3 of the federal "Ryan White C.A.R.E. Act of 1990", as amended.

(b) The composition of the advisory committee shall reflect, to the extent practical, Colorado's ethnic, racial, and geographic diversity.

(c) The grants administered pursuant to section 25-4-1413 shall only be subject to the restrictions provided for in this section and section 25-4-1413 and shall not be subject to the same restrictions as grants provided with federal moneys for HIV and AIDS prevention. The state board, upon recommendations of the advisory committee, shall adopt rules that specify, but need not be limited to, the following:

- (I) The procedures and timelines by which an entity may apply for program grants;
- (II) Grant application contents, in addition to those specified in section 25-4-1413 (3);
- (III) Criteria for selecting the entities that shall receive grants and determining the amount and duration of the grants;
- (IV) Reporting requirements for entities that receive grants pursuant to this section; and
- (V) The qualifications of an adequate proposal.

(2) The advisory committee shall review the applications received pursuant to this section and submit to the state board and the executive director of the department recommended grant recipients, recommended grant amounts, and the duration of each recommended grant. In making recommendations for grants, the advisory committee shall consider the distribution of federal funds in the areas of HIV and AIDS prevention, education, and treatment. Within thirty days after receiving the advisory committee's recommendations, the executive director shall submit his or her recommendations to the state board. The state board shall have the final authority to approve the grants administered under this section and section 25-4-1413. If the state board disapproves a recommendation for a grant recipient, the advisory committee may submit a replacement recommendation within thirty days after disapproval. In making grant recommendations, the advisory committee shall follow the purpose of the program as outlined in section 25-4-1413. The state board shall award grants to the entities selected by the advisory committee, specifying the amount and duration of each grant award. In reviewing and approving grant applications, the advisory committee and the state board shall ensure that grants are distributed statewide and address the needs of both urban and rural residents of Colorado.

(3) If a member of the advisory committee has an immediate personal, private, or financial interest in any matter pending before the advisory committee, the member shall disclose the fact and shall not vote upon the matter.

Source: L. 2006: Entire section added, p. 1756, § 1, effective June 6. L. 2009: (1)(a)(I), (1)(a)(III), and (1)(a)(V) amended, (SB 09-179), ch. 112, p. 474, § 17, effective April 9.

Cross references: For the "Ryan White C.A.R.E. Act of 1990", see Pub.L. 101-381, codified at 42 U.S.C. sec. 300ff et seq.

25-4-1415. Cash fund - administration - limitation. (1) There is hereby created in the state treasury the AIDS and HIV prevention fund, referred to in this section as the "fund", that shall consist of moneys that may be appropriated to the fund by the general assembly. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the program; except that, for the 2009-10 and 2010-11 fiscal years, the general assembly may appropriate moneys from the fund to the department of public health and environment for the implementation and administration of the AIDS drug assistance program described in section 25-4-1411 (2). Any moneys in the fund not expended for the purpose of the program may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(2) Pursuant to section 24-75-1104.5 (1) (m), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2006-07 fiscal year and in each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall annually transfer to the fund two percent, not to exceed two million dollars in any fiscal year, of the total amount of the moneys received by the state pursuant to the master settlement agreement, not including attorney fees and costs, during the preceding fiscal year. The state treasurer shall transfer the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(3) The department may receive up to five percent of the moneys annually appropriated by the general assembly to the department from the fund created in subsection (1) of this section for the actual costs incurred in administering the program.

(4) For the 2009-10 fiscal year, the state treasurer shall transfer from the fund:

(a) To the Colorado health service corps fund created in section 25-20.5-706 the amount of one hundred twenty thousand dollars; and

(b) To the visa waiver program fund created in section 25-20.5-605 the amount of sixty-seven thousand two hundred ninety-four dollars for appropriation by the general assembly to the primary care office in the prevention services division of the department.

Source: L. 2006: (2) amended, p. 1042, § 14, effective May 25; entire section added, p. 1757, § 1, effective June 6. L. 2009: (1) and (2) amended, (SB 09-269), ch. 333, p. 1767, § 6, effective June 1; (4) added, (HB 09-1111), ch. 396, p. 2142, § 7, effective June 2. L. 2010: (1) amended, (HB 10-1323), ch. 35, p. 131, § 6, effective March 22; (4)(a) amended, (HB 10-1138), ch. 142, p. 484, § 8, effective July 1.

PART 15

BREAST CANCER SCREENING

Cross references: For provisions relating to mandatory insurance coverage for mammography screening, see § 10-16-104 (4).

25-4-1501. Legislative declaration. The general assembly hereby finds and declares that the incidence of breast cancer in women of this state is a significant health problem that can and should be reduced through early detection and treatment. Accordingly, it is the intention of the general assembly in enacting this part 15 to provide breast cancer screening where it is not otherwise readily available for reasons of cost or distance to suitable medical facilities.

Source: L. 88: Entire part added, p. 1013, § 1, effective April 7.

25-4-1502. Definitions. As used in this part 15, unless the context otherwise requires:

(1) (Deleted by amendment, L. 95, p. 487, § 2, effective July 1, 1995.)

(2) “Board” means the state board of health.

(3) “Department” means the department of public health and environment.

(3.5) “Diagnostic screening” means the use of procedures including physical examinations, radiologic imaging, surgical techniques, and any new technologies approved by the board for detecting whether abnormalities of the breast are malignant or benign.

(4) “Fund” means the breast cancer screening fund established in section 25-4-1503.

(5) “Screening” means the conduct of physical examinations, visual inspections, or other medical tests exclusively for the purpose of ascertaining the existence of any physiological abnormality which might be indicative of the presence of disease. “Screening” includes diagnostic screening services.

Source: L. 88: Entire part added, p. 1013, § 1, effective April 7. L. 94: (3) amended, p. 2775, § 469, effective July 1. L. 95: (1) and (5) amended and (3.5) added, p. 487, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1503. Fund created. (1) There is hereby established in the state treasury a fund to be known as the breast cancer screening fund, which shall be subject to annual appropriation to the department for the purposes of this part 15. The fund shall be credited with such appropriations as the general assembly may make from the general fund for the purposes of this part 15, as well as any moneys received by the department pursuant to section 25-4-1505 (2) and (4). In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of this fund shall be credited to the general fund.

(2) All moneys credited to the breast cancer screening fund which are not expended during the fiscal year shall be retained in the fund for its future use and shall not be credited or transferred to the general fund or any other fund.

Source: L. 88: Entire part added, p. 1014, § 1, effective April 7. L. 92: Entire section amended, p. 1296, § 1, effective May 29.

25-4-1504. Allocation of fund. (1) All moneys in the fund shall be used by the department for the following purposes:

(a) The creation and development of a breast cancer screening program, undertaken by private contract for services or operated by the department, that will improve the availability of breast cancer screening and which may include the purchase, maintenance, and staffing of a truck, a van, or any other vehicle suitably equipped to perform breast cancer screening;

(a.5) To provide such further breast cancer diagnostic screening services, as may be indicated;

(b) The creation and operation of a referral service for the benefit of women for whom further examination or treatment is indicated by the breast cancer screening.

Source: L. 88: Entire part added, p. 1014, § 1, effective April 7. L. 94: (1)(a) amended, p. 2775, § 470, effective July 1. L. 95: (1)(a) amended and (1)(a.5) added, p. 488, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1)(a), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1505. Powers and duties of department and advisory board. (1) The executive director of the department shall appoint an advisory board which shall recommend guidelines for the services of the program and such rules and regulations as may be necessary to effect the purposes of this part 15. Members of the advisory board shall be persons interested in health care and the promotion of breast cancer screening drawn from both the private and public sectors. The board of health shall have the authority to approve recommendations of the advisory board and the authority to promulgate rules and regulations recommended by the advisory board.

(2) The department is authorized to accept any grant or award of funds from the federal government or private sources for the furtherance of the purposes of this part 15. Any moneys thus received shall be credited to the fund. Any expenses incurred in the solicitation of donations to the fund shall be paid from the fund.

(3) Any program of breast cancer screening conducted pursuant to this part 15 shall be conducted so as to make such screening available to persons who are at or below two hundred fifty percent of the federal poverty line and who are at least forty years of age but less than sixty-five years of age.

(4) The department may adopt a schedule of fees to be charged for breast cancer screening. The schedule of fees shall be determined so as to make such screening available to the largest possible number of women. The department shall, where practical, collect any available insurance proceeds or other reimbursement payable on behalf of any recipient of

a breast cancer screening under this part 15 and may adjust the schedule of fees to reflect insurance contributions. All fees collected shall be credited to the fund.

Source: **L. 88:** Entire part added, p. 1014, § 1, effective April 7. **L. 94:** (1) amended, p. 2775, § 471, effective July 1. **L. 95:** (4) amended, p. 488, § 4, effective July 1. **L. 2005:** (3) amended, p. 941, § 28, effective June 2. **L. 2010:** (3) amended, (HB 10-1422), ch. 419, p. 2101, § 109, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2005 act amending subsection (3), see section 1 of chapter 241, Session Laws of Colorado 2005.

25-4-1506. Repeal of part. (Repealed)

Source: **L. 88:** Entire part added, p. 1015, § 1, effective April 7. **L. 92:** Entire section repealed, p. 1296, § 2, effective May 29.

PART 16

FOOD PROTECTION ACT

Editor's note: This part 16 was added in 1991. This part 16 was repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 16 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

25-4-1601. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that it is in the public interest for the department of public health and environment to establish minimum standards and rules for retail food establishments in Colorado and to provide authority for the uniform statewide administration, implementation, interpretation, and enforcement of such minimum standards and rules. Such standards and rules are established to:

- (a) Ensure the safety of food prepared, sold, or served in retail food establishments;
- (b) Maximize public health protection;
- (c) Identify hazards and potential sources of contamination and take measures to prevent, reduce, or eliminate the physical, chemical, or biological agents in food prepared, sold, or served in retail food establishments; and
- (d) Improve the sanitary condition of all retail food establishments, reduce food-borne illness outbreaks, and control the spread of food-borne disease from retail food establishments.

(2) This part 16 is deemed an exercise of the police powers of the state for the protection of the health and social welfare of the people of the state of Colorado.

Source: **L. 98:** Entire part R&RE, p. 1244, § 1, effective July 1. **L. 2009:** IP(1) amended, (SB 09-223), ch. 255, p. 1151, § 1, effective May 15.

Editor's note: This section is similar to former § 25-4-1601 as it existed prior to 1998.

25-4-1602. Definitions. As used in this part 16, unless the context otherwise requires:

- (1) "Automated food merchandising enterprise" means the collective activity of the supplying or preparing of food or drink for automated food merchandising machines.
- (2) "Certificate of license" means a grant to operate a retail food establishment without a fee, under the conditions set forth in section 25-4-1607 (9).

(2.5) “County or district public health agency” means a county or district health department or a county or municipal board of health.

(3) “Department” means the department of public health and environment, and its authorized employees.

(4) “Food” means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(5) “Fund” means the food protection cash fund created in section 25-4-1608.

(6) “HACCP plan” means a written document setting forth the formal procedures for following hazard analysis critical control point principles.

(6.5) “Imminent health hazard” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries or illnesses and the nature, severity, and duration of the anticipated injury or illness.

(7) “Inspection” means an inspection of a retail food establishment conducted by the department or a county or district board of health to ensure compliance by such establishment with rules promulgated by the department pursuant to this part 16.

(8) “License” means a grant to a licensee to operate a retail food establishment.

(9) “Licensee” means a person that is licensed or who holds a certificate of license pursuant to this part 16 and is responsible for the lawful operation of a retail food establishment.

(10) (Deleted by amendment, L. 2009, (SB 09-223), ch. 255, p. 1151, § 2, effective May 15, 2009.)

(11) “Modified atmosphere packaging” means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen, displacing the oxygen with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen.

(12) “Nonpotentially hazardous” means any food or beverage that, when stored under normal conditions without refrigeration, will not support the rapid and progressive growth of microorganisms that cause food infections or food intoxications.

(13) “Person” means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of such entities.

(14) “Retail food establishment” means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. “Retail food establishment” does not mean:

(a) Any private home;

(b) Private boarding houses;

(c) Hospital and health facility patient feeding operations licensed by the department;

(d) Child care centers and other child care facilities licensed by the department of human services;

(e) Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed base of operation;

(f) Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

(g) Motor vehicles used only for the transport of food;

(h) Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;

(i) Establishments that handle only nonpotentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package;

(j) Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;

(k) Automated food merchandising enterprises that supply only prepackaged nonpotentially hazardous food or drink or food or drink in bottles, cans, or cartons only, and operations that dispense only chewing gum or salted nuts in their natural protective covering;

(l) The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

(I) Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and

(II) Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

(m) A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the “Colorado Cottage Foods Act”, section 25-4-1614.

(15) “Safe food” means food that does not contain any poisonous, deleterious, or disease-causing substance or microorganisms that may render such food injurious to human health.

(16) “Special event” means an organized event or celebration at which retail food establishments prepare, serve, or otherwise provide food for human consumption.

(17) “Uniform statewide administration, implementation, interpretation, and enforcement” means the application of the rules adopted by the state board of health and the policy guidance of the department by state and county or district public health agencies responsible for implementation of the rules and policies. The uniform application shall not preclude county or district public health agencies from implementing administrative efficiencies or practices if the practices do not conflict with the state board of health rules or department policies.

Source: L. 98: Entire part R&RE, p. 1245, § 1, effective July 1. L. 2009: (2.5) and (17) added and (7) and (10) amended, (SB 09-223), ch. 255, p. 1151, § 2, effective May 15. L. 2010: (2.5) amended, (HB 10-1422), ch. 419, p. 2101, § 110, effective August 11. L. 2012: (14)(m) added, (SB 12-048), ch. 16, p. 41, § 4, effective March 15; (6.5) added, (HB 12-1097), ch. 78, p. 259, § 1, effective April 6.

Editor’s note: This section is similar to former § 25-4-1602 as it existed prior to 1998.

Cross references: For the legislative declaration in the 2012 act adding subsection (14)(m), see section 1 of chapter 16, Session Laws of Colorado 2012.

25-4-1603. Licensing, certification, and food protection agency. The department is hereby designated the state licensing, certification, and food protection agency for the purpose of protecting the public health and ensuring a safe food supply in this state. In addition to such designation, the department is hereby authorized to regulate and control retail food establishments, promulgate rules governing the operation of such establishments, and uniformly enforce and administer this part 16.

Source: L. 98: Entire part R&RE, p. 1247, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-223), ch. 255, p. 1152, § 3, effective May 15.

Editor’s note: This section is similar to former § 25-4-1603 as it existed prior to 1998.

25-4-1604. Powers and duties of department - rules. (1) The department shall have the following powers and duties:

(a) To grant or refuse licenses and certificates of license pursuant to section 25-4-1606, or to suspend or revoke licenses and certificates of license pursuant to section 25-4-1609;

(b) (I) To promulgate rules for adoption by the state board of health pursuant to article 4 of title 24, C.R.S., for the uniform statewide administration, implementation, interpretation, and enforcement of this part 16 and, as necessary, to ensure a safe food supply in retail

food establishments. Such rules may include provisions for the initial and periodic medical examination by the department or other competent medical authority of all employees of retail food establishments and shall include provisions specifying and regulating the places and conditions under which food shall be prepared for consumption, a uniform code of sanitary rules, and such other rules as the department deems necessary. Such rules may be modified and changed from time to time.

(II) For purposes of this paragraph (b), a uniform code of sanitary rules means rules for the preparation, sale, and serving of food, including but not be limited to general overall retail food establishment and equipment design and construction; sanitary maintenance of equipment, utensils, and facilities for food preparation, service, and storage; wholesomeness of food and drink; source and protection of food and water; disposal of liquid and solid wastes; and other rules for the effective administration and enforcement of this part 16.

(c) To hear and determine all complaints against licensees or grantees of certificates of license and to administer oaths and issue subpoenas to require the presence of any person necessary to the determination of any such hearing;

(d) To uniformly enforce this part 16 and the rules promulgated pursuant to this section;

(e) To enter retail food establishments during business hours and at other times during which activity is evident to conduct inspections and other interventions related to food safety and the protection of public health;

(f) To develop and enforce uniform statewide standards of program conduct and performance to be followed and adhered to by employees of the department and county or district boards of health;

(g) To provide technical assistance, equipment and product review, training and standardization, program evaluation, and other services necessary to assure the uniform statewide administration, implementation, interpretation, and enforcement of this part 16 and rules promulgated under this part 16;

(h) To review and approve HACCP plans submitted for evaluation to verify and ensure that food handling risks are reduced to prevent food-borne illness outbreaks;

(i) To delegate to any county or district board of health the powers and duties described in paragraphs (a), (c), (d), (e), and (h) of this subsection (1) at the request of such county or district board of health.

(2) Subsection (1) of this section shall not apply to the city and county of Denver, which, by ordinance, may provide for the licensure of retail food establishments.

Source: L. 98: Entire part R&RE, p. 1247, § 1, effective July 1. L. 2009: (1)(b)(I), (1)(d), (1)(f), (1)(g), and (1)(i) amended and (2) added, (SB 09-223), ch. 255, p. 1152, § 4, effective May 15.

Editor's note: This section is similar to former § 25-4-1604 as it existed prior to 1998.

25-4-1605. Submission of plans for approval - required. (1) An owner or operator of a retail food establishment shall submit plans and specifications to the department or a county or district board of health in the jurisdiction in which a retail food establishment is to be constructed or extensively remodeled before such construction or extensive remodeling is begun or any existing structure is converted for use as a retail food establishment. Such plans and specifications shall be submitted for review and approval, in such form as the department requires or approves, to ensure that the retail food establishment layout, equipment, and food handling procedures are conducive to providing a safe food product. Each plan and specification submission shall be accompanied by the fees set forth in section 25-4-1607. The department and a county or district board of health shall treat the plans and specifications as confidential trade secret information. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plants, construction materials of work areas, and the location, type, and model of proposed fixed equipment and facilities.

(2) The construction, extensive remodeling, or conversion of any retail food establishment shall be in accordance with the plans and specifications submitted to and approved by the department or a county or district board of health. The department or a county or district

board of health shall conduct preopening inspections of retail food establishments to assure compliance with the approved plans, as circumstances require.

(3) An owner or operator of a retail food establishment shall submit an HACCP plan to the department or a county or district board of health for review and approval before beginning a modified atmosphere packaging process or other food preparation method that does not meet rules promulgated by the department. HACCP plans shall be submitted in such form as the department requires or approves. The submission shall ensure that food handling risks are reduced to prevent food-borne illness and outbreaks. The department and any county or district board of health shall treat HACCP plans as confidential trade secret information.

(4) The department or a county or district board of health shall respond to any plans and specifications submitted pursuant to subsection (1) of this section and to any HACCP plan submitted pursuant to subsection (3) of this section within fourteen working days after receipt. If a submitted HACCP plan or other plan or specification is deemed inadequate, the department or a county or district board of health shall respond in writing to the submitter of the plans or specifications with a statement describing how such deficiencies may be corrected.

Source: L. 98: Entire part R&RE, p. 1248, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-223), ch. 255, p. 1153, § 5, effective May 15.

Editor's note: This section is similar to former § 25-4-1606 as it existed prior to 1998.

25-4-1606. Licensure - exception. (1) An application for a license or a certificate of license shall be filed with the department or a county or district board of health before any person may operate a retail food establishment in this state. The application shall be on a form supplied by the department and shall include such information as the department may require.

(2) Before granting any license or certificate of license, the department or a county or district board of health may visit and inspect the retail food establishment or property on which the applicant conducts or proposes to conduct business to assess whether the establishment can operate in accordance with the rules promulgated by the department to provide a safe food product. If an applicant complies with the requirements of this subsection (2) and the rules promulgated pursuant to this part 16, the department or a county or district board of health shall approve the application for a license or certificate of license.

(2.5) If a critical violation is documented during an inspection, and the retail food establishment is unable to correct the violation while the inspector is on site, follow-up activities shall be conducted. If the retail food establishment is able to correct the critical violation during the inspection, the critical violation and the resolution demonstrating compliance shall be documented on the inspection report form, with no follow-up inspection required. If more than one follow-up inspection is needed to correct the same critical violation at any type of retail food establishment, the department or a county or district board of health may pursue the civil penalty process outlined in section 25-4-1611 for correction and to recover any associated costs.

(3) Every license and certificate of license granted pursuant to this section shall specify the date granted, the period of coverage, the name of the licensee, and the name and address of the licensed establishment. All licenses shall be conspicuously displayed at all times in the licensed establishment.

(4) Licenses and certificates of license shall be valid for one calendar year or such portion thereof as remains after the granting of a license or certificate. When a license or certificate is valid for only a portion of a calendar year, there shall be no reduction of the fees required by section 25-4-1607. All licenses and certificates of license shall expire December 31 of the year in which they were granted and renewal applications shall be filed with the department during December of each year. Once a license or certificate of license has been granted, the department or a county or district board of health shall not refuse to renew such license or certificate unless the licensee has engaged in an unlawful act set forth in section 25-4-1610 or is in violation of any rules promulgated pursuant to this part 16.

(5) Subsections (1) and (2) of this section shall not apply in the city and county of Denver, which, by ordinance, may provide for the licensure of retail food establishments.

Source: L. 98: Entire part R&RE, p. 1249, § 1, effective July 1. L. 2009: (1), (2), and (4) amended and (2.5) added, (SB 09-223), ch. 255, p. 1154, § 6, effective May 15.

25-4-1607. Fees - repeal. (1) Each retail food establishment in this state shall be assessed an annual license fee in accordance with the following provisions:

(a) A retail food establishment preparing or serving food in individual portions for immediate on- or off-premises consumption shall be assessed an annual fee based on the following schedule:

Seating Capacity	Fee
0 to 100	\$255
101 to 200	285
Over 200	310

(b) A retail food establishment offering food for retail sale to consumers for off-premises consumption shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 3,500	\$115
3,501 to 15,000	180
15,001 to 25,000	200
25,001 to 45,000	235
45,001 to 65,000	290
65,001 to 85,000	415
over 85,000	500

(c) A retail food establishment offering food for retail sale to consumers for off-premises consumption and preparing or serving food in individual portions for immediate consumption either on- or off-premises shall be assessed an annual fee based on the following schedule:

Square Footage	Fee
Less than 3,500	\$207
3,501 to 15,000	338
15,001 to 25,000	360
25,001 to 45,000	395
45,001 to 65,000	450
65,001 to 85,000	575
over 85,000	690

(c.5) (I) A retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed an initial licensing fee based on the following schedule:

Seating Capacity	Initial License Fee
0-50	\$ 750
Over 50	1,250

(II) Any future annual license fee or a change in location within the calendar year of the same retail food establishment offering food at a temporary living quarter for workers associated with oil and gas shall be assessed a renewal fee based on the following schedule:

Seating Capacity	Renewal License Fee
0-50	\$ 275
Over 50	500

(d) A retail food establishment shall be subject to only one of the fees established in this subsection (1).

(e) (I) Retail food establishment license fees shall be established pursuant to this subsection (1); except that the city and county of Denver may establish such fees by ordinance.

(II) Notwithstanding subparagraph (I) of this paragraph (e), the fees established in this subsection (1) or by ordinance of the city and county of Denver shall be the only annual license fees charged by the state or any county, district, local, or regional inspection authority and shall cover all inspections of a retail food establishment pursuant to this subsection (1) throughout an annual license period.

(2) At the time a plan is submitted for review, an application fee of one hundred dollars shall be paid to the department or a county or district board of health. The fee for plan review and preopening inspection of a new or remodeled retail food establishment shall be the actual cost of such review, which shall not exceed five hundred eighty dollars. Such costs shall be payable at the time the plan is approved and an inspection is completed to determine compliance.

(3) At the time an equipment review is submitted, an application fee of one hundred dollars shall be paid to the department. The fee for equipment review by the department to determine compliance with applicable standards shall be the actual cost of such review, which shall not exceed five hundred dollars. Such costs shall be payable when the review is completed.

(4) The fee for an HACCP plan review of a specific written process shall be the actual cost of such review, which shall not exceed one hundred dollars. The review of an HACCP plan for a process already conducted at a facility shall be the actual cost of such review, which shall not exceed four hundred dollars. Costs shall be paid at the time the plan is approved and an inspection is completed.

(5) The fee for services requested by any person seeking department or county or district board of health review of a potential retail food establishment site shall be seventy-five dollars or the actual cost of such review, whichever is greater. Seventy-five dollars of such fee shall be billed at the time the review is requested, and the remainder shall be payable when services are completed.

(6) The fee for food protection services provided to special events shall not exceed the actual cost of such services and shall be paid by the organizer of such special event when services are completed.

(7) The fee for any requested service not specifically set forth in this section shall not exceed the actual cost of such service.

(8) The actual cost of a service shall be established by the department or a county or district board of health, whichever provided the service.

(9) (a) A certificate of license may be issued to and in the name and address of any:

(I) Parochial, public, or private school;

(II) Penal institution;

(III) Charitable organization and benevolent, nonprofit retail food establishment conducted for the purpose of assisting elderly, incapacitated, or disadvantaged persons; and

(IV) Nonprofit or charitable organization that donates, prepares, sells, or serves food in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

(A) Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and

(B) Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

(b) No institution or organization listed in paragraph (a) of this subsection (9) shall pay any fee imposed on a retail food establishment pursuant to this section.

(10) County or district boards of health created in part 5 of article 1 of this title shall collect fees under this section if the county or district boards of health are authorized by the department to enforce this part 16 and any rules promulgated pursuant to this part 16.

(11) (Deleted by amendment, L. 2009, (SB 09-223), ch. 255, p. 1155, § 7, effective May 15, 2009.)

(12) Notwithstanding the amount specified for any fee in this section, the state board of health by rule or as otherwise provided by law may reduce the amount of one or more of

the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board of health by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: **L. 98:** (12) added, p. 1334, § 46, effective June 1; entire part R&RE, p. 1250, § 1, effective July 1. **L. 2003:** (1)(a), (1)(b), and (1)(c) amended, p. 2050, § 1, effective July 1. **L. 2009:** (1)(a), (1)(b), (1)(c), (1)(e)(II), (2) to (5), (8), (10), and (11) amended and (1)(c.5) added, (SB 09-223), ch. 255, p. 1155, § 7, effective May 15.

Editor's note: (1) This section is similar to former § 25-4-1607 as it existed prior to 1998.

(2) Subsection (12) was enacted as subsection (3) in SB 98-194 and was renumbered in the 1998 Colorado Revised Statutes for ease of location in the section as repealed and reenacted by SB 98-189.

25-4-1608. Food protection cash fund - creation. (1) Fees collected by the department pursuant to section 25-4-1607 shall be transmitted to the state treasurer who shall credit the same to the food protection cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate the moneys in the fund to the department for the payment of salaries and expenses necessary for the administration of this part 16.

(2) Forty-three dollars of each fee collected by the department and a county or district board of health pursuant to section 25-4-1607 (1) (a), (1) (b), (1) (c), and (1) (c.5) shall be transmitted to the state treasurer, who shall credit such fee to the food protection cash fund created in subsection (1) of this section. This portion of the fee shall be used by the department to conduct the duties and responsibilities set forth in section 25-4-1604 (1) (a), (1) (b), (1) (c), (1) (f), (1) (g), and (1) (i). The remainder of such fee shall be retained by the county or district board of health for deposit in the appropriate county or district public health agency fund in accordance with section 25-1-511 or, if the fee is collected by the department, it shall be deposited pursuant to subsection (1) of this section, and used to pay a portion of the cost of conducting a retail food establishment protection program.

(3) Any interest derived from the deposit and investment of moneys in the food protection cash fund shall be credited to such fund. Any unexpended or unencumbered moneys remaining in such fund at the end of a fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state.

Source: **L. 98:** Entire part R&RE, p. 1244, § 1, effective July 1. **L. 2003:** (2) amended, p. 2051, § 2, effective July 1. **L. 2008:** (2) amended, p. 2053, § 8, effective July 1. **L. 2009:** (2) amended, (SB 09-223), ch. 255, p. 1157, § 8, effective May 15.

Editor's note: This section is similar to former § 25-4-1605 as it existed prior to 1998.

25-4-1609. Disciplinary actions - closure - revocation - suspension - review. (1) The department or a county or district board of health may, on its own motion or complaint and after an investigation and hearing at which the licensee is afforded an opportunity to be heard, suspend or revoke a license or certificate of license for any violation of this part 16, any rule adopted pursuant to this part 16, or any of the terms, conditions, or provisions of such license or certificate of license. A written notice of suspension or revocation, as well as any required notice of hearing, shall be sent by certified mail to the licensee at the address contained in the license or certificate of license.

(2) Except in cases of closure due to an imminent health hazard, proceedings for the revocation or suspension of a license or certificate of license may not be commenced until after the imposition of the penalties prescribed by section 25-4-1611. The maximum period of suspension is six months. When a license or certificate of license is suspended or revoked, no part of the fees paid for a license may be returned to the licensee.

(3) Any suspension or revocation of a license or certificate of license may be reviewed by any court of general jurisdiction having jurisdiction over the retail food establishment for

which the application for license or certificate of license was made. If such court determines that such suspension or revocation was without good cause, it shall order the department to reinstate such license or certificate of license.

Source: **L. 98:** Entire part R&RE, p. 1253, § 1, effective July 1. **L. 2009:** (1) amended, (SB 09-223), ch. 255, p. 1157, § 9, effective May 15. **L. 2012:** (2) amended, (HB 12-1097), ch. 78, p. 259, § 2, effective April 6.

25-4-1609.5. Grievance process. (1) If a licensee believes that a county or district public health agency is taking regulatory action outside the scope of its authority, the licensee may file a written complaint with the department within thirty days after the licensee's knowledge of the regulatory action.

(2) Within forty-five days after receipt of a written complaint pursuant to subsection (1) of this section, the department shall convene a dispute resolution panel that consists of one person from the department, one person from the retail food industry, and one person from a county or district public health agency who is not within the jurisdiction of the licensee requesting resolution. The dispute resolution panel shall allow the licensee and the county or district public health agency to provide information related to the grievance. The dispute resolution panel shall make findings concerning the grievance and shall recommend to the county or district public health agency a resolution to the dispute. The county or district public health agency shall implement the recommendations within thirty days after receipt of the findings and recommendations from the dispute resolution panel. If the parties to the grievance resolve the complaint prior to review by the dispute resolution panel, the parties shall notify the department in writing and the grievance shall be dismissed.

(3) If the county or district public health agency fails to implement the recommendations of the dispute resolution panel within thirty days after receipt of the recommendations, the county or district public health agency shall provide the licensee with the opportunity to request an administrative hearing in accordance with section 24-4-105, C.R.S.

Source: **L. 2009:** Entire section added, (SB 09-223), ch. 255, p. 1157, § 10, effective May 15.

25-4-1610. Unlawful acts. (1) It is unlawful for:

(a) Any person to begin the construction or extensive remodeling of a retail food establishment unless such person has received department or county or district board of health approval of plans and specifications for such construction or remodeling pursuant to section 25-4-1605;

(b) Any person to operate a retail food establishment without a valid license or certificate of license from the department or a county or district board of health having jurisdiction over such establishment;

(c) Any person to violate this part 16 and any rules promulgated pursuant to this part 16;

(d) Any person or retail food establishment to refuse to permit entry to such establishment in accordance with sections 25-4-1604 (1) (e) and 25-4-1606 (2);

(e) Any retail food establishment to sell or serve food prepared in a private home to any person;

(f) Any person to fail to pay a civil penalty assessed by the department or a county or district board of health.

Source: **L. 98:** Entire part R&RE, p. 1254, § 1, effective July 1. **L. 2009:** (1)(a), (1)(b), and (1)(f) amended, (SB 09-223), ch. 255, p. 1158, § 11, effective May 15.

25-4-1611. Violation - penalties. (1) If the department or a county or district board of health finds that a licensee or other person operating a retail food establishment was provided with written notification of a violation of section 25-4-1610 (1) (a), (1) (b), (1) (d), (1) (e), or (1) (f) and was given a reasonable time to comply but remained in noncompli-

ance, such person shall be subject to a civil penalty of not less than two hundred fifty dollars and not more than one thousand dollars, assessed by the department or a county or district board of health.

(2) (a) Upon a finding by the department or a county or district board of health that a retail food establishment is in violation of this part 16 or the rules promulgated pursuant to this part 16, and that the violation is sufficient to permit the department or a county or district board of health to establish a date and time for correction, the department or county or district board of health shall, in writing, advise the licensee or other person operating the establishment of the violation, provide the person with a reasonable time to comply, and conduct a follow-up inspection. If, at the time of the follow-up inspection, the establishment is found to be in violation of the same provisions, the department or a county or district board of health shall issue the person a written notification of noncompliance, provide the person with a reasonable time to comply, and conduct a second follow-up inspection.

(b) (I) If, at a second follow-up inspection, a retail food establishment is found to be in compliance with the same provisions as were cited in the written notification issued pursuant to paragraph (a) of this subsection (2), the department or a county or district board of health shall advise the licensee or other person operating the establishment that noncompliance with such provisions at the next regular inspection shall result in the issuance of a second written notification of noncompliance.

(II) If, at a second follow-up inspection, a retail food establishment is found to be in violation of the same provisions as were cited in the written notification of noncompliance issued pursuant to paragraph (a) of this subsection (2), the department or a county or district board of health shall issue a second written notification of noncompliance, advising the licensee or other person operating the establishment of the violation and potential civil penalties that may be assessed if the noncompliance continues. The department or a county or district board of health shall conduct a third follow-up inspection.

(c) (I) If, at a third follow-up inspection, a retail food establishment is found to be in compliance with the same provisions as were cited in the second written notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars and shall advise the person operating the establishment in writing that future noncompliance with the cited provisions in the second notification of noncompliance shall result in the issuance of a third written notification of noncompliance and subject the establishment to an additional civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars.

(II) If, at a third follow-up inspection, a retail food establishment is found to be in violation of the same provisions as were cited in the second written notification of noncompliance issued pursuant to paragraph (b) of this subsection (2), the department or a county or district board of health may assess a civil penalty of not less than five hundred dollars nor more than one thousand dollars. When compliance with the provisions cited in the second written notification of noncompliance is obtained, the department or a county or district board of health shall notify the licensee or other person operating the establishment in writing that noncompliance with the cited provisions in the second notification of noncompliance at the next regular inspection will result in the issuance of a third written notification of noncompliance and may result in an additional civil penalty of not less than five hundred dollars nor more than one thousand dollars.

(3) A maximum of three civil penalties may be assessed against a licensee or other person operating a retail food establishment in any twelve-month period. Whenever a third civil penalty is assessed in a twelve-month period, the department or a county or district board of health may initiate proceedings to suspend or revoke the license of the licensee pursuant to section 25-4-1609.

(4) Neither the department nor a county or district board of health shall assess a civil penalty pursuant to this section if a disciplinary action is pending against the same licensee under section 25-4-1609.

(5) (a) All penalties collected by the department pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the food protection cash fund created in section 25-4-1608.

(b) Penalties collected by a county or district board of health shall be deposited in the appropriate county or district public health agency fund in accordance with section 25-4-1608, and shall be used to pay expenses related to the inspection of retail food establishments.

(6) To obtain compliance with this part 16, the department or a county or district board of health may allow the owner of a retail food establishment to use any assessed penalty fee to pay for employee training or the cost of needed improvements to the establishment.

(7) In addition to the remedies provided in this part 16 and other remedies provided by law, the department or a county or district board of health is authorized to apply to the county or district court of the county or district where a retail food establishment is located for a temporary or permanent injunction, and such court shall have jurisdiction to issue an injunction restraining any person from violating section 25-4-1610.

Source: **L. 98:** Entire part R&RE, p. 1254, § 1, effective July 1. **L. 2009:** Entire section amended, (SB 09-223), ch. 255, p. 1158, § 12, effective May 15. **L. 2012:** (3) amended, (HB 12-1097), ch. 78, p. 260, § 3, effective April 6.

Editor's note: This section is similar to former § 25-4-1608 as it existed prior to 1998.

25-4-1612. Judicial review. Any person adversely affected or aggrieved by a department decision to refuse to grant a license or certificate of license may seek judicial review in the district court having jurisdiction over the retail food establishment for which the application for license or certificate of license was made. Any other final order or determination by the department or a county or district board of health pursuant to this part 16 shall be subject to judicial review in accordance with article 4 of title 24, C.R.S.

Source: **L. 98:** Entire part R&RE, p. 1256, § 1, effective July 1. **L. 2009:** Entire section amended, (SB 09-223), ch. 255, p. 1160, § 13, effective May 15.

Editor's note: This section is similar to former § 25-4-1609 as it existed prior to 1998.

25-4-1613. General fund moneys - repeal. (1) For the fiscal years 2009-10 and 2010-11, no general fund moneys shall be used as matching funds to the increase in fees pursuant to sections 25-4-1607 and 25-4-1608. For the fiscal year 2011-12, the department shall request moneys from the general fund.

(2) This section is repealed, effective July 1, 2013.

Source: **L. 2009:** Entire section added, (SB 09-223), ch. 255, p. 1160, § 14, effective May 15.

25-4-1614. Home kitchens - exemption - food inspection - short title - definitions. (1) This section shall be known and may be cited as the "Colorado Cottage Foods Act".

(2) (a) A producer may use his or her home kitchen or a commercial, private, or public kitchen to produce foods for sale only if the producer sells the foods directly to ultimate consumers.

(b) A producer is permitted under this section to sell only a limited range of foods that are nonpotentially hazardous and that do not require refrigeration. These foods are limited to spices, teas, dehydrated produce, nuts, seeds, honey, jams, jellies, preserves, fruit butter, and baked goods, including candies.

(c) A producer must be certified in safe food handling and processing by a third-party certifying entity, comparable to and including the United States department of agriculture or the Colorado state university cooperative extension service, and must maintain a status of good standing in accordance with the certifying entity's practices and procedures, including attending any classes required for certification.

(d) The foods produced under this section must be sold only:

(I) Directly to ultimate consumers and not to grocery stores or restaurants; and

(II) On the producer's premises, at the producer's roadside stand, or at a farmers' market, community-supported agriculture organization, or similar venue where the product is sold directly to consumers.

(e) This section applies only to producers who earn net revenues of five thousand dollars or less per calendar year from the sale of each eligible food product produced in the producer's home kitchen or a commercial, private, or public kitchen.

(3) (a) A food product sold under this section must have an affixed label that includes at least:

(I) Identification of the product;

(II) The producer's name, the address at which the food was prepared, and the producer's current telephone number and electronic mail address;

(III) The date on which the food was produced;

(IV) A complete list of ingredients; and

(V) The following disclaimer: "This product was produced in a home kitchen that is not subject to state licensure or inspection and that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish. This product is not intended for resale."

(b) A food product sold under this section and not labeled in accordance with paragraph (a) of this subsection (3) is misbranded and is subject to food sampling and inspection pursuant to subsection (4) of this section.

(4) A food product produced pursuant to this section is subject to food sampling and inspection by the department or a county, district, or regional health agency pursuant to section 25-5-406 if it is determined that the food product is misbranded pursuant to subsection (3) of this section or if a consumer complaint has been received or if the product is suspected in an injury or food-borne illness outbreak.

(5) A person who purchases a product made by a producer shall not resell the product.

(6) A person who sells foods pursuant to this act is encouraged to maintain home bakery liability insurance or other adequate liability insurance.

(7) Sections 25-4-1604 to 25-4-1613 do not apply to this section.

(8) The department or a county, district, or regional health agency may create a voluntary electronic registry of producers if it determines that a registry would be of value to producers and consumers.

(9) As used in this section:

(a) "Home" means a primary residence occupied by the producer producing the food under this section.

(b) "Nonpotentially hazardous" has the meaning set forth in section 25-4-1602 (12) and does not include low-acid or acidified foods.

(c) "Producer" means a natural person who is a resident of Colorado and who prepares nonpotentially hazardous foods in a home kitchen or similar venue for sale directly to consumers pursuant to this section.

Source: L. 2012: Entire section added, (SB 12-048), ch. 16, p. 42, § 5, effective March 15.

PART 17

INFANT IMMUNIZATION ACT

25-4-1701. Short title. This part 17 shall be known and may be cited as the "Infant Immunization Act".

Source: L. 92: Entire part added, p. 1307, § 1, effective July 1.

25-4-1702. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that vaccine preventable diseases represent a serious public health threat to the people of this state. It has been well documented that vaccines are an effective way to save lives and prevent debilitating disease. Vaccines are among the most cost-

effective components of preventive medical care because for every dollar spent on immunization, ten dollars are saved in later medical expenses.

(2) The general assembly further finds, determines, and declares that the rate of routine immunization among preschool children appears to be falling steadily. Therefore, it is the purpose of this part 17 to fully immunize all infants, subject to available appropriations, at a level that is age-appropriate as determined by the board of health.

(3) The general assembly further finds, determines, and declares that the inability of some parents to personally take their children to health care professionals for the purpose of immunization contributes to the significant number of children who have not been immunized on a timely basis in accordance with this part 17. Therefore, it is the further purpose of this part 17 to provide an alternative method by which such children may be immunized without circumventing parental authority and control.

Source: **L. 92:** Entire part added, p. 1307, § 1, effective July 1. **L. 96:** (3) added, p. 583, § 1, effective July 1.

25-4-1703. Definitions. As used in this part 17, unless the context otherwise requires:

- (1) "Board of health" means the state board of health.
- (2) "Department" means the state department of public health and environment.
- (3) "Infant" means any child up to twenty-four months of age or any child eligible for vaccination and enrolled under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.
- (3.5) "Minor" means any child under eighteen years of age.
- (4) "Practitioner" means a duly licensed physician or other person who is permitted and otherwise qualified to administer vaccines under the laws of this state.
- (5) "Vaccine" means such vaccines as are determined by the board of health to be necessary to conform to recognized standard medical practices. Such term includes, but is not limited to, the following vaccines:
 - (a) Diphtheria-tetanus-pertussis (DTP);
 - (b) Polio: Oral polio vaccine (OPV) or inactivated polio vaccine (IPV);
 - (c) Measles-mumps-rubella (MMR);
 - (d) Haemophilus influenzae type B conjugate vaccines (HIB).

Source: **L. 92:** Entire part added, p. 1308, § 1, effective July 1. **L. 94:** (2) amended, p. 2776, § 474, effective July 1. **L. 96:** (3.5) added, p. 583, § 2, effective July 1. **L. 2006:** (3) amended, p. 2015, § 90, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1704. Infant immunization program - delegation of authority to immunize minor. (1) There is hereby created in the department an infant immunization program which is established to immunize infants against vaccine preventable disease. Such program shall be implemented on and after January 1, 1993.

(2) Every parent, legal guardian, or person vested with legal custody or decision-making responsibility for the medical care of a minor, or person otherwise responsible for the care of an infant residing in this state, shall be responsible for having such infant vaccinated in compliance with the schedule of immunization established by the board of health; except that, failure to vaccinate a child in accordance with this subsection (2) shall not constitute sufficient grounds for any insurance company to deny a claim submitted on behalf of a child who develops a vaccine preventable disease.

(2.5) (a) Subject to the provisions of this subsection (2.5), a parent, legal guardian, person vested with legal custody of a minor or decision-making responsibility for the medical care of a minor, or such other adult person responsible for the care of a minor in this state, other than any employee of a licensed child care center in which the minor is enrolled, may delegate, verbally or in writing, that person's authority to consent to the

immunization of a minor to a stepparent, an adult relative of first or second degree of kinship, or an adult child care provider who has care and control of the minor. Any immunization administered pursuant to a delegation of authority under this subsection (2.5) shall be administered only at a health care clinic, hospital, office of a private practitioner, or county public health clinic.

(b) If a parent, legal guardian, person vested with legal custody of a minor or decision-making responsibility for the medical care of a minor, or other adult person responsible for the care of a minor in this state verbally delegates his or her authority to consent to the immunization of a minor under this subsection (2.5), the person to whom such authority is thereby delegated shall confirm the verbal delegation in writing and shall verbally relay any relevant health history to the administering practitioner. The practitioner administering the vaccination shall include the written confirmation in the minor's medical record. If a parent, legal guardian, person vested with legal custody of a minor or decision-making responsibility for the medical care of a minor, or other adult person responsible for the care of a minor in this state delegates his or her authority to consent to the immunization of a minor under this subsection (2.5) in writing, such writing shall include the relevant health history, and the practitioner administering the vaccination shall include a copy of the written delegation of authority in the minor's medical record.

(c) A person who consents to the immunization of a minor pursuant to a delegation of authority under this subsection (2.5) shall provide the practitioner with sufficient and accurate health information about the minor for whom the consent is given and, if necessary, sufficient and accurate health information about the minor's family to enable the practitioner to assess adequately the risks and benefits inherent in the proposed immunization and to determine whether the immunization is advisable.

(d) A person may not consent to the immunization of a minor pursuant to this subsection (2.5) if:

(I) The person has actual knowledge that the parent, legal guardian, person vested with legal custody of a minor or decision-making responsibility for the medical care of a minor, or other adult person responsible for the care of a minor in this state has expressly refused to give consent to the immunization; or

(II) The parent, legal guardian, person vested with legal custody of a minor or decision-making responsibility for the medical care of a minor, or other adult person responsible for the care of a minor in this state has told the person that the person may not consent to the immunization of the minor or, in the case of a written authorization, has withdrawn the authorization in writing.

(3) In addition to the immunization obligations set forth in section 25-4-905, relating to the immunization of indigent children, and except as provided in subsection (4) of this section, the department shall provide at public expense, subject to available appropriations, systematic immunizations to those infants that are not exempt from such immunization pursuant to paragraph (a) or (b) of subsection (4) of this section. The manner and frequency of vaccine administration shall conform to recognized standards of medical practice which are necessary for the protection of public health.

(4) An infant shall be exempted from receiving the required immunizations:

(a) Upon submitting certification from a licensed physician or advanced practice nurse that the physical condition of the infant is such that one or more specified immunizations would endanger the infant's life or health; or

(b) Upon submitting a statement signed by one parent or guardian that such parent or guardian adheres to a religious belief whose teachings are opposed to immunizations, or that such parent or guardian has a personal belief that is opposed to immunization.

Source: L. 92: Entire part added, p. 1308, § 1, effective July 1. L. 96: (2.5) added, p. 583, § 3, effective July 1. L. 98: (2), (2.5)(a), (2.5)(b), and (2.5)(d) amended, p. 1412, § 79, effective February 1, 1999. L. 2008: (4)(a) amended, p. 133, § 19, effective January 1, 2009.

25-4-1705. Department of public health and environment - powers and duties - rules. (1) The department shall negotiate for the purchase of and shall purchase vaccines to achieve the purposes of this part 17.

(2) The department shall secure and maintain such facilities as may be necessary for the safe and adequate preservation and storage of such vaccines.

(3) The department shall distribute such vaccines, in accordance with rules promulgated by the board of health, without purchase, shipping, handling, or other charges to practitioners who agree not to impose a charge for such vaccine on the infant recipient, the child's parent or guardian, third-party payor, or any other person; except that a practitioner may charge a reasonable administrative fee in connection with the administration of a vaccine. The board of health shall determine the amount of such administrative fee that a practitioner may charge.

(4) The department shall collect epidemiological information and shall establish a system for recording such information pursuant to rules and regulations adopted by the board of health.

(5) The board of health, in consultation with the medical services board in the state department of health care policy and financing, and such other persons, agencies, or organizations that the board of health deems advisable, shall formulate, adopt, and promulgate rules governing the implementation and operation of the infant immunization program. Such rules shall address the following:

- (a) The purchase, storage, and distribution of the vaccines by the department;
- (b) Requirements that providers, hospitals, and health care clinics must meet before entering into a contract with the department, making such provider, hospital, or clinic an agent of the department for the purposes of the infant immunization program;
- (c) Which vaccines shall be required to be administered;
- (d) The route and frequency of the vaccine's administration;
- (e) (Deleted by amendment, L. 2007, p. 655, § 3, effective April 26, 2007.)
- (f) The issuance of immunization records to parents or guardians;
- (g) The assessment of the vaccination status of infants;
- (h) The dissemination of information about the operation of the infant immunization program, including the requirement that such information be distributed by hospitals to parents of newborns.

(6) The department is authorized to accept any gifts or grants or awards of funds from the federal government or private sources for the implementation and operation of the infant immunization program.

(7) The department is authorized to enter into contracts which are necessary for the implementation and operation of the infant immunization program.

(8) County, district, or municipal public health agencies and the department shall use the birth certificate of any infant to enroll such infant in an immunization tracking system established in section 25-4-2403. Such use of the infant's birth certificate shall be considered an official duty of county, district, and municipal public health agencies and the department.

(9) (a) (Deleted by amendment, L. 2003, p. 2198, § 1, effective August 6, 2003.)

(b) The department or any person who contracts with the department pursuant to subsection (7) of this section shall not establish a universal purchase system for the procurement of vaccines for privately insured persons under federal government contracts.

(10) Physicians, licensed health care practitioners, clinics, schools, licensed child care providers, hospitals, managed care organizations or health insurers in which a student, as defined in section 25-4-901 (3), or an infant is enrolled as a member or insured, persons that have contracted with the department pursuant to subsection (7) of this section, and public health officials may release any immunization records in their possession, whether or not such records are in the immunization tracking system established in section 25-4-2403, to the persons or entities specified in section 25-4-2403 (1) to provide an accurate and complete immunization record for the child in order to verify compliance with state immunization law.

Source: L. 92: Entire part added, p. 1309, § 1, effective July 1. L. 94: IP(5), (5)(b), and (5)(e)(IV) amended, p. 2776, § 475, effective July 1. L. 98: (5)(e) amended, p. 20, § 3, effective August 5. L. 2001: IP(5) and (5)(e) amended and (9) and (10) added, p. 825, § 4, effective August 8. L. 2002: (5)(e)(III)(A) and (5)(e)(III)(B) amended, p. 1536, § 266,

effective October 1. **L. 2003:** (5)(e)(II)(D) and (5)(e)(IV) amended, p. 710, § 42, effective July 1; (9) amended, p. 2198, § 1, effective August 6. **L. 2005:** (5)(e)(IV) and (5)(e)(V) amended and (5)(e)(VI) added, p. 419, § 1, effective April 29. **L. 2007:** (5)(e), (8), and (10) amended, p. 655, § 3, effective April 26. **L. 2010:** (8) amended, (HB 10-1422), ch. 419, p. 2101, § 111, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (5) and subsections (5)(b) and (5)(e)(IV), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-4-1706. Infant immunization program - eligibility. Any infant shall be eligible for participation in the infant immunization program; except that, for fiscal year 1992-93, only infants born on or after January 1, 1993, shall be eligible for participation in the infant immunization tracking program.

Source: **L. 92:** Entire part added, p. 1311, § 1, effective July 1.

25-4-1707. Moneys targeted for medical assistance for infants - reimbursement. The state department of health care policy and financing shall reimburse the department of public health and environment for the costs of vaccinating infants under the infant immunization program who are medicaid eligible pursuant to the “Colorado Medical Assistance Act”, articles 4, 5, and 6 of title 25.5, C.R.S. Such moneys received from the state department of health care policy and financing shall be credited to the immunization fund.

Source: **L. 92:** Entire part added, p. 1311, § 1, effective July 1. **L. 94:** Entire section amended, p. 2624, § 44, effective July 1. **L. 2006:** Entire section amended, p. 2015, § 91, effective July 1. **L. 2007:** Entire section amended, p. 658, § 4, effective April 26.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1708. Fund created. (1) There is hereby established in the state treasury a fund to be known as the immunization fund, which fund shall be subject to annual appropriation to the department of public health and environment by the general assembly for the purposes of purchasing vaccines, assisting users of the immunization tracking system established in section 25-4-2403 to connect to the system, utilizing the reminder and recall process of the immunization tracking system, and implementing, developing, and operating immunization programs. The fund shall be credited with such appropriations as the general assembly may make from the general fund for immunization programs, any gifts, grants, or awards received pursuant to sections 25-4-1705 (6) and 25-4-2403, and moneys received from the state department of health care policy and financing as reimbursement pursuant to section 25-4-1707. All income from the investment of moneys in the fund shall be credited to the fund.

(2) If federal funds are not received to implement and operate the immunization programs created in this part 17 and part 24 of this article, no additional general fund moneys shall be appropriated for such purposes.

(3) All moneys credited to the immunization fund that are not expended during the fiscal year shall be retained in the fund for its future use and shall not be credited or transferred to the general fund or any other fund.

(4) (Deleted by amendment, L. 2007, p. 658, § 5, effective April 26, 2007.)

Source: **L. 92:** Entire part added, p. 1311, § 1, effective July 1. **L. 94:** (1) amended, p. 2776, § 476, effective July 1. **L. 2003:** (4) added, p. 1543, § 3, effective May 1. **L. 2005:** (1) amended, p. 1239, § 1, effective June 3. **L. 2007:** Entire section amended, p. 658, § 5, effective April 26.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-4-1709. Limitations on liability. (1) No person who administers a vaccine required under the provisions of this part 17 shall be held liable for injuries sustained pursuant to such vaccine if:

(a) The vaccine was administered according to the schedule of immunization established by the board of health;

(b) There were no medical contraindications for administering such vaccine; and

(c) The vaccine was administered using generally accepted clinical methods.

(2) An action shall not be maintained for a vaccine-related injury or death until action for compensation for such alleged injury has been exhausted under the terms of the federal "National Childhood Vaccine Injury Act of 1986", 42 U.S.C. secs. 300aa-10 to 300aa-33, as such law is from time to time amended, provided the federal "National Childhood Vaccine Injury Act of 1986" applies to the particular vaccine administered.

(3) If the injury or death which is sustained does not fall within the parameters of the vaccine injury table as defined in 42 U.S.C. sec. 300aa-14, as enacted on November 14, 1986, a rebuttable presumption is established that the injury sustained or the death was not due to the administration of the vaccine. Such presumption shall be overcome by a preponderance of the evidence.

(4) Where a claim against a hospital, clinic, or provider arises from injuries resulting from the handling, storage, or distribution of vaccines required by this part 17, such hospital, clinic, or provider shall not be liable unless such injuries are the result of the negligent failure of an employee of such hospital, clinic, or provider to conform to recognized standards of practice which are necessary for the protection of public health.

(5) A practitioner licensed to practice medicine pursuant to article 36 of title 12, C.R.S., or nursing pursuant to article 38 of title 12, C.R.S., or the health care clinic, hospital, office of a private practitioner, or county public health clinic at which the immunization was administered that relies on the health history and other information given by a person who has been delegated the authority to consent to the immunization of a minor pursuant to section 25-4-1704 (2.5) is not liable for damages related to an immunization resulting from factual errors in the health history or information given to the practitioner or the health care clinic, hospital, office of a private practitioner, or county public health clinic at which the immunization was administered by the person when such practitioner or health care clinic, hospital, office of a private practitioner, or county public health clinic reasonably relies upon the health history information given and exercises reasonable and prudent care in administering the immunization.

Source: L. 92: Entire part added, p. 1312, § 1, effective July 1. L. 96: (5) added, p. 585, § 4, effective July 1.

25-4-1710. Report to the general assembly. (Repealed)

Source: L. 92: Entire part added, p. 1313, § 1, effective July 1. L. 96: Entire section repealed, p. 1257, § 148, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-4-1711. Infant immunization advisory committee - creation. (Repealed)

Source: L. 92: Entire part added, p. 1313, § 1, effective July 1. L. 94: (1) amended, pp. 2625, 2702, §§ 45, 257, effective July 1.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 1995. (See L. 92, p. 1313.)

PART 18

SHELLFISH DEALER CERTIFICATION ACT

25-4-1801. Short title. This part 18 shall be known and may be cited as the “Shellfish Dealer Certification Act”.

Source: L. 97: Entire part added, p. 81, § 1, effective July 1.

25-4-1802. Legislative declaration. The general assembly finds, determines, and declares that the certification of shellfish dealers and the regulation of premises or places wherein shellfish are handled, stored, and processed for distribution in accordance with the guidelines of the national shellfish sanitation program administered by the United States food and drug administration is necessary to protect the public health; will benefit consumers by ensuring that the sale and distribution of shellfish is from safe sources; will assist retailers by ensuring that shellfish have not been adulterated during processing, shipping, or handling; and will contribute to the economic health of the state by assuring that Colorado certified dealers are permitted to ship their product in interstate commerce.

Source: L. 97: Entire part added, p. 81, § 1, effective July 1.

25-4-1803. Definitions. As used in this part 18, unless the context otherwise requires:

(1) “Certification” means the issuance of a numbered certificate to a person for a particular activity or group of activities that indicates:

- (a) Permission from the department to conduct the activity; and
- (b) Compliance with the requirements of the department.

(2) “Certification number” means the unique identification number issued by the department to each dealer for each location.

(3) “Dealer” means a person to whom certification is issued for the activities of shell stock shipper, shucker-packer, repacker, reshipper, depuration processor, or wet storage.

(4) “Department” means the Colorado department of public health and environment and its authorized agents and employees.

(5) “Depuration processor” or “DP” means a person who receives shell stock from approved or restricted growing areas and submits such shell stock to an approved, controlled purification process.

(6) “FDA” means the United States food and drug administration.

(7) “Person” means any individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind, and any partnership, association, corporation, or other entity. “Person” also includes the federal or state government and any other public or private entity.

(8) “Repacker” or “RP” means any person, other than the original certified shucker-packer, who repackages shucked shellfish into other containers.

(9) “Reshipper” or “RS” means a person who purchases shucked shellfish or shell stock from other certified shippers and sells the product without repacking or relabeling to other certified shippers, wholesalers, or retailers.

(10) “Shellfish” means all species of:

(a) Oysters, clams, or mussels, whether:

(I) Shucked or in the shell;

(II) Fresh or frozen; and

(III) Whole or in part; and

(b) Scallops in any form, except when the final product form is the adductor muscle only.

(11) “Shell stock” means live shellfish in the shell.

(12) “Shell stock shipper” or “SS” means a person who grows, harvests, buys, or repacks and sells shell stock. A shell stock shipper is not authorized to shuck shellfish nor to repack shucked shellfish, but may ship shucked shellfish.

(13) “Shucker-packer” or “SP” means a person who shucks and packs shellfish. A shucker-packer may act as a shell stock shipper or reshipper or may repack shellfish originating from other certified dealers.

(14) “Wet storage” means the temporary storage of shell stock from growing areas in the approved classification or in the open status of the conditionally approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

Source: L. 97: Entire part added, p. 81, § 1, effective July 1.

25-4-1804. Department designated as certifying and inspecting agency. For the purpose of regulating and controlling shellfish dealers, establishing sanitary conditions therein, and the enforcement and administration of this part 18, the department is hereby authorized as the state certifying and inspection agency pursuant to applicable federal law and rules.

Source: L. 97: Entire part added, p. 83, § 1, effective July 1.

25-4-1805. Powers and duties of department - rules. (1) The department is hereby authorized to enforce this part 18 and to adopt and enforce reasonable rules and standards to implement this part 18. Such rules and standards shall be consistent with, and no more stringent than, standards adopted pursuant to the national shellfish sanitation program and may include, but shall not be limited to:

(a) Rules governing applications for initial certification and for annual renewal of certifications;

(b) Requirements for comprehensive on-site inspections of the premises and facilities of applicants for certification;

(c) Standards concerning the form and manner of submission of records required for certification and record keeping pursuant to this part 18;

(d) Establishment of fees required for certification and renewal of certification; and

(e) Grounds for denial, suspension, or revocation of a certificate.

(2) This part 18 shall be administered by the department; except that county, district, and municipal public health agencies may be authorized by the department to assist it in performing its powers and duties pursuant to this part 18.

(3) The department is authorized to conduct hearings in accordance with article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when the use of administrative law judges would result in a net saving of costs to the department.

(4) The department is authorized to enter into cooperative agreements with and to accept grants from any agency or political subdivision of this state or any other state, or with any agency of the United States government, subject to limitations set forth elsewhere in law and the state constitution, to carry out the provisions of this part 18.

(5) (a) When the department determines that a dealer’s activity constitutes a major public health threat, the department shall:

(I) Suspend or withdraw certification; and

(II) Immediately notify the FDA and the authorities in known states that receive the dealer’s shellfish.

(b) The department shall prohibit any dealer whose certification has been suspended or withdrawn from shipping in interstate or intrastate commerce.

(c) When the department recertifies any dealer, the department shall notify the FDA and the authorities in known states that receive the shellfish.

Source: L. 97: Entire part added, p. 83, § 1, effective July 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2101, § 112, effective August 11.

25-4-1806. Shellfish dealers - certificate required - application - fees. (1) Any person desiring to do business as a shellfish dealer in Colorado shall apply for and obtain

a valid shellfish dealer certification issued by the department pursuant to this part 18 and any rules adopted pursuant thereto. Any such application shall be accompanied by the appropriate fee, if any, set by the department.

(2) Each shellfish dealer certification shall expire on June 30 in the year following the year of issuance.

(3) Each certificated shellfish dealer shall report to the department, in the form and manner required by the department, any change in the information provided in the dealer's application or in such reports previously submitted, within thirty days of such change.

(4) Certifications issued pursuant to this part 18 are not transferable.

(5) An application for renewal of a shellfish dealer certification shall be in the form and manner prescribed by the department.

(6) The department shall issue only one certification number to any dealer for any location. A dealer may maintain more than one certification if each business is operated as a separate entity and is not found at the same location.

(7) The certification number issued to any dealer by the department shall be unique. Each certification number shall consist of a one- to five-digit Arabic number preceded by the two-letter state postal abbreviation ("CO") and followed by a two-letter abbreviation for the type of activity or activities the dealer is qualified to perform in accordance with the following terms as defined in section 25-4-1802:

- (a) Shell stock shipper (SS);
- (b) Shucker-packer (SP);
- (c) Repacker (RP);
- (d) Reshipper (RS);
- (e) Depuration processor (DP); or
- (f) Wet storage (WS).

(8) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the wholesale food manufacturing and storage protection cash fund created in section 25-5-426.

Source: L. 97: Entire part added, p. 84, § 1, effective July 1. **L. 2003:** (8) amended, p. 1462, § 2, effective May 1.

25-4-1807. Record-keeping requirements. (1) Each certificated shellfish dealer shall keep and maintain records in the form and manner designated by the department.

(2) Records maintained pursuant to subsection (1) of this section shall be retained at the dealer's address of record for at least one year or for such different period as the department may specify by rule.

Source: L. 97: Entire part added, p. 85, § 1, effective July 1.

25-4-1808. Unlawful acts. (1) Unless otherwise authorized by law, it is unlawful and a violation of this part 18 for any person to:

(a) Perform any of the acts for which certification as a shellfish dealer is required without possessing a valid certification;

(b) Hold oneself out as being so qualified to perform any of the acts for which certification pursuant to this part 18 is required without possessing a valid certification;

(c) Solicit, advertise, or offer to perform any of the acts for which certification under this part 18 is required without possessing a valid certification to perform such acts;

(d) Refuse or fail to comply with the provisions of this part 18;

(e) Refuse or fail to comply with any rules adopted by the department pursuant to this part 18 or to any lawful order issued by the department;

(f) Refuse to comply with a cease-and-desist order issued pursuant to section 25-4-1810;

(g) Willfully make a material misstatement in the application for a certification or in the application for renewal thereof or to the department during an official investigation;

(h) Impersonate any federal, state, county, city and county, or municipal official or inspector;

(i) Aid or abet another in any violation of this part 18 or of any rule adopted pursuant thereto;

(j) Refuse to permit entry or inspection in accordance with section 25-4-1809;

(k) Allow a certification issued pursuant to this part 18 to be used by an uncertificated person; or

(l) Make any misrepresentation or false promise, through advertisements, employees, agents, or otherwise, in connection with the business operations certificated pursuant to this part 18 or for which an application for a certification is pending.

Source: L. 97: Entire part added, p. 85, § 1, effective July 1.

25-4-1809. Inspections - investigations - access - subpoena. (1) The department, upon its own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this part 18.

(2) The department shall have the right of access, at any reasonable time, during regular working hours and at other times during which activity is evident, to any premises for the purpose of any examination or inspection necessary to enforce any of the provisions of this part 18 or the rules or standards adopted thereunder.

(3) Complaints of record made to the department and the results of the department's investigations may, in the discretion of the department, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on the person in interest.

(4) (a) The department shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses and the production of books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(b) Upon failure or refusal of any witness to obey any subpoena, the department may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

Source: L. 97: Entire part added, p. 86, § 1, effective July 1.

25-4-1810. Enforcement. (1) The department or its designee shall enforce the provisions of this part 18.

(2) (a) If the department has reasonable cause to believe a violation of any provision of this part 18 or any rule adopted pursuant to this part 18 has occurred and immediate enforcement is deemed necessary, it may issue a cease-and-desist order, which shall require a person to cease violating any provision of this part 18 or any rule promulgated pursuant to this part 18.

(b) A cease-and-desist order shall set forth the provisions alleged to have been violated, the facts constituting the violation, and the requirement that all violating actions immediately cease.

(c) (I) At any time after service of the order to cease and desist, the person for whom such order was served may request, at such person's discretion, a prompt hearing to determine whether or not such violation has occurred.

(II) A hearing held pursuant to this paragraph (c) shall be conducted in conformance with the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) If the department possesses sufficient evidence to indicate that a person has engaged in any act or practice constituting a violation of this part 18 or of any rule adopted under this part 18, the department may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance

with this part 18 or any rule or order under this part 18. In any such action, the department shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. The court shall not require the department to post a bond.

Source: L. 97: Entire part added, p. 87, § 1, effective July 1.

25-4-1811. Disciplinary actions - denial of certification. (1) The department, pursuant to the provisions of article 4 of title 24, C.R.S., may issue letters of admonition or may deny, suspend, refuse to renew, restrict, or revoke any certification authorized under this part 18 if the applicant or certificated person has:

- (a) Refused or failed to comply with any provision of this part 18, any rule adopted under this part 18, or any lawful order of the department;
- (b) Had an equivalent certification denied, revoked, or suspended by any authority;
- (c) Refused to provide the department with reasonable, complete, and accurate information when requested by the department; or
- (d) Falsified any information requested by the department.

(2) In any proceeding held under this section, the department may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a dealer in another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

Source: L. 97: Entire part added, p. 87, § 1, effective July 1.

25-4-1812. Civil penalties. (1) Any person who violates any provision of this part 18 or any rule adopted pursuant to this part 18 is subject to a civil penalty, as determined by the department. The maximum penalty shall not exceed fifty dollars per violation.

(2) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, the department may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the department may consider the effect of such penalty on the ability of the person charged to stay in business.

(5) All penalties collected pursuant to this section by the department shall be transmitted to the state treasurer who shall credit the same to the food protection cash fund created in section 25-4-1605.

Source: L. 97: Entire part added, p. 88, § 1, effective July 1.

25-4-1813. Criminal penalties. Any person who violates any of the provisions of section 25-4-1808 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501 (1), C.R.S.

Source: L. 97: Entire part added, p. 88, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1537, § 267, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 19

GULF WAR SYNDROME REGISTRY

25-4-1901. Short title. This part 19 shall be known and may be cited as the “Gulf War Syndrome Registry Act”.

Source: L. 98: Entire part added, p. 711, § 2, effective May 18.

25-4-1902. Definitions. As used in this part 19, unless the context otherwise requires:

(1) "Birth defect" means any physical or mental abnormality or condition, including any susceptibility to any illness or condition other than normal childhood illnesses or conditions.

(2) "Department" means the department of public health and environment.

(3) "Family member" means a spouse or a child of a veteran who served in the gulf war.

(4) "Gulf war syndrome" means the wide range of physical and mental conditions, problems, and illnesses, including birth defects, experienced by veterans and family members that are connected with a veteran's service in the armed forces of the United States during the gulf war.

(5) "Registry" means the gulf war syndrome registry created in section 25-4-1903.

(6) "Veteran" means a person who is a resident of this state, who served on and after August 2, 1990, but prior to December 31, 1991, during the gulf war in the southwest Asia theater of operations, which includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Source: L. 98: Entire part added, p. 712, § 2, effective May 18.

25-4-1903. Gulf war syndrome registry - creation - reporting. (1) There is hereby created a statewide gulf war syndrome registry that shall be established and maintained by the department. The registry shall contain the names of veterans and family members of veterans who have been affected by gulf war syndrome as reported by physicians, health care professionals, hospitals, or medical facilities as provided in subsection (2) of this section or as reported by veterans on forms prescribed by the department. The registry shall also contain the names of children with cancer or birth defects who have at least one parent that is a veteran of the gulf war, and who submit information to the registry as provided in subsection (4) of this section.

(2) A physician or other qualified health care professional who has primary responsibility for treating a veteran or a family member of a veteran and who believes the veteran may have been exposed to certain causative agents while serving in the armed forces of the United States during the gulf war shall submit a report to the department on a form provided by the department. If there is no physician or other qualified health care professional having primary responsibility for treating the veteran or the veteran's family member, the hospital or other medical facility treating the veteran or family member shall submit the report to the department. No report shall be submitted pursuant to this subsection (2) unless consent of the veteran or, if the report involves a family member of the veteran, of the affected family member has been obtained. If the report involves a person who is under the age of eighteen years, consent shall be obtained from a parent or legal guardian of the child.

(3) The form provided by the department to veterans and to physicians or other qualified health care professionals, hospitals, or other medical facilities shall request the following information:

(a) Symptoms of the veteran or family member of the veteran that may be related to exposure to causative agents during the gulf war;

(b) Diagnoses of the veteran or family member of the veteran;

(c) Methods of treatment prescribed;

(d) Outcome or results of any treatment prescribed.

(4) The department shall contact the families of any child born after August 2, 1990, who is on the state cancer registry or who has been reported to the department as having birth defects to determine whether either of the two biological parents of such child is a veteran of the gulf war. If either parent did serve, the department shall inform the family of

the child about the registry. If the family consents, the child's name and any symptoms, diagnoses, methods of treatment, and treatment outcomes shall be listed in the registry.

Source: L. 98: Entire part added, p. 712, § 2, effective May 18.

25-4-1904. Gulf war syndrome advisory committee - creation. (1) There is hereby created a gulf war syndrome advisory committee to advise the department on the implementation of the gulf war syndrome registry and to analyze the data collected from the registry. The advisory committee shall consist of eleven members. One of the members shall be the state epidemiologist for the department of public health and environment. The remaining ten members shall be appointed by the governor for terms of three years; except that, of the members first appointed, five shall be appointed for three years and five shall be appointed for two years. Whenever a vacancy exists, the governor shall appoint a member for the remaining portion of the unexpired term. Of the members appointed by the governor, one member shall be a toxicologist, one member shall be a licensed physician who specializes in neurology, one member shall be a licensed physician who specializes in obstetrics and gynecology, one member shall be a licensed physician who specializes in pediatrics, one member shall be a licensed physician who specializes in oncology, one member shall be a member of the Colorado board of veterans affairs, three members shall be veterans, at least two of whom shall be veterans of the gulf war, and one member shall be a member of the public.

(2) The advisory committee shall elect a chairperson and shall meet as often as necessary. Members of the advisory committee shall serve without compensation.

(3) The advisory committee shall have the following powers and duties:

(a) To advise the department on the implementation of the registry;

(b) To assist and advise the department on the kinds of information that should be requested for and compiled in the registry;

(c) To analyze the data collected from the registry and make findings based on the information collected from the registry pursuant to section 25-4-1905;

(d) To monitor studies or other actions that other states and the federal government are taking to address the problems and impacts of the gulf war on veterans and their family members;

(e) To make recommendations about legislation or public health efforts needed to address gulf war syndrome.

Source: L. 98: Entire part added, p. 713, § 2, effective May 18. L. 2000: (3)(c) amended, p. 463, § 9, effective August 2.

25-4-1905. Confidentiality of information collected. (1) The advisory committee shall compile, analyze, and evaluate the information and data submitted to the registry.

(2) All information obtained from or concerning a veteran or an individual on the registry shall be confidential; except that release may be made of such information for statistical purposes in a manner such that no individual person can be identified.

(3) A physician or other qualified health care professional, a hospital, or medical facility that complies with the provisions of this part 19 shall not be held civilly or criminally liable for providing information required by this part 19.

Source: L. 98: Entire part added, p. 714, § 2, effective May 18. L. 2000: (1) amended, p. 462, § 5, effective August 2.

25-4-1906. Gulf war syndrome registry fund. The department is authorized to accept and expend grants, donations, and gifts-in-kind from private and public sources for the purposes of maintaining and publicizing the registry created in this part 19; except that the registry shall not be implemented until sufficient grants, donations, and gifts are obtained to support its implementation. Once sufficient funds are obtained to implement the registry, the department shall contract with a private entity to perform any of its duties concerning

the registry. Any grants, donations, and gifts shall be credited to the gulf war syndrome registry fund, which fund is hereby created in the state treasury. The moneys in said fund shall be subject to annual appropriation by the general assembly for the purpose of implementing the gulf war syndrome registry. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

Source: L. 98: Entire part added, p. 714, § 2, effective May 18.

PART 20

HEPATITIS C EDUCATION AND SCREENING PROGRAM

25-4-2001. Short title. This part 20 shall be known and may be cited as the “Hepatitis C Program Act”.

Source: L. 99: Entire part added, p. 1067, § 1, effective July 1.

25-4-2002. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Hepatitis C is a silent killer, being largely asymptomatic until irreversible liver damage may have occurred;

(b) Hepatitis C has been characterized by the world health organization as a disease of primary concern to humanity;

(c) Currently, approximately four million five hundred thousand Americans are infected with hepatitis C, and there are approximately thirty thousand new infections occurring each year in the United States;

(d) The center for disease control estimates that approximately twelve thousand individuals die each year due to the consequences of hepatitis C, and this number continues to grow each year;

(e) Hepatitis C is considered such a public health threat that the United States department of health and human services has launched a comprehensive plan to address it, beginning with the identification and notification of the hundreds of thousands of persons inadvertently exposed to hepatitis C through blood transfusion; and

(f) In the absence of a vaccine for hepatitis C, emphasis must be placed on other means of disease awareness and prevention, including but not limited to education of police officers, firefighters, health care professionals, and the general public. This approach may be the only means of halting the spread of this devastating disease.

(2) The general assembly further declares that the purpose of this part 20 is to create and develop a program that will:

(a) Heighten awareness and enhance knowledge and understanding of hepatitis C by disseminating educational materials and information about services and strategies for detection and treatment to patients and the general public;

(b) Promote public awareness and knowledge about the risk factors, the value of early detection, and the options available for the treatment of hepatitis C;

(c) Utilize any available technical assistance from and any educational and training resources and services that have been developed by organizations with appropriate expertise and knowledge of hepatitis C;

(d) Design a model screening process to provide guidelines for health care professionals to use to prevent further transmission of the hepatitis C virus and prevent onset of chronic liver disease caused by hepatitis C by detecting and treating chronic hepatitis C virus infection;

(e) Evaluate existing hepatitis C support services in the community and assess the need for improving the quality and accessibility of these services; and

(f) Provide easy access to clear, complete, and accurate hepatitis C and patient referral services information.

(3) The general assembly further finds, determines, and declares that it is the intent of the general assembly to provide funding for the hepatitis C program created in this part 20 for the fiscal year beginning July 1, 1999, and to review the effectiveness of and the necessity for the hepatitis C program in determining the reasonableness and the amount of future funding, if any.

Source: L. 99: Entire part added, p. 1067, § 1, effective July 1.

25-4-2003. Definitions. As used in this part 20, unless the context otherwise requires:

- (1) "CDC" means the centers for disease control and prevention.
- (2) "Department" means the department of public health and environment.
- (3) "Health care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts. The term includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state, as well as certified substance abuse counselors.
- (4) "Hepatitis C" means a liver disease caused by the hepatitis C virus and is also known as non-A-non-B hepatitis.
- (5) "Outreach service" means services including, but not limited to, provision of educational materials and information on screening and provision of counseling services.
- (6) "Program" means the hepatitis C program created in this part 20.
- (7) "Screening" means administration of an examination or test exclusively for the purpose of ascertaining the existence of any physiological abnormality that might be indicative of the presence of disease.

Source: L. 99: Entire part added, p. 1069, § 1, effective July 1.

25-4-2004. Powers and duties of executive director - hepatitis C program. (1) The executive director of the department shall design and implement a hepatitis C program to:

(a) Coordinate with local public health officials, health care professionals, public institutions, and community organizations to identify high risk populations, including those associated with currently understood means of transmission, to assist in implementing a model screening process, and to provide information on referral services or to otherwise assist in obtaining treatment for those with hepatitis C infection;

(b) Educate and provide outreach services related to hepatitis C to the general public. At a minimum, public education on these issues shall be designed to:

(I) Provide basic information about the prevalence, transmission, risks, care, and treatment of hepatitis C;

(II) Provide information about co-infection with hepatitis C and the implications of co-infection for other similarly transmitted diseases;

(III) Provide information on screening services available in the community;

(IV) Coordinate with national public education efforts related to the identification and notification of recipients of blood from hepatitis C virus positive donors;

(V) Stimulate interest among and coordinate with community-based organizations to sponsor community forums and to undertake other appropriate community outreach activities; and

(VI) Employ public communication strategies, including the print media, radio, television, video, internet, and any other appropriate form of communication.

(2) The program described in subsection (1) of this section shall be implemented within available appropriations. If available appropriations are inadequate to fund the entire program described in subsection (1) of this section, the program shall be implemented in stages, commencing with the coordination with local public health officials, health care professionals, public institutions and community organizations, as described in paragraph (a) of subsection (1) of this section, and followed by the education of the general public, as described in paragraph (b) of subsection (1) of this section.

(3) The department is authorized to enter into contracts that are necessary for the implementation and operation of the program.

(4) After implementation of subsection (1) of this section, if funding is available, the executive director of the department shall have the authority to implement a system to:

(a) Collect and analyze reports of cases of hepatitis C, without regard to the distinction between chronic and acute;

(b) Investigate all reported cases of hepatitis C and maintain records of possible sources of transmission;

(c) Prepare a statistical report on the numbers and types of reported hepatitis C cases; and

(d) Report cases to the CDC to the extent permitted by the CDC.

(5) Repealed.

Source: L. 99: Entire part added, p. 1069, § 1, effective July 1. L. 2002: (5) repealed, p. 883, § 24, effective August 7.

PART 21

BODY ARTISTS

25-4-2101. Powers and duties of department - rules. In addition to any other powers and duties, the department of public health and environment shall promulgate rules governing the safe and sanitary practice of body art, the safe and sanitary physical environment where body art is performed, and the safe and sanitary conditions of equipment utilized in body art procedures. Nothing in this section shall be construed to prohibit a city, county, or district board of health established pursuant to part 5 of article 1 of this title, or a county or district public health agency established pursuant to part 5 of article 1 of this title, from adopting or enforcing ordinances, resolutions, or rules that impose standards for body art that are at least as stringent as the standards imposed by the rules adopted by the department of public health and environment.

Source: L. 2000: Entire part added, p. 765, § 2, effective May 23. L. 2008: Entire section amended, p. 2053, § 9, effective July 1.

25-4-2102. Penalties for violations. Upon a finding by the department of public health and environment or a local board of health that a body art facility is in violation of any rule adopted pursuant to section 25-4-2101, the department or local board of health may assess a penalty not to exceed two hundred fifty dollars for each day of a violation. Each day of a violation shall be considered a separate offense. The department or local board of health shall consider the degree of danger to the public caused by the violation, the duration of the violation, and whether such facility has committed any similar violations.

Source: L. 2000: Entire part added, p. 766, § 2, effective May 23.

25-4-2103. Parental consent for minors. No body artist shall perform a body art procedure upon a minor unless the body artist has received express consent from the minor's parent or guardian. Failure to obtain such permission before performing body art procedures on a minor shall constitute a petty offense punishable by a fine of two hundred fifty dollars.

Source: L. 2000: Entire part added, p. 766, § 2, effective May 23.

PART 22

HEALTH DISPARITIES GRANT PROGRAM

Cross references: For the legislative declaration contained in the 2005 act adding this part 22, see section 1 of chapter 241, Session Laws of Colorado 2005.

25-4-2201. Legislative declaration. (1) The general assembly hereby finds that:

(a) Although Colorado as a whole is a healthy state, African Americans, Hispanics, and Native Americans, who represent over twenty-five percent of the population, are disproportionately impacted by disease, injury, disability, and death;

(b) Compared to the state average:

(I) African Americans have a twenty-five percent higher death rate from heart disease, a twenty-eight percent higher death rate from stroke, a thirty percent higher death rate from breast cancer, a fifty percent higher death rate from colon cancer, and nearly twice the death rate from diabetes;

(II) Hispanics have approximately twice the incidence of cervical cancer, a fifty percent higher death rate from cervical cancer, and approximately twice the death rate from diabetes;

(III) Hispanics are fourteen and one-half percent less likely to be screened for cervical cancer and both African Americans and Hispanics are, respectively, twenty-eight percent and thirty-nine percent less likely to be screened for colon cancer.

(2) Therefore, the general assembly hereby declares that it is in the best interests of the state to establish a health disparities grant program to provide prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases to minority populations.

Source: L. 2005: Entire part added, p. 941, § 29, effective June 2.

25-4-2202. Definitions. As used in this part 22, unless the context otherwise requires:

(1) "Commission" means the minority health advisory commission created in section 25-4-2206.

(2) "Council" means the interagency health disparities leadership council created in section 25-4-2207.

(3) "Department" means the department of public health and environment.

(4) "Office" means the office of health disparities created in section 25-4-2204.

(5) "State board" means the state board of health created in section 25-1-103.

Source: L. 2005: Entire part added, p. 941, § 29, effective June 2. **L. 2007:** Entire section amended, p. 904, § 2, effective May 15.

25-4-2203. Health disparities grant program - rules. (1) There is hereby created in the department the health disparities grant program, referred to in this section as the "grant program", to provide financial support for statewide initiatives that address prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases in underrepresented populations. The office shall administer the grant program. The state board shall award grants to selected entities from moneys transferred to the health disparities grant program fund created in section 24-22-117 (2) (f), C.R.S.

(2) The state board shall adopt rules that specify, but are not necessarily limited to, the following:

(a) The procedures and timelines by which an entity may apply for program grants;

(b) Grant application contents, including but not limited to how the program meets at least one of the program criteria specified in section 25-20.5-302 (1);

(c) Criteria for selecting the entities that shall receive grants and determining the amount and duration of the grants;

(d) Reporting requirements for entities that receive grants pursuant to this section;

(e) Criteria for the office and the state board to determine the effectiveness of the programs that receive grants pursuant to this section.

(3) The commission shall review the applications received pursuant to this section and make recommendations to the state board regarding the entities that may receive grants and the amounts of the grants. Within thirty days after receiving the commission's recommendations, the state board shall award grants to the selected entities, specifying the amount and duration of each award. A grant awarded pursuant to this section shall not exceed three years without renewal.

Source: **L. 2005:** Entire part added, p. 942, § 29, effective June 2. **L. 2006:** (1) amended, p. 1747, § 2, effective June 6. **L. 2007:** (1), (2)(e), and (3) amended, p. 908, § 4, effective May 15.

25-4-2204. Office of health disparities - creation. (1) There is hereby created in the department of public health and environment the office of health disparities. The executive director of the department, subject to the provisions of section 13 of article XII of the state constitution, shall appoint the director of the office, who shall be the head of the office.

(2) The office and the director of the office shall exercise their powers and perform their duties and functions specified in this part 22 under the department as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

Source: **L. 2007:** Entire section added, p. 905, § 3, effective May 15.

25-4-2205. Powers and duties of office of health disparities. (1) The purpose of the office is to serve in a coordinating, educating, and capacity-building role for state and local public health programs and community-based organizations. The office shall be dedicated to eliminating racial, ethnic, and rural health disparities in Colorado by fostering systems change and capacity-building through collaboration with multiple sectors impacting minority health and with input from a variety of multicultural professionals.

(2) The office shall have the following powers, duties, and functions:

(a) Administering and coordinating the health disparities grant program created in section 25-4-2203;

(b) Coordinating with and providing advice to the department;

(c) Publishing data reports documenting health disparities;

(d) Providing education to the public on racial and ethnic health disparities and cultural competence;

(e) Improving interpretation and translation services within public health systems;

(f) Building capacity within communities to offer or expand public health programs to better meet the needs of a diverse population;

(g) Conducting state-level strategic planning on minority health improvement;

(h) Providing technical assistance to the department in carrying out its programs and to county, district, and municipal public health agencies, community-based organizations, and communities in the state;

(i) Promoting workforce diversity within public health systems;

(j) Coordinating and staffing the minority health advisory commission created in section 25-4-2206;

(k) Coordinating and supporting an interagency health disparities leadership council created in section 25-4-2207.

(3) The office shall report to the executive director of the department or to the chief medical officer of the department, at the discretion of the executive director.

Source: **L. 2007:** Entire section added, p. 905, § 3, effective May 15. **L. 2010:** (2)(h) amended, (HB 10-1422), ch. 419, p. 2101, § 113, effective August 11.

25-4-2206. Minority health advisory commission - creation - repeal. (1) There is hereby created in the office the minority health advisory commission. The purpose of the commission is to: Provide a formal mechanism for community members to raise awareness of minority health needs, issues, and resources and to give input on health programming at the level of the executive director of the department; help the department determine culturally innovative data collection strategies; and strengthen collaboration between the department and minority communities to ensure that programs and services meet minority health needs.

(2) (a) The commission shall consist of the following thirteen members, who shall be appointed as follows:

(I) One member of the house of representatives, who shall be appointed by the speaker of the house of representatives;

(II) One member of the senate, who shall be appointed by the president of the senate;

(III) Ten members who represent, to the extent practical, Colorado's ethnic, racial, and geographic diversity, appointed by the executive director of the department. At a minimum, there shall be one member who represents African Americans and Blacks in Colorado, one member who represents Asian Americans and Pacific Islanders in Colorado, one member who represents native American Indians in Colorado, and one member who represents Latinos and Hispanics in Colorado.

(IV) The executive director of the department shall serve as an ex officio member of the commission.

(b) The members of the commission shall serve at the pleasure of the appointing authority. The members of the commission shall serve without compensation, but shall be reimbursed by the department for their actual and necessary expenses incurred in the performance of their duties pursuant to this part 22.

(c) The members of the commission shall elect a chair and vice-chair from among its membership.

(3) The commission shall have the following powers and duties:

(a) Providing a formal mechanism for the public to give input to the department at the level of the executive director of the department;

(b) Advising the executive director of the department and the department on determining culturally innovative data collection strategies;

(c) Strengthening collaboration between the department and minority communities;

(d) Making recommendations to the office and the department on the health disparities grant program created in section 25-4-2203, regarding financial support for local and statewide initiatives that address prevention, early detection, needs assessment, and treatment of cancer, cardiovascular disease, including diabetes, and pulmonary disease in minority populations.

(4) The office shall provide staff to the commission.

(5) This section is repealed, effective July 1, 2017. Prior to the repeal of this section, the commission shall be reviewed as provided for in section 2-3-1203 (3), C.R.S.

Source: L. 2007: Entire section added, p. 906, § 3, effective May 15.

25-4-2207. Interagency health disparities leadership council - creation. (1) There is hereby created in the department within the office the interagency health disparities leadership council. The purpose of the council is to provide leadership, education, and resources to comprehensively eliminate health disparities in Colorado through collaboration, consultation, research, and inclusion.

(2) The council shall consist of the following members:

(a) The executive director or designee of state agencies that impact health disparities, including but not limited to the departments of corrections, education, health care policy and finance, higher education, human services, personnel, and public health and environment and representation from other state agencies as may be requested by the executive director of the department;

(b) Additional members appointed by the executive director that represent other interests and may include but are not limited to representatives from:

(I) The Colorado civil rights commission;

(II) The United States department of health and human services, region VIII office;

(III) One or more member organizations representing local public health agencies;

(IV) An agency representing rural health;

(V) An agency representing community health clinics;

(VI) An agency representing hospitals;

(VII) One or more nonprofit agencies;

(VIII) One or more universities or colleges;

(IX) One or more communities impacted by health disparities;

(c) Up to five additional members appointed by the council from nonprofit agencies or from communities impacted by health disparities.

(3) The members of the council shall serve without compensation.

(4) The members of the council shall elect a chair and vice-chair from among its membership.

Source: L. 2007: Entire section added, p. 907, § 3, effective May 15.

PART 23

COLORADO IMMUNIZATION FUND

25-4-2301. Colorado immunization fund - supplemental tobacco litigation settlement moneys account - creation. There are hereby created in the state treasury the Colorado immunization fund and an account within the fund to be known as the supplemental tobacco litigation settlement moneys account. The principal of the portion of the fund that is not the account shall consist of general fund appropriations made by the general assembly to the fund and gifts, grants, or awards received by the department of public health and environment from the federal government or private sources for the fund. The principal of the account shall consist of tobacco litigation settlement moneys transferred by the state treasurer to the account in accordance with section 24-75-1104.5 (1.5) (a) (VII), C.R.S. All interest and income earned on the deposit and investment of moneys in the portion of the fund that is not the account shall be credited to that portion of the fund, and all interest and income earned on the deposit and investment of moneys in the account before July 1, 2011, shall be credited to the account and remain therein until transferred as required by this section. Except as otherwise provided in this section, and subject to annual appropriation by the general assembly to the department, the department shall expend the principal of the fund and the account only for the purpose of immunization and immunization strategies; except that, at the end of the 2007-08 fiscal year and at the end of any fiscal year thereafter, any unexpended and unencumbered moneys in the portion of the fund that is not the account shall remain in that portion of the fund and may be used by the department through the state immunization program to support infant, child, and adolescent vaccination and, at the end of the 2011-12 fiscal year and at the end of each fiscal year thereafter, any unexpended and unencumbered moneys in the account shall be transferred to the general fund, in accordance with section 24-75-1104.5 (1.5) (b), C.R.S.

Source: L. 2007: Entire part added, p. 147, § 7, effective March 22. **L. 2011:** Entire section amended, (SB 11-225), ch. 189, p. 731, § 4, effective May 19. **L. 2012:** Entire section amended, (HB 12-1247), ch. 53, p. 193, § 4, effective March 22.

PART 24

IMMUNIZATION REGISTRY ACT

25-4-2401. Short title. This part 24 shall be known and may be cited as the “Immunization Registry Act”.

Source: L. 2007: Entire part added, p. 659, § 6, effective April 26.

25-4-2402. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Immunization is one of the most important ways to protect individuals and communities against serious infectious diseases and their consequences, and widespread immunization has virtually eliminated many serious diseases that were once responsible for millions of infections and thousands of deaths each year.

(b) Although immunization rates of infants, children, adolescents, and adults in Colorado have improved over the last several years, there is a need to continue to improve the rates so that fewer individuals are put at risk from vaccine-preventable diseases.

(c) Timely vaccination of children, adolescents, and adults not only protects them against common, sometimes serious, and potentially fatal diseases, but also serves the community as one of the most successful and cost-effective public health tools available for the prevention and spread of these infections, and the vaccines are safe and highly protective, particularly when administered according to recommended schedules.

(d) More than twenty percent of preschool-aged children in Colorado are not fully vaccinated and are at increased risk of contracting and spreading vaccine-preventable diseases.

(e) It is unnecessary for children, adolescents, and adults to be subjected to suffering or death from diseases that are immunization preventable.

(f) In 2005, hospital charges for the care of children with vaccine-preventable diseases exceeded twenty-five million dollars. Additionally, tens of millions of dollars were spent on the costs of the outpatient care of affected children, in addition to the costs of the loss of productivity and absences from work for caregivers due to the absences of children from school.

(g) Over the past three decades, the recommended vaccination schedules for children and adults have become increasingly more complex as vaccines have been combined, new vaccines have been added, and the delivery system has incorporated more manufacturers, distributors, and providers. Additionally, local and national vaccine shortages and distribution errors have resulted in compromised vaccination initiatives.

(h) For Colorado to be consistent with the healthy people 2010 initiative and reach the goal of immunizing ninety percent of all children in the state in a timely and expeditious manner, the Colorado immunization information system must be funded and sustained. The Colorado immunization information system may also provide a secure method for authorized individuals and entities to access information collected by public agencies.

(2) Therefore, the general assembly supports the expansion of the Colorado immunization registry and supports increased access to immunizations for persons in Colorado.

Source: L. 2007: Entire part added, p. 659, § 6, effective April 26.

25-4-2403. Department of public health and environment - powers and duties - immunization tracking system. (1) In order to expand the immunization registry and increase access to immunizations, the department of public health and environment may address:

(a) Mechanisms for maximizing federal funds to purchase, distribute, and deliver vaccines for individuals in Colorado, including, but not limited to, participation in a state purchasing and distribution cooperative and the mechanisms for statewide purchase, distribution, and prioritization to include, but not be limited to, the seasonal influenza vaccine;

(b) Methods to reduce the administrative burden of providing immunizations to individuals in Colorado by reviewing current immunization activities and strategies and epidemiological data related to vaccine-preventable diseases and identifying opportunities to implement best practices for immunizations throughout Colorado using innovative strategies that are population-specific, culturally sensitive, and inclusive; address safety issues; and enhance current services;

(c) Options for Colorado to more effectively purchase, distribute, and deliver vaccines to underinsured and uninsured individuals;

(d) The pursuit of private and public partnerships for funding for the immunization registry infrastructure;

(e) Options for the most effective and cost-effective use of funds that may be available to the department of public health and environment to address vaccine delivery in the state; and

(f) Methods for implementing the findings addressed in paragraphs (a) to (d) of this subsection (1).

(2) To enable the gathering of epidemiological information and investigation and control of communicable diseases, the department of public health and environment may establish a comprehensive immunization tracking system with immunization information gathered by state and local health officials from the following sources:

- (a) Practitioners;
- (b) Clinics;
- (c) Schools;
- (d) Parents, legal guardians, or persons authorized to consent to immunization pursuant to section 25-4-1704;
- (e) Individuals;
- (f) Managed care organizations or health insurance plans in which an individual is enrolled as a member or insured, if such managed care organization or health insurer reimburses or otherwise financially provides coverage for immunizations;
- (g) Hospitals;
- (h) The department of health care policy and financing with respect to individuals who are eligible for coverage under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.; and
- (i) Persons and entities that have contracted with the state pursuant to paragraph (d) of subsection (9) of this section.

(3) Records in the immunization tracking system shall be strictly confidential and shall not be released, shared with any agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or otherwise, except under the following circumstances:

- (a) Medical and epidemiological information may be released in a manner such that no individual person can be identified.
- (b) Immunization records and epidemiological information may be released to the extent necessary for the treatment, control, investigation, and prevention of vaccine-preventable diseases; except that every effort shall be made to limit disclosure of personal identifying information to the minimum amount necessary to accomplish the public health purpose.

(c) Immunization records and epidemiological information may be released to the individual who is the subject of the record, to a parent of a minor individual, to a guardian or person authorized to consent to immunization under section 25-4-1704, to the physician, clinic, hospital, or licensed health care practitioner treating the person who is the subject of an immunization record, to a school in which such person is enrolled, or any entity or person described in paragraph (f), (h), or (i) of subsection (2) of this section.

(4) An officer, employee, or agent of the department of public health and environment or a county, district, or municipal public health agency shall not be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report obtained by such department without consent of the individual or the individual's parent or guardian. However, this subsection (4) shall not apply to individuals who are under isolation, quarantine, or other restrictive action taken pursuant to section 25-1.5-102 (1) (c).

(5) (a) An officer, employee, or agent of the department of public health and environment or any other person who violates this section by releasing or making public confidential immunization records or epidemiological information in the immunization tracking system or by otherwise breaching the confidentiality requirements of this section or releasing such information without authorization commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501 (1), C.R.S. The unauthorized release of each record shall constitute a separate offense.

(b) A natural person who, in exchange for money or any other thing of value, violates this section by wrongfully releasing or making public confidential immunization records or epidemiological information in the immunization tracking system or by otherwise breaching the confidentiality requirements of this section or releasing such information without authorization commits a class 1 misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-501 (1), C.R.S.

(c) A business entity who, in exchange for money or any other thing of value, violates this section by wrongfully releasing or making public confidential immunization records or epidemiological information in the immunization tracking system or by otherwise breaching the confidentiality requirements of this section or releasing such information without authorization shall be assessed a civil penalty of ten thousand dollars per sale of information per subject of such information.

(6) (a) The department of public health and environment or the department's contractor may directly contact the individual who is the subject of immunization records or the individual's parent or legal guardian for the purpose of notifying the individual, parent, or legal guardian if immunizations are due or overdue as indicated by the advisory committee on immunization practices of the United States department of health and human services or the American academy of pediatrics. The department or the department's contractor shall contact the individual, parent, or legal guardian if it is necessary to control an outbreak of or prevent the spread of a vaccine-preventable disease pursuant to section 25-1.5-102 (1) (a) or 25-4-908.

(b) A notice given to an individual or a parent or legal guardian of an individual under eighteen years of age pursuant to this subsection (6) shall also inform the individual, parent, or legal guardian of the option to refuse an immunization on the grounds of medical, religious, or personal belief considerations pursuant to section 25-4-903.

(7) An individual or a parent or legal guardian who consents to the immunization of an infant, child, or student pursuant to part 9 or 17 of this article or this part 24 may exclude immunization information from the immunization tracking system. The individual, parent, or legal guardian may remove such immunization information from the immunization tracking system at any time. The department of public health and environment shall ensure that the process to exclude immunization information from the system is readily available and not burdensome. The physician, licensed health care practitioner, clinic, hospital, or county, district, or municipal public health agency shall inform the individual, parent, or legal guardian of the option to exclude such information from such system and the potential benefits of inclusion in such system. In addition, the physician, licensed health care practitioner, clinic, hospital, or county, district, or municipal public health agency shall inform such parent or legal guardian of a minor individual of the option to refuse an immunization on the grounds of medical, religious, or personal belief considerations pursuant to section 25-4-903. Neither refusing an immunization on the grounds of medical, religious, or personal belief considerations pursuant to section 25-4-903 nor opting to exclude immunization notification information from the immunization tracking system shall, by itself, constitute child abuse or neglect by a parent or legal guardian.

(8) A person licensed to practice medicine pursuant to article 36 of title 12, C.R.S.; a person licensed to practice nursing pursuant to article 38 of title 12, C.R.S.; any other licensed health care practitioner as defined in section 25-4-1703; providers of county nursing services; staff members of health care clinics, hospitals, and offices of private practitioners; county, district, and municipal public health agencies; and all persons and entities listed in subsection (2) of this section are authorized to report to the immunization tracking system and to use the reminder and recall process established by the immunization tracking system.

(9) The department of public health and environment may:

(a) Issue immunization records to individuals, parents, or guardians authorized to consent to immunizations;

(b) Assess the vaccination status of individuals;

(c) Accept any gifts or grants or awards of funds from the federal government or private sources for the implementation and operation of the immunization tracking system, which shall be credited to the immunization fund created in section 25-4-1708; and

(d) Enter into contracts that are necessary for the implementation and operation of the immunization tracking system. A person who enters into a contract pursuant to this paragraph (d) shall only use the information gathered from the immunization tracking system in accordance with this part 24 and shall be subject to all applicable state and federal laws regarding the confidentiality of information.

(10) County, district, and municipal public health agencies and the department of public health and environment shall use the birth certificate of any person to enroll the person in an immunization tracking system. The use of the birth certificate shall be considered an official duty of local health departments and the department of public health and environment.

(11) Physicians, licensed health care practitioners, clinics, schools, licensed child care providers, hospitals, managed care organizations or health insurance plans in which an individual is enrolled as a member or insured, persons that have contracted with the department of public health and environment pursuant to paragraph (d) of subsection (9) of this section, and public health officials may release any immunization records in their possession, whether or not such records are in the immunization tracking system, to the persons or entities specified in subsection (2) of this section to provide treatment for such individual or to provide an accurate and complete immunization record for the individual.

(12) The department of public health and environment shall disseminate information about the immunization tracking system, including providing notification pursuant to subsection (7) of this section to birthing hospitals. The hospitals shall provide the notices to the parents of newborns.

Source: L. 2007: Entire part added, p. 660, § 6, effective April 26. **L. 2010:** (4), (7), (8), and (10) amended, (HB 10-1422), ch. 419, p. 2101, § 114, effective August 11.

PART 25

CERVICAL CANCER IMMUNIZATION ACT

25-4-2501. Short title. This part 25 shall be known and may be cited as the “Cervical Cancer Immunization Act”.

Source: L. 2007: Entire part added, p. 1346, § 1, effective May 29.

25-4-2502. Definitions. As used in this part 25, unless the context otherwise requires:

- (1) “Board of health” means the state board of health.
- (2) “Cervical cancer vaccine” or “cervical cancer immunization” means the series of vaccines to prevent cervical cancer as determined by the board of health to be necessary to conform to recognized standard medical practices.
- (3) “Department” means the department of public health and environment.
- (4) “FQHC” means a provider designated as a federally qualified health center pursuant to the provisions of 42 U.S.C. sec. 1396d (1) (2) (B).
- (5) “Local public health agency” means a county or district public health agency established pursuant to section 25-1-506.
- (6) “Program” means the cervical cancer immunization program, created in section 25-4-2503.

Source: L. 2007: Entire part added, p. 1346, § 1, effective May 29. **L. 2008:** (5) amended, p. 2054, § 10, effective July 1.

25-4-2503. Cervical cancer immunization program - rules. (1) There is hereby created in the department the cervical cancer immunization program. The department is directed to investigate manners in which the cervical cancer vaccine may be administered in an economical fashion. The state board is authorized to promulgate rules to assist the department in making the vaccine available.

(2) FQHCs are encouraged to enter into agreements with local public health agencies to administer vaccinations to underinsured female minors through a federally recognized vaccination program for children. If a local public health agency enters into an agreement, the agency shall administer vaccinations, including but not limited to cervical cancer

vaccinations, pursuant to the agreement with the FQHC. The department shall pay to a local public health agency the agency's administrative cost for administering a cervical cancer vaccination to an underinsured female entering the sixth grade.

Source: L. 2007: Entire part added, p. 1347, § 1, effective May 29.

25-4-2504. Public awareness campaign - fund. (1) Subject to the moneys being available in the fund created in subsection (2) of this section, on and after January 1, 2008, the department shall conduct a public awareness campaign on cervical cancer immunization and the benefits, disadvantages, and possible side effects of receiving cervical cancer immunization.

(2) There is hereby created in the state treasury the cervical cancer immunization awareness campaign fund, referred to in this section as the "fund". The fund shall consist of any gifts, grants, or donations received by the department pursuant to paragraph (a) of subsection (3) of this section and any moneys appropriated to the fund by the general assembly. Moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this section. Interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(3) (a) The department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section.

(b) If, on or before January 1, 2008, the department has received eight hundred thousand dollars or more in gifts, grants, or donations pursuant to paragraph (a) of this subsection (3), there is transferred from the Colorado immunization fund established pursuant to section 25-4-2301 to the fund on January 15, 2008, the sum of one hundred thousand dollars and on or after July 1, 2008, the sum of one hundred thousand dollars.

Source: L. 2007: Entire part added, p. 1347, § 1, effective May 29.

PRODUCTS CONTROL AND SAFETY

ARTICLE 5

Products Control and Safety

Cross references: For agricultural and animal products standards, see title 35; for automotive products standards, see parts 8 and 9 of article 20 of title 8.

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(Repealed)

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PART 1

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25-5-101 to 25-5-112. (Repealed)

Source: L. 83: Entire part repealed, p. 1057, § 1, effective July 1.

Editor's note: This part 1 was numbered as article 10 of chapter 66, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 2

ENRICHMENT OF FLOUR AND BREAD

25-5-201. Legislative declaration. The purpose of this part 2 is to protect so far as may be possible the health and well-being of the people of this state by providing for the enrichment of certain kinds of flour and bread in order to increase their content of certain essential vitamins and minerals. There will continue to be widespread deficiencies in the diets of our people unless such nutrients are contained in flour, bread, and rolls as provided in this part 2.

Source: L. 49: p. 429, § 1. **CSA:** C. 69, § 125. **CRS 53:** § 66-15-1. **C.R.S. 1963:** § 66-15-1.

25-5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Department" means the department of public health and environment of the state of Colorado.

(2) "Flour" includes and is limited to the foods commonly known in the milling and baking industries as:

(a) White flour, also known as wheat flour or plain flour;

(b) Bromated flour;

(c) Self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) Phosphated flour, also known as phosphated white flour or phosphated wheat flour, which includes whole wheat flour but excludes special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake, pancake, and pastry flours.

(3) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, or any group of persons, whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

(4) "Rolls" includes plain white rolls and buns of the semibread dough type, namely: Soft rolls, such as hamburger rolls, hot dog rolls, and parker house rolls; and hard rolls, such as Vienna rolls and kaiser rolls. It does not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(5) "White bread" means any bread made with flour, as defined in paragraph (a) of subsection (2) of this section, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

Source: L. 49: p. 429, § 2. CSA: C. 69, § 126. CRS 53: § 66-15-2. C.R.S. 1963: § 66-15-2. L. 94: (1) amended, p. 2777, § 477, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-203. Content of flour. (1) It is unlawful for any person to manufacture, mix, compound, sell, or offer for sale flour for human consumption in this state unless the following vitamins and minerals are contained in each pound of such flour: Not less than two milligrams and not more than two and five-tenths milligrams of thiamine; not less than one and two-tenths milligrams and not more than one and five-tenths milligrams of riboflavin; not less than sixteen milligrams and not more than twenty milligrams of niacin or niacin amide; not less than thirteen milligrams and not more than sixteen and five-tenths milligrams of iron (Fe), except in the case of self-rising flour which in addition to the above ingredients shall contain not less than five hundred milligrams and not more than one thousand five hundred milligrams of calcium (Ca).

(2) The terms of this section shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate, in such form as the department by regulation shall prescribe, certifying that such flour will be:

(a) Resold to a distributor, baker, or other processor;

(b) Used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this part 2;

(c) Used in the manufacture of products other than flour, white bread, or rolls.

(2.5) Notwithstanding any provision of this section to the contrary, the department shall promulgate rules and regulations which shall establish standards for the production, manufacture, distribution, and sale of flour, white flour, wheat flour, and plain flour. Such rules shall include the requirement that all such flour sold be clearly and distinctly labeled "Flour", "White Flour", "Wheat Flour", or "Plain Flour". All such flour shall be produced, manufactured, distributed, and sold in accordance with such rules and standards; except that the department shall allow the distribution and sale in this state of such flour produced and manufactured in another state if such flour has been produced and manufactured under rules and standards similar to those of the department.

(3) It is unlawful for any purchaser to use or resell the flour so purchased in any manner other than as prescribed in this section.

Source: L. 49: p. 430, § 3. CSA: C. 69, § 127. CRS 53: § 66-15-3. C.R.S. 1963: § 66-15-3. L. 77: (2.5) added, p. 1287, § 1, effective July 1.

25-5-204. Content of white bread or rolls. It is unlawful for any person to manufacture, bake, sell, or offer for sale any white bread or rolls for human consumption in this state unless the following vitamins and minerals are contained in each pound of such bread or

rolls: Not less than one and one-tenth milligrams and not more than one and eight-tenths milligrams of thiamine; not less than seven-tenths milligrams and not more than one and six-tenths milligrams of riboflavin; not less than ten milligrams and not more than fifteen milligrams of niacin or niacin amide; and not less than eight milligrams and not more than twelve and five-tenths milligrams of iron (Fe).

Source: L. 49: p. 430, § 4. CSA: C. 69, § 125. CRS 53: § 66-15-4. C.R.S. 1963: § 66-15-4.

25-5-205. Enforcement of part 2. (1) The department is charged with the duty of enforcing the provisions of this part 2, and it is authorized to make, amend, or rescind rules, regulations, and orders for the efficient enforcement of this part 2.

(2) Whenever the vitamin and mineral requirements set forth in sections 25-5-203 and 25-5-204 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this part 2, is authorized to modify or revise such requirements to conform with amended standards governing interstate shipments.

(3) (a) In the event of findings by the department that there is an existing or imminent shortage of any ingredient required by sections 25-5-203 and 25-5-204 and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this part 2, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls and, if it is found necessary or appropriate, excepting such foods from labeling requirements until further order of the department. Any such findings may be made without hearing on the basis of factual information supplied to or obtained by the department. Furthermore, the department, on its own motion, may hold a public hearing and, upon receiving the sworn statements of ten or more persons subject to this part 2 that they believe such a shortage exists or is imminent, within twenty days thereafter, shall hold a public hearing with respect thereto at which any interested person may present evidence; and it shall make findings based upon the evidence presented. The department shall publish notice of any such hearing at least ten days prior thereto.

(b) Whenever the department has reason to believe that such shortage no longer exists, it shall hold a public hearing, after at least ten days' notice has been given, at which any interested person may present evidence, and it shall make findings based upon the evidence so presented. If its findings are that such shortage no longer exists, it shall issue an order, to become effective not less than thirty days after publication thereof, revoking such previous order; but undisposed floor stocks of flour on hand at the effective date of such revocation order or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) All orders, rules, and regulations adopted by the department pursuant to this part 2 shall be published in the manner prescribed in subsection (5) of this section and, within the limits specified by this part 2, shall become effective upon such date as the department shall fix.

(5) Whenever under this part 2 publication of any notice, order, rule, or regulation is required, such publication shall be made at least once in at least one daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this part 2, the department, or such officers or employees under its supervision as it may designate, is authorized to take samples for analysis; and to conduct examinations and investigations; and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof; and to inspect any such place or vehicle and any flour, white bread, or rolls therein and all pertinent equipment, materials, containers, and labeling.

Source: L. 49: p. 431, § 5. CSA: C. 69, § 129. CRS 53: § 66-15-5. C.R.S. 1963: § 66-15-5.

25-5-206. Penalty. Any person who violates any of the provisions of this part 2 or the orders, rules, or regulations promulgated by the department under authority thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine for each offense of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days.

Source: L. 49: p. 432, § 6. CSA: C. 69, § 130. CRS 53: § 66-15-6. C.R.S. 1963: § 66-15-6.

PART 3

MATTRESSES AND BEDDING

25-5-301. Short title. This part 3 shall be known and may be cited as the “Bedding Act”.

Source: L. 41: p. 718, § 18. CSA: C. 78, § 206. CRS 53: § 66-17-17. C.R.S. 1963: § 66-17-17.

25-5-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) “Bedding” means any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, studio couch, pillow, or cushion, any bag or container made of leather, cloth, or any other material, or any other device that is stuffed or filled in whole or in part with any concealed material in addition to the structural units and filling material used therein and its container, all of which can be used by any human being for sleeping or reclining purposes.

(2) “New material” means any material which has not been formerly used in the manufacture of another article or used for any other purpose.

(3) “Person” means any individual, corporation, partnership, or association.

(4) “Previously used material” means any material which has been used in the manufacture of another article or previously used for any other purpose.

(5) “Secondhand” means any article of bedding which has been previously used but not remade before it is offered for resale.

(6) “Sell” and “sold”, in the corresponding tense, include: Sell, offer to sell, or deliver or consign in sale, or possess with intent to sell, deliver or consign in sale, including bedding stored in warehouses for ultimate purpose of sale.

Source: L. 41: p. 713, § 1. CSA: C. 78, § 190. CRS 53: § 66-17-1. C.R.S. 1963: § 66-17-1. L. 90: (1) amended, p. 1315, § 1, effective July 1.

25-5-303. Restrictions. No person shall sell or distribute any bedding or bedding materials which are not clean or which may be deemed injurious to the public’s health.

Source: L. 41: p. 714, § 2. CSA: C. 78, § 191. CRS 53: § 66-17-2. C.R.S. 1963: § 66-17-2. L. 90: Entire section R&RE, p. 1315, § 2, effective July 1.

ANNOTATION

Applied in *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 1979).

25-5-304. Sale of bedding exposed to contagion. (Repealed)

Source: L. 41: p. 714, § 3. CSA: C. 78, § 192. CRS 53: § 66-17-3. C.R.S. 1963: § 66-17-3. L. 90: Entire section repealed, p. 1317, § 8, effective July 1.

25-5-305. Disinfection. (1) No person engaged in manufacturing, remaking, or renovating bedding for sale or distribution shall use any previously used material which since last used has not been disinfected by a method approved by the department of public health and environment.

(2) No person shall knowingly sell any bedding containing animal material, including but not limited to hair, feathers, down, or wool, which has not been disinfected by a method approved by the department of health prior to being incorporated into such bedding.

(3) Repealed.

Source: L. 41: p. 714, § 4. CSA: C. 78, § 193. CRS 53: § 66-17-4. C.R.S. 1963: § 66-17-4. L. 90: (1) and (2) amended and (3) repealed, pp. 1315, 1317, §§ 3, 8, effective July 1. L. 94: (1) amended, p. 2777, § 478, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-306. Receiving bedding to be remade. (Repealed)

Source: L. 41: p. 715, § 5. CSA: C. 78, § 194. CRS 53: § 66-17-5. C.R.S. 1963: § 66-17-5. L. 90: Entire section repealed, p. 1317, § 8, effective July 1.

25-5-307. Tagging. (1) No person shall sell bedding or materials therefor to which is not securely sewn by at least one edge a cloth or clothbacked tag at least two inches by three inches in size.

(2) Upon said tag shall be legibly stamped or printed in English in letters at least one-eighth of an inch high:

(a) If the materials used in the manufacture of the article of bedding to which the label is to be attached are entirely new, the label shall be as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are entirely new."

(b) If the materials used in the manufacture of the article to which the label is to be attached are partially or wholly previously used materials, the label shall be as follows: "The materials used in the manufacture of this mattress (or other article of bedding) are previously used materials and have been disinfected."

(c) If the article to which the label is to be attached is secondhand, the label shall be as follows: "This mattress (or other article of bedding) is secondhand."

(3) In addition to the requirements of subsections (1) and (2) of this section, every label shall bear the name and address of the manufacturer or vendor of the article of bedding to which it is attached and the name of the material used to fill such article of bedding.

(4) Nothing likely to mislead shall appear on said tag. The tag shall contain all statements required by this section, and it shall be sewn to the outside covering of every article of bedding sold, manufactured, or remade.

(5) The tagging requirement of this section shall not apply to any individual selling his own personal articles of bedding to another individual.

Source: L. 41: p. 715, § 6. CSA: C. 78, § 195. CRS 53: § 66-17-6. C.R.S. 1963: § 66-17-6. L. 90: (1), (2)(a), (2)(b), (2)(c), and (5) amended, p. 1316, § 4, effective July 1.

25-5-308. Removing or defacing tag or stamp. (Repealed)

Source: L. 41: p. 716, § 7. CSA: C. 78, § 196. CRS 53: § 66-17-7. C.R.S. 1963: § 66-17-7. L. 90: Entire section repealed, p. 1317, § 8, effective July 1.

25-5-309. Administered by department. (1) The department of public health and environment is charged with the administration and enforcement of this part 3.

(2) Repealed.

Source: L. 41: p. 716, § 8. **CSA:** C. 78, § 197. **CRS 53:** § 66-17-8. **C.R.S. 1963:** § 66-17-8. **L. 75:** Entire section amended, p. 877, § 1, effective July 14. **L. 90:** (1) amended and (2) repealed, pp. 1316, 1317, §§ 5, 8, effective July 1. **L. 94:** (1) amended, p. 2777, § 479, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-310. License. (Repealed)

Source: L. 41: p. 716, § 9. **CSA:** C. 78, § 198. **CRS 53:** § 66-17-9. **C.R.S. 1963:** § 66-17-9. **L. 90:** Entire section repealed, p. 1317, § 8, effective July 1.

25-5-311. Disposition of moneys. (Repealed)

Source: L. 41: p. 716, § 10. **CSA:** C. 78, § 199. **CRS 53:** § 66-17-10. **C.R.S. 1963:** § 66-17-10. **L. 90:** Entire section repealed, p. 1317, § 8, effective July 1.

25-5-312. Appropriation. (Repealed)

Source: L. 41: p. 716, § 11. **CSA:** C. 78, § 200. **CRS 53:** § 66-17-11. **C.R.S. 1963:** § 66-17-11. **L. 90:** Entire section repealed, p. 1317, § 8, effective July 1.

25-5-313. Posting of license. (Repealed)

Source: L. 41: p. 717, § 12. **CSA:** C. 78, § 201. **CRS 53:** § 66-17-12. **C.R.S. 1963:** § 66-17-12. **L. 90:** Entire section repealed, p. 1317, § 8, effective July 1.

25-5-314. Enforcement. The department of public health and environment shall enforce this part 3 upon complaint or upon request by a consumer. The department of public health and environment, as often as necessary, may inspect any place where bedding is made, remade, renovated, or sold or where material is disinfected under this part 3. If the department has reason to believe that any article of bedding is not tagged as required by this part 3, the department has the authority to open the same and examine the materials therein to determine if said filling is as stated on said tag; except that, in opening such bedding, the department shall use reasonable means not to damage the same or destroy the value thereof. The department also has the power to examine any purchase records necessary to determine definitely the kind of material used in said bedding, and the department has the power to seize and hold for evidence any article or material therein possessed or offered for sale contrary to this part 3. The department of public health and environment may thereafter commence an action against any violator pursuant to section 25-5-316.

Source: L. 41: p. 717, § 13. **CSA:** C. 78, § 202. **CRS 53:** § 66-17-13. **C.R.S. 1963:** § 66-17-13. **L. 90:** Entire section amended, p. 1317, § 6, effective July 1. **L. 94:** Entire section amended, p. 2777, § 480, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-315. Violation - what constitutes. (Repealed)

Source: L. 41: p. 717, § 14. **CSA:** C. 78, § 203. **CRS 53:** § 66-17-14. **C.R.S. 1963:** § 66-17-14. **L. 90:** Entire section repealed, p. 1317, § 8, effective July 1.

25-5-316. Penalty for violation. Any person who violates any provision of this part 3 shall be subject to a civil penalty of not more than one thousand dollars. Such penalty shall

be determined and collected by the district court for the judicial district in which such violation occurs upon an action instituted by the department of public health and environment. In determining the amount of any such penalty, the court shall take into account the seriousness of the violation, whether the violation was willful or due to a mistake, the economic impact of the penalty upon the violator, and any other relevant factors. All penalties collected pursuant to this section shall be transmitted to the state treasurer and credited to the general fund. The court may also order that the violator pay any court costs of such action, and the court may order that the violator pay restitution to any person damaged by such violation. Any person damaged by a violation of this part 3 may maintain a civil suit for damages against any violator responsible for such damages.

Source: L. 41: p. 717, § 15. CSA: C. 78, § 204. CRS 53: § 66-17-15. C.R.S. 1963: § 66-17-15. L. 90: Entire section R&RE, p. 1317, § 7, effective July 1. L. 94: Entire section amended, p. 2778, § 481, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-317. Rules and regulations. The department of public health and environment shall have the right to promulgate rules and regulations deemed necessary for the proper enforcement of this part 3 and not inconsistent therewith.

Source: L. 41: p. 718, § 16. CSA: C. 78, § 205. CRS 53: § 66-17-16. C.R.S. 1963: § 66-17-16. L. 94: Entire section amended, p. 2778, § 482, effective July 1.

Cross references: (1) For rule-making procedures, see article 4 of title 24.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 4

PURE FOOD AND DRUG LAW

Cross references: For authority of the governor in regard to food control, see article 30 of title 35; for destruction of food products, see article 31 of title 35.

25-5-401. Short title. This part 4 shall be known and may be cited as the “Colorado Food and Drug Act”.

Source: L. 57: p. 424, § 1. CRS 53: § 66-22-1. C.R.S. 1963: § 66-20-1.

ANNOTATION

Public policy declared. This part 4 and article 60 of title 35 declare the public policy of Colorado with respect to the protection of the public against the manufacture and sale of food and foodstuffs, including livestock feeds, containing deleterious elements or ingredients which cannot be known or determined by the public. *White v. Rose*, 241 F.2d 94 (10th Cir. 1957).

Duty imposed on livestock feed manufacturers. This part 4 imposes a broad and far-

reaching duty upon manufacturers of livestock feeds for the benefit of those who use the product and who are the real sufferers if the statute is violated. *White v. Rose*, 241 F.2d 94 (10th Cir. 1957).

Negligence per se. To recover under a theory of negligence per se, plaintiff was required to prove that violation of the “Colorado Food and Drug Act” caused her injuries. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

25-5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “Advertisement” means all representations disseminated in any manner or by any

means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

(I) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; and

(II) When added or applied to a food, drug, or cosmetic or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which is exempted under the federal act.

(b) Nothing in this subsection (3) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process or produce of the soil and thereby affecting its color, whether before or after harvest.

(4) "Consumer commodity", except as otherwise specifically provided in this subsection (4), means any food, drug, cosmetic, or device. Such term does not include:

(a) Any tobacco or tobacco product;

(b) Any commodity subject to packaging or labeling requirements imposed under article 9 of title 35, C.R.S., being known as the "Pesticide Act", or imposed by the secretary of agriculture under the "Federal Insecticide, Fungicide, and Rodenticide Act", as amended (7 U.S.C. secs. 135-135k), or under the federal "Animal Virus, Serum, Toxin, Antitoxin Act" (21 U.S.C. secs. 151-158);

(c) Any drug subject to the provisions of section 25-5-415 (1) (m) or of 21 U.S.C. sec. 353 (b) (1) or 356;

(d) Any beverage subject to or complying with packaging or labeling requirements imposed under the "Federal Alcohol Administration Act" (27 U.S.C. secs. 201-211); or

(e) Any commodity subject to the provisions of article 27 of title 35, C.R.S., concerning seeds.

(5) "Contaminated with filth" applies to any food, drug, cosmetic, or device not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(6) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance or articles intended for use as a component of any such articles; except that such term does not include soap.

(7) "Department" means the department of public health and environment.

(8) "Device", except when used in subsection (23) of this section and in sections 25-5-403 (1) (j), 25-5-411 (1) (g), 25-5-415 (1) (d), and 25-5-417 (1) (d), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals or to affect the structure or any function of the body of man or other animals.

(9) "Drug" means:

(a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals;

(d) Articles intended for use as a component of any article specified in paragraph (a), (b), or (c) of this subsection (9) but does not include devices or their components, parts, or accessories.

(10) "Federal act" means the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. sec. 301 et seq., 52 Stat. 1040 et seq.).

(11) "Food" means articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

(12) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including any source of radiation intended for any such use) if such substance is not generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. The term does not include:

- (a) A pesticide chemical in or on a raw agricultural commodity;
- (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (c) A color additive; or
- (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the amendment to the federal act known as the "Food Additives Amendment of 1958", the "Poultry Products Inspection Act" (21 U.S.C. secs. 451-470), or the "Meat Inspection Act of March 4, 1907", as amended and extended (21 U.S.C. secs. 71-91).

(13) "Immediate container" does not include package liners.

(14) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and by or under the authority of this part 4 a requirement that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

(15) "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

(16) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(17) "Package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term does not include:

(a) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers or wrappers bear no printed matter pertaining to any particular commodity.

(18) "Person" includes an individual, partnership, corporation, and association.

(19) "Pesticide chemical" means any substance which alone, in chemical combination, or in formulation with one or more other substances is a pesticide within the meaning of section 35-9-102 (21), C.R.S., and which is used in the production, storage, or transportation of raw agricultural commodities.

(20) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(21) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(22) "Safe", as used in subsection (12) of this section, has reference to the health of man or animal.

(23) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account all represen-

tations made or suggested by statement, work, design, device, sound, or any combination thereof, and also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(24) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as being, an antiseptic for inhibitory use which involves prolonged contact with the body.

(25) The provisions of this part 4 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

Source: L. 57: p. 424, § 2. CRS 53: § 66-22-2. C.R.S. 1963: § 66-20-2. L. 70: p. 197, § 1. L. 94: (7) amended, p. 2778, § 483, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (7), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-403. Offenses. (1) The following acts and the causing thereof within this state are prohibited:

(a) The manufacture, sale, or delivery or the holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) The adulteration or misbranding of any food, drug, device, or cosmetic;

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 25-5-412;

(e) The dissemination of any false or misleading advertisement;

(f) The refusal to permit entry, inspection, or the taking of a sample, as authorized by section 25-5-421;

(g) The giving of a false guaranty or undertaking except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic;

(h) The removal or disposal of a detained or embargoed article in violation of section 25-5-406;

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic which results in such article being adulterated or misbranded, if such act is done while such article is being stored or held for sale;

(j) Forging, counterfeiting, simulating, falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device required by this part 4 or by regulations promulgated under the provisions of this part 4;

(k) The distribution or causing to be distributed in commerce of any consumer commodity if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this part 4 and of regulations promulgated pursuant to this part 4; except that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(I) Are engaged in the packaging or labeling of such commodities; or

(II) Prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(1) The using by any person to his own advantage or the revealing, other than to the executive director of the department or his authorized representative or to the courts, when relevant in any judicial proceeding under this part 4, of any information acquired under authority of this part 4 concerning any method or process which as a trade secret is entitled to protection.

(2) It is prohibited for any person to sell, give, or in any way furnish to another person who is under the age of twenty-one years any confectionery which contains alcohol in excess of one-half of one percent by volume.

(3) The provisions of this section shall not apply to a medical marijuana center or a medical-marijuana-infused products manufacturer licensed pursuant to article 43.3 of title 12, C.R.S., that manufactures or sells a food product that contains medical marijuana so long as the food product is labeled as containing medical marijuana and the label specifies that the product is manufactured without any regulatory oversight for health, safety, or efficacy, and that there may be health risks associated with the consumption or use of the product.

Source: L. 57: p. 426, § 3. CRS 53: § 66-22-3. C.R.S. 1963: § 66-20-3. L. 70: p. 199, § 2. L. 89: (2) added, p. 708, § 3, effective July 1. L. 2010: (3) added, (HB 10-1284), ch. 355, p. 1684, § 3, effective July 1.

ANNOTATION

Common-law offense. The selling of unwholesome provisions to be used for human consumption was an indictable offense at common law. *Ferch v. People*, 101 Colo. 471, 74 P.2d 712 (1937).

Duty to warn where product may produce allergic reaction. Where a cosmetic contains an ingredient to which a substantial number of the population are allergic, and the ingredient is one whose danger is not generally known or which the consumer would reasonably not expect to find in the product, the seller is required to give warning against it, if he has knowledge, or by the application of reasonably developed human skill and foresight should have knowledge, of

the presence of the ingredient and the danger. *Howard v. Avon Prods., Inc.*, 155 Colo. 444, 395 P.2d 1007 (1964).

The duty to warn need not be predicated upon actual knowledge only, but there must be reasonable foreseeability of the danger from the product to sensitive users. *Howard v. Avon Prods., Inc.*, 155 Colo. 444, 395 P.2d 1007 (1964).

Misbranding prohibition. The "Colorado Food and Drug Act" prohibition against misbranding applied to an intrauterine device distributed by prescription through a physician to the lay public. *Palmer v. A.H. Robins Co. Inc.*, 684 P.2d 187 (Colo. 1984).

25-5-404. Injunction. In addition to the remedies provided in this part 4, the department is authorized to apply to the district court of the district wherein the defendant resides or has his place of business for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of section 25-5-403, irrespective of whether or not there exists an adequate remedy at law.

Source: L. 57: p. 427, § 4. CRS 53: § 66-22-4. C.R.S. 1963: § 66-20-4.

25-5-405. Penalties. (1) Any person who violates any of the provisions of section 25-5-403 (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment; but, if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to a fine of not more than two thousand dollars, or to imprisonment for not more than one year, or to both such fine and imprisonment for each succeeding offense. Each violation shall be considered a separate offense.

(2) No person shall be subject to the penalties of subsection (1) of this section for having violated section 25-5-403 (1) (a) or (1) (c) if he establishes a valid guaranty or undertaking signed by and containing the name and address of the person residing in the

United States from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this part 4, designating this part 4.

(3) No publisher, radio-broadcast licensee, television licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement unless he refuses, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the United States who caused him to disseminate such advertisement.

(4) Any person who violates section 25-5-403 (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than seven hundred fifty dollars.

Source: L. 57: p. 427, § 5. CRS 53: § 66-22-5. C.R.S. 1963: § 66-20-5. L. 70: p. 213, § 17. L. 89: (4) amended, p. 709, § 4, effective July 1.

25-5-406. Tagging articles misbranded or adulterated. (1) Whenever a duly authorized agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or misbranded within the meaning of this part 4, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the department or such agent or the court. No person shall remove or dispose of such embargoed article by sale or otherwise without the permission of the department or its agent or, after summary proceedings have been instituted, without permission from the court. If the embargo is removed by the department or by the court, neither the department nor the state shall be held liable for damages because of such embargo in the event that the court finds that there was probable cause for the embargo.

(2) When an article detained or embargoed under subsection (1) of this section has been found by such agent to be adulterated or misbranded, he shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expense shall be taxed against the claimant of such article or his agent; except that, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the department that the article is no longer in violation of this part 4 and that the expenses of such supervision have been paid.

(4) Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substance or which may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the department or its authorized agent shall forthwith condemn or destroy the same or in any other manner render the same unsalable as human food.

Source: L. 57: p. 428, § 6. CRS 53: § 66-22-6. C.R.S. 1963: § 66-20-6. L. 64: p. 273, § 179.

25-5-407. Duties of district attorney. It is the duty of each district attorney to whom the department reports any violation of this part 4 to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

Source: L. 57: p. 429, § 7. CRS 53: § 66-22-7. C.R.S. 1963: § 66-20-7.

25-5-408. Discretion as to warning. Nothing in this part 4 shall be construed as requiring the department to report, for the institution of proceedings under this part 4, minor violations of this part 4 whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: L. 57: p. 429, § 8. CRS 53: § 66-22-8. C.R.S. 1963: § 66-20-8.

25-5-409. Regulations. (1) Definitions and standards of identity, quality, and fill of container for any food adopted under authority of the federal act are the definitions and standards of identity, quality, and fill of container in this state. However, when, in its judgment, such action will promote honesty and fair dealing in the interest of consumers, the department may promulgate additional regulations establishing definitions and standards of identity, quality, and fill of container for foods which are not subject to any federal regulations. Any definition or standard of identity, quality, or fill of container promulgated under this subsection (1) which is in addition to federal definitions and standards shall constitute a regulation of the department, and it shall be subject to the requirements of section 25-5-420 concerning the procedures for promulgating such regulations. The department may promulgate amendments to any federal or state regulations which set definitions and standards of identity, quality, and fill of container for foods in the same manner as is provided for their adoption.

(2) Temporary permits granted under the federal act for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under the conditions provided in such permits. The department may issue additional permits if they are necessary to the completion or conclusiveness of an otherwise adequate investigation and if the interests of consumers are safeguarded. Such permits are subject to the terms and conditions the department may prescribe by regulation.

Source: L. 57: p. 429, § 9. CRS 53: § 66-22-9. C.R.S. 1963: § 66-20-9. L. 70: p. 199, § 3.

Cross references: For rule-making and licensing procedures, see article 4 of title 24.

25-5-410. Definitions of “adulterated”. (1) A food is deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but, in case the substance is not an added substance, such food shall not be considered adulterated under this paragraph (a) if the quantity of such substance in such food does not ordinarily render it injurious to health;

(b) (I) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 25-5-413; except that a pesticide chemical in or on a raw agricultural commodity, a food additive, or a color additive shall not be deemed a poisonous or deleterious substance within the meaning of this paragraph (b);

(II) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 25-5-413 (1); but, if a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 25-5-413 (2) and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food, notwithstanding the provisions of section 25-5-413 (1) and this subparagraph (II), shall not be

deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(III) If it is, or it bears or contains any food additive which is, unsafe within the meaning of section 25-5-413 (1);

(c) If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(d) If it is produced, prepared, packed, or held under unsanitary conditions whereby it may be contaminated with filth or rendered diseased, unwholesome, or injurious to health;

(e) If it is, in whole or in part, the product of a diseased animal or an animal which has died otherwise than by slaughter or which has been fed upon the uncooked offal from a slaughterhouse;

(f) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(g) If it has been intentionally subjected to radiation unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 25-5-413 or 21 U.S.C. sec. 348;

(h) (I) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(II) If any substance has been substituted wholly or in part therefor;

(III) If damage or inferiority has been concealed in any manner;

(IV) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(i) If it is confectionery and:

(I) Has partially or completely imbedded therein any nonnutritive object; but this subparagraph (I) shall not apply in the case of any nonnutritive object if, in the judgment of the department as provided by regulations, such object is of practical functional value to the confectionery product and does not render the product injurious or hazardous to health;

(II) Bears or contains any alcohol other than alcohol not in excess of six and twenty-five hundredths percent by volume or five percent by weight; or

(III) Bears or contains any nonnutritive substance; but this subparagraph (III) shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this part 4; and, furthermore, the department, for the purpose of avoiding or resolving uncertainty as to the application of this subparagraph (III), may issue regulations allowing or prohibiting the use of particular nonnutritive substances;

(j) If it is, or it bears or contains a color additive which is, unsafe within the meaning of section 25-5-413 (1) or the federal act;

(k) If it is chopped or ground beef or hamburger and it contains any meat other than the voluntary striated muscle of beef, or the total fat content, derived solely from beef, is in excess of thirty percent, or it contains any substance other than those which the department has by regulation declared to be permitted optional ingredients;

(l) If it is fresh meat or a fresh meat product, or fresh poultry, parts thereof, or fresh poultry products, and contains any antiseptic or chemical preservative;

(m) If it is meat or a meat product and contains any artificial coloring or if it is contained in an artificially colored casing or wrapper; except that the department may by regulation establish the conditions of the use of artificial color in casings and wrappers;

(n) If it is pork sausage or pork breakfast sausage and the total fat content is in excess of fifty percent.

Source: L. 57: p. 430, § 10. CRS 53: § 66-22-10. L. 61: p. 171, § 2. C.R.S. 1963: § 66-20-10. L. 70: pp. 200, 201, §§ 4, 5. L. 89: (1)(i)(II) amended, p. 709, § 5, effective July 1.

25-5-411. Definitions of “misbranding”. (1) A food shall be deemed to be misbranded:

- (a) If its labeling is false or misleading in any particular;
- (b) If its labeling or packaging fails to conform to the requirements of section 25-5-419;
- (c) If it is offered for sale under the name of another food;
- (d) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and, immediately thereafter, the name of the food imitated;

- (e) If its container is so made, formed, or filled as to be misleading;
- (f) If in package form, unless it bears a label containing:
 - (I) The name and place of business of the manufacturer, packer, or distributor; and
 - (II) An accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; but, as to such terms of quantity, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulation prescribed by the department;

- (g) If any word, statement, or other information required by or under authority of this part 4 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

- (h) If it purports to be or is represented as a food for which a definition and standard of identity is prescribed by regulations as provided by section 25-5-409, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

- (i) If it purports to be or is represented as:

- (I) A food for which a standard of quality has been prescribed by regulations as provided by section 25-5-409 and its quality falls below such standard, unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standard; or

- (II) A food for which a standard of fill of container is prescribed by regulations as provided by section 25-5-409 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

- (j) If it is not subject to the provisions of paragraph (h) of this section, unless it bears labeling clearly giving the common or usual name of the food, if any, and, if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; but, to the extent that compliance with the requirements as to such multiple names is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department. The requirements of this paragraph (j) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale whose ingredients are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

- (k) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

- (l) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; but, to the extent that compliance with the requirements of this paragraph (l) is impracticable, exemptions shall be established by regulations promulgated by the department. The provisions of this paragraph (l) and paragraphs (h) and (j) of this subsection (1) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this paragraph (l) with respect to chemical

preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(m) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded;

(n) If it is meat imported from without the boundaries of the United States or if it is a meat product containing such meat, unless it bears labeling stating the fact that it is imported meat or that it contains imported meat. Any person who sells or offers for sale in this state any meat imported from without the boundaries of the United States, or any meat product containing such imported meat, without labeling such meat or meat product stating that it is imported, or contains imported meat, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

(o) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; except that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade;

(p) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive as may be contained in regulations issued pursuant to the provisions of the federal act.

(2) Foods which, in accordance with the practice of the trade, are to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling requirements under this section if such food is not adulterated or misbranded under any provision of this part 4 upon removal from such processing, labeling, or repacking establishment. Regulations adopted under authority of the federal act (21 U.S.C. sec. 345) relating to such exemptions are automatically effective in this state. The department may promulgate additional regulations or amendments to existing regulations concerning such exemptions, but the department may not promulgate any regulation which has the effect of allowing any food which is subject to federal labeling requirements to be exempt from labeling requirements under the law of this state.

Source: L. 57: p. 431, § 11. CRS 53: § 66-22-11. L. 61: p. 416, § 1. L. 63: p. 539, § 1. C.R.S. 1963: § 66-20-11. L. 70: p. 201, § 6.

25-5-412. Issuance of permits. (1) Whenever the department finds after investigation that the distribution in this state of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it, then and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health; and, after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer, unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

(2) The department is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged to apply at any time for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate

measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(3) Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds such a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be grounds for suspension of the permit until such access is freely given by the operator.

Source: L. 57: p. 433, § 12. CRS 53: § 66-22-12. C.R.S. 1963: § 66-20-12.

25-5-413. Limit of adulteration - rule or regulation. (1) Any added poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive, with respect to any particular use or intended use, shall be deemed unsafe for the purpose of application of section 25-5-410 (1) (b) with respect to any food, section 25-5-414 (1) (a) to (1) (f) with respect to any drug or device, or section 25-5-416 (1) (a) with respect to any cosmetic, unless there is in effect a regulation pursuant to section 25-5-419 or subsection (2) of this section limiting the quantity of such substance and the use or intended use of such substance is within the limits prescribed by such regulation. While such a regulation relating to such substance is in effect, a food, drug, or cosmetic, by reason of bearing or containing such substance in accordance with the regulations, shall not be considered adulterated within the meaning of section 25-5-410 (1) (b), 25-5-414 (1) (a) to (1) (f), or 25-5-416 (1) (a).

(2) The department, whenever public health or other considerations so require, is authorized to adopt, amend, or repeal regulations upon its own motion or upon the petition of any interested party, whether or not in accordance with regulations promulgated under the federal act. Such regulations may prescribe tolerances for any added poisonous or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including but not limited to zero tolerances. The department may prescribe exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The department may also promulgate regulations prescribing the conditions under which a food additive or a color additive may be safely used and exemptions if such food additive or color additive is to be used solely for investigational or experimental purposes. It shall be incumbent upon any petitioner to establish that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted, and failure to comply with the request shall be sufficient grounds for denial of the request. In adopting, amending, or repealing regulations under this section, the department shall consider, among other relevant factors, the following, which the petitioner, if any, shall furnish:

(a) The name and all pertinent information concerning such substance, including, where available, its chemical identity and composition; a statement of the conditions of the proposed use, including directions, recommendations, suggestions, and specimens of proposed labeling; all relevant data bearing on the physical or other technical effects; and the quantity required to produce such effect;

(b) The probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) The probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) The availability of any needed practicable methods of analysis for determining the identity and quantity of:

(I) Such substance in or on an article;

- (II) Any substance formed in or on such article because of the use of such substance; and
- (III) The pure substance and all intermediates and impurities;
- (f) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

Source: L. 57: p. 433, § 13. CRS 53: § 66-22-13. C.R.S. 1963: § 66-20-13. L. 70: p. 203, § 7.

- 25-5-414. Adulterations.** (1) A drug or device shall be deemed to be adulterated:
- (a) If it consists in whole or in part of any filthy, putrid, or decomposed substance;
 - (b) If it has been produced, prepared, packed, or held under unsanitary conditions under which it may have been contaminated with filth or rendered injurious to health;
 - (c) If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this part 4 as to safety and that such drug has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;
 - (d) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
 - (e) If it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or section 25-5-413 (1);
 - (f) If it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act or section 25-5-413 (1);
 - (g) If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in case of the absence or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph (g) because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia.
 - (h) If it is not subject to the provisions of paragraph (g) of this subsection (1) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;
 - (i) If it is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength or substituted wholly or in part therefor.

Source: L. 57: p. 434, § 14. CRS 53: § 66-22-14. C.R.S. 1963: § 66-20-14. L. 70: p. 204, § 8.

- 25-5-415. Misbranding.** (1) A drug or device shall be deemed to be misbranded:
- (a) If its labeling is false or misleading in any particular;
 - (b) If its labeling or packaging fails to conform with the requirements of section 25-5-419;
 - (c) If in package form, unless it bears a label containing:
 - (I) The name and place of business of the manufacturer, packer, or distributor; and
 - (II) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform

location upon the principal display panel of the label, except as exempted by section 25-5-402 (4) (c); but, as to such terms of quantity, reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulation prescribed by the department or issued under the federal act;

(d) If any word, statement, or other information required by or under authority of this part 4 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(e) (I) If it is a drug, unless:

(A) Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), the established name, as defined in subparagraph (II) of this paragraph (e), of the drug, if such there be; and, in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; except that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this sub-subparagraph (A), shall apply only to prescription drugs; and

(B) For any prescription drug, the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient. To the extent that compliance with the requirements of this sub-subparagraph (B) and sub-subparagraph (A) of this subparagraph (I) as to fabricated drugs is impracticable, exemptions shall be established by regulations promulgated by the department or under the federal act.

(II) As used in this paragraph (e), the term "established name", with respect to a drug or ingredient thereof, means:

(A) The applicable official name designated pursuant to the federal act; or

(B) If there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) If neither sub-subparagraph (A) nor sub-subparagraph (B) of this subparagraph (II) applies, then the common or usual name, if any, of such drug or of such ingredient;

(D) Where sub-subparagraph (B) of this subparagraph (II) applies to an article recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

(f) Unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users; but, where any requirement as to such adequate directions for use, as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirement, and articles exempted under regulations issued under the federal act shall also be exempt;

(g) If it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; but the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. In the event of inconsistency between the requirements of

this paragraph (g) and those of paragraph (e) of this subsection (1) as to the name by which the drug or its ingredients are designated, the requirements of paragraph (e) of this subsection (1) shall prevail.

(h) If it is found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body has failed within a reasonable time to prescribe such requirements.

(i) (I) If it is a drug and its container is so made, formed, or filled as to be misleading; or

(II) If it is an imitation of another drug; or

(III) If it is offered for sale under the name of another drug;

(j) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(k) If its labeling represents it to have any effect in albuminuria, appendicitis, arteriosclerosis, arthritis, baldness, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, rheumatism, scarlet fever, sexual impotence, sexually transmitted infection, sinus infection, smallpox, tuberculosis, tumors, typhoid, or uremia, and shall also be deemed to be false; except that no labeling in violation of paragraphs (a) and (b) of this subsection (1) shall be deemed to be false under this paragraph (k) if it is disseminated only to members of the medical, dental, chiropractic, or veterinary professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; but, if the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this paragraph (k), the department shall by regulation authorize the labeling of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health; except that this paragraph (k) shall not be construed as indicating that self-medication for any disease is safe or efficacious;

(l) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be and designated as habit-forming by rules issued by the department or pursuant to the federal act, unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement "Warning - May be habit-forming";

(m) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(I) It is from a batch with respect to which a certificate or release has been issued pursuant to the federal act; and

(II) Such certificate or release is in effect with respect to such drug;

(n) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:

(I) It is from a batch with respect to which a certificate or release has been issued pursuant to the federal act; and

(II) Such certificate or release is in effect with respect to such drug; but this subparagraph (II) shall not apply to any drug or class of drugs exempted by regulations promulgated under the federal act. For the purpose of this paragraph (n), "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is

produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(o) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of section 25-5-413 (2) or of the federal act;

(p) In the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes, in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug, a true statement of:

(I) The established name, as defined in paragraph (e) (II) of this subsection (1), printed prominently and in type at least half as large as that used for any trade or brand name thereof;

(II) The formula showing quantitatively each ingredient of such drug to the extent required for labels under the federal act; and

(III) Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act;

(q) If a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug sold on a prescription given by a member of the medical, dental, or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if such member of the medical, dental, or veterinary profession is authorized by law to administer such drug or if such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, the name of such member of the medical, dental, or veterinary profession, and, if stated in the prescription, the name of the patient, the directions for use, and any cautionary statements contained in such prescription.

(3) Drugs and devices which, in accordance with the practice of the trade, are to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this part 4 if such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

Source: L. 57: p. 435, § 15. CRS 53: § 66-22-15. C.R.S. 1963: § 66-20-15. L. 70: pp. 205, 207, §§ 9, 10. L. 2009: (1)(k) amended, (SB 09-179), ch. 112, p. 475, § 23, effective April 9. L. 2010: (1)(l) amended, (HB 10-1352), ch. 259, p. 1175, § 23, effective August 11.

ANNOTATION

Subsection (1)(f) exemption from statutory misbranding prohibition not applicable to intrauterine device where the labeling representations concerning the device clearly related to the safety and effectiveness of the product and not to directions for its use. Therefore, the statutory

exemption was not applicable to exclude the plaintiff's claim of negligence per se from the misbranding prohibition of § 25-5-403 (1)(a). *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

25-5-416. Adulteration of cosmetics. (1) A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. This provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously

displayed thereon: "Caution - This product contains ingredients which may cause skin irritations on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." The label shall also bear adequate directions for such preliminary testing. For the purposes of this paragraph (a) and paragraph (e) of this subsection (1), "hair dye" does not include eyelash dyes or eyebrow dyes.

- (b) If it consists in whole or in part of any filthy, putrid, or decomposed substance;
- (c) If it is produced, prepared, packed, or held under unsanitary conditions under which it may become contaminated with filth or rendered injurious to health;
- (d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
- (e) If it is not a hair dye and it is, or it bears or contains, a color additive which is unsafe within the meaning of the federal act or section 25-5-413 (1).

Source: L. 57: p. 437, § 16. CRS 53: § 66-22-16. C.R.S. 1963: § 66-20-16. L. 70: p. 208, § 11.

25-5-417. Misbranding of cosmetics. (1) A cosmetic shall be deemed to be misbranded:

- (a) If its labeling is false or misleading in any particular;
- (b) If its labeling or packaging fails to conform with the requirements of section 25-5-419;
- (c) If in package form, unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; but, as to such terms of quantity required, reasonable variations shall be permitted and exemptions as to small packages shall be established by regulation prescribed by the department or under the federal act;
- (d) If any word, statement, or other information required by or under authority of this part 4 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (e) If its container is so made, formed, or filled as to be misleading;
- (f) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed in regulations under the provisions of the federal act. This paragraph (f) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes as defined in section 25-5-416 (1) (a).

(2) A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed is exempted from the affirmative labeling requirements of this part 4 while it is in transit in commerce from one establishment to the other if such transit is made in good faith for such completion purposes only; but such cosmetic is otherwise subject to all applicable provisions of this part 4.

Source: L. 57: p. 438, § 17. CRS 53: § 66-22-17. C.R.S. 1963: § 66-20-17. L. 70: p. 208, § 12.

25-5-418. Advertisements. (1) An advertisement of a food, drug, device, or cosmetic is deemed to be false if it is false or misleading in any particular.

(2) For the purpose of this part 4, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, arthritis, baldness, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mas-

toiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, rheumatism, scarlet fever, sexual impotence, sexually transmitted infections, sinus infection, smallpox, tuberculosis, tumors, typhoid, or uremia shall also be deemed to be false; except that no advertisement not in violation of subsection (1) of this section shall be deemed to be false under this subsection (2) if it is disseminated only to members of the medical, dental, chiropractic, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; but, if the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this subsection (2), the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health; except that this subsection (2) shall not be construed as indicating that self-medication for any diseases is safe or efficacious.

Source: L. 57: p. 439, § 18. CRS 53: § 66-22-18. C.R.S. 1963: § 66-20-18. L. 2009: (2) amended, (SB 09-179), ch. 112, p. 476, § 24, effective April 9.

25-5-419. Packaging and labeling of consumer commodities. (1) All labels of consumer commodities, as defined in section 25-5-402 (4), shall conform with the requirements for the declaration of net quantity of contents of the federal "Fair Packaging and Labeling Act" (15 U.S.C. sec. 1453) and the regulations promulgated pursuant thereto; but consumer commodities exempted from such requirements of the federal "Fair Packaging and Labeling Act" (15 U.S.C. secs. 1451-1461) shall also be exempt from this subsection (1).

(2) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(3) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (1) of this section, but nothing in this subsection (3) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents; but such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(4) (a) Whenever the department determines that regulations containing prohibitions or requirements other than those prescribed by subsection (1) of this section are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the department shall promulgate with respect to that commodity regulations effective to:

(I) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such consumer commodity, but this subparagraph (I) shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any consumer commodity;

(II) Regulate the placement upon any package containing any consumer commodity, or upon any label affixed to such consumer commodity, of any printed matter stating or representing by implication that such consumer commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(III) Require that the label on each package of a consumer commodity bear the common or usual name of such consumer commodity, if any, and, in case such consumer

commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, and, with respect to any confectionery containing alcohol in excess of one-half of one percent by volume, but within the limits prescribed by section 25-5-410 (1) (i) (II), a statement that the content of alcohol does not exceed six and twenty-five hundredths percent by volume or five percent by weight, and that the product is unlawful for any person under twenty-one years of age, but nothing in this subparagraph (III) shall be deemed to require that any trade secret be divulged; or

(IV) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

(b) For the purposes of subparagraph (IV) of paragraph (a) of this subsection (4), a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than protection of the contents of such package or the requirements of machines used for enclosing the contents in such package; except that the department may adopt any regulations promulgated pursuant to the federal "Fair Packaging and Labeling Act" (15 U.S.C. secs. 1451-1461) which shall have the force and effect of law in this state.

Source: L. 70: p. 212, § 16. C.R.S. 1963: § 66-20-25. L. 89: (4)(a)(III) amended, p. 709, § 6, effective July 1.

25-5-420. Enforcement. (1) The authority to promulgate regulations for the efficient enforcement of this part 4 is vested in the department. The department is authorized to make the regulations promulgated under this part 4 conform, insofar as practicable, with those promulgated under the federal act, the federal "Fair Packaging and Labeling Act" (15 U.S.C. secs. 1451-1461), and the federal "Meat Inspection Act of March 4, 1907", as amended (21 U.S.C. secs. 71-91). All regulations promulgated under this part 4 shall be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.

(2) Hearings authorized or required by this part 4 or by article 4 of title 24, C.R.S., shall be conducted by the department or such officer, agent, or employee as the department may designate for the purpose.

(3) All pesticide chemical regulations and their amendments adopted under authority of the federal act are the pesticide chemical regulations in this state. However, the department may adopt regulations which prescribe tolerances for pesticides in finished foods in this state which are no less stringent than regulations promulgated under the federal act.

(4) All food additive regulations and their amendments adopted under authority of the federal act are the food additive regulations in this state. However, the department may adopt regulations which prescribe conditions under which a food additive may be used in this state which are no less stringent than regulations promulgated under the federal act.

(5) All color additive regulations and their amendments adopted under authority of the federal act are the color additive regulations in this state. However, the department may adopt regulations which prescribe conditions under which a color additive may be used in this state which are no less stringent than regulations promulgated under the federal act.

(6) All special dietary use regulations and their amendments adopted under authority of the federal act are the special dietary use regulations in this state. However, the department may, if it finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use regulations which are no less stringent than regulations promulgated under the federal act.

(7) All regulations and their amendments adopted under the federal "Fair Packaging and Labeling Act" shall be the regulations in this state. However, the department may, if it finds it necessary in the interest of consumers, prescribe packaging and labeling regulations for consumer commodities which are no less stringent than regulations promulgated under such "Fair Packaging and Labeling Act", but no such regulations shall be promulgated which are contrary to the labeling requirements for the net quantity of contents required pursuant to the "Fair Packaging and Labeling Act" (15 U.S.C. sec. 1453) and the regulations promulgated thereunder.

(8) All regulations establishing standards of identity and composition for meat and meat food products and their amendments adopted under the federal "Meat Inspection Act

of March 4, 1907", as amended (21 U.S.C. secs. 71-91), are the established standards of identity and composition for meat and meat food products in this state. However, the department may, if it finds it necessary in the interest of consumers, adopt additional regulations establishing standards of identity and composition for meat and meat food products which are no less stringent than regulations promulgated under the federal "Meat Inspection Act".

(9) (a) A federal regulation automatically adopted pursuant to this part 4 takes effect in this state on the date it becomes effective as a federal regulation. The department shall publish all other proposed regulations thirty days prior to hearing thereon. A person who may be adversely affected by a regulation may file with the department, in writing, objections and a request for a hearing. The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the regulation in this state.

(b) If no substantial objections are received and no hearing is requested within thirty days after publication of a proposed regulation, it shall take effect on a date set by the department. The effective date shall be at least sixty days after the time for filing objections has expired.

(c) If substantial objections are made to a federal regulation within thirty days after it is automatically adopted or to a proposed regulation within thirty days after it is published, the department, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections. Any interested person or his representative may be heard. The department shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable. The order shall be based on substantial evidence in the record of the hearing. If the order concerns a federal regulation, it may reinstate, rescind, or modify such regulation. If the order concerns a proposed regulation, it may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date shall be at least sixty days after publication of the order.

Source: L. 57: p. 439, § 19. CRS 53: § 66-22-19. C.R.S. 1963: § 66-20-19. L. 70: pp. 209, 210, §§ 13, 14.

25-5-421. Inspections. (1) (a) For purposes of enforcement of this part 4, the authorized agents of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in commerce; and to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein and to obtain samples necessary to the enforcement of this part 4.

(b) (I) In the case of any factory, warehouse, establishment, or consulting laboratory in which prescription drugs are manufactured, processed, packed, or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls, and facilities) bearing on whether prescription drugs which are adulterated or misbranded within the meaning of this part 4 or which may not be manufactured, introduced into commerce, or sold or offered for sale by reason of any provision of this part 4 have been or are being manufactured, processed, packed, transported, or held in any such place or otherwise bearing on violation of this part 4.

(II) No inspection authorized for prescription drugs by subparagraph (I) of this paragraph (b) shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this article), and research data (other than data, relating to new drugs and antibiotic drugs, subject to reporting and inspection under regulations lawfully issued pursuant to 21 U.S.C. sec. 355 (i) or (j) and data, relating to other drugs, which in the case of a new drug would be subject to reporting or inspection under

regulations issued pursuant to 21 U.S.C. sec. 355 (j)). Each such inspection shall be commenced and completed with reasonable promptness.

(III) The provisions of subparagraph (I) of this paragraph (b) shall not apply to pharmacies which maintain establishments in conformance with the laws of this state regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs upon prescriptions of practitioners licensed to administer such drugs to patients under the care of such practitioners in the course of their professional practice and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs for sale other than in the regular course of their business of dispensing or selling drugs at retail; to practitioners licensed by law to prescribe or administer drugs and who manufacture, prepare, propagate, compound, or process drugs solely for use in the course of their professional practice; to persons who manufacture, prepare, propagate, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale; nor to such other classes of persons as the department may by regulation exempt from the application of this section upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

(c) The authorized agents of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; but evidence obtained under this paragraph (c) shall not be used in a criminal prosecution of the person from whom obtained, and carriers shall not be subject to the other provisions of this part 4 by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers.

(2) Upon completion of any such inspection of a factory, warehouse, consulting laboratory, or other establishment, and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which, in his judgment, indicate that any food, drug, device, or cosmetic in such establishment consists in whole or in part of any filthy, putrid, or decomposed substance or has been prepared, packed, or held under unsanitary conditions under which it may become contaminated with filth or rendered injurious to health. A copy of such report shall be sent promptly to the department.

(3) If the authorized agent making any such inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(4) Whenever, in the course of any such inspection of a factory or other establishment where food is manufactured, processed, or packed, the officer or employee making the inspection obtains a sample of any such food, and an analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for food, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

Source: L. 57: p. 440, § 20. CRS 53: § 66-22-20. C.R.S. 1963: § 66-20-20. L. 70: p. 211, § 15.

25-5-422. Reports and information. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this part 4, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

Source: L. 57: p. 440, § 21. CRS 53: § 66-22-21. C.R.S. 1963: § 66-20-21.

25-5-423. Cooperation with federal agencies. The department is authorized to confer and cooperate with the federal food and drug administration in the enforcement of the federal act and the United States department of agriculture in the enforcement of the federal “Meat Inspection Act of 1907”, as amended, as they may apply to foods, drugs, devices, and cosmetics received in this state from other states, territories, or foreign countries.

Source: L. 57: p. 441, § 22. CRS 53: § 66-22-22. C.R.S. 1963: § 66-20-22.

25-5-424. Review. Any person aggrieved by a decision of the department, and affected thereby, is entitled to judicial review pursuant to section 25-1-113.

Source: L. 57: p. 441, § 23. CRS 53: § 66-22-23. C.R.S. 1963: § 66-20-23.

25-5-425. Application of part 4. The powers in this part 4 vested in the department are declared to be cumulative and in addition to and not in exclusion nor derogation nor limitation of the powers vested by law in the department, or in any other department of this state, or in any board or commission established by law, or in any law enforcement authority of this state.

Source: L. 57: p. 441, § 24. CRS 53: § 66-22-24. C.R.S. 1963: § 66-20-24.

25-5-426. Wholesale food manufacturing and storage - definitions - legislative declaration - fees - cash fund - repeal. (1) The general assembly hereby finds, determines, and declares that the registration of wholesale food manufacturers and the regulation of premises or places wherein manufactured foods are produced, manufactured, packed, processed, prepared, treated, packaged, transported, or held for distribution in accordance with the “Colorado Food and Drug Act”, the “Shellfish Dealer Certification Act”, and the sanitary regulations administered by the department pursuant to part 1 of article 4 of this title and any rules promulgated thereunder:

- (a) Is necessary to protect the public health;
- (b) Will benefit consumers by ensuring that the sale and distribution of manufactured food is from safe sources;
- (c) Will assist retailers by ensuring that manufactured foods have not been adulterated during manufacturing, packing, processing, preparing, treating, packaging, transporting, and storage; and

(d) Will contribute to the economic health of the state by assuring that Colorado wholesale food manufacturers are permitted to ship their product in interstate commerce.

(2) As used in this section:

(a) “Dietary ingredient” means one or any combination of a vitamin, mineral, herb or other botanical, amino acid, and a substance such as an enzyme, organ tissue, glandular, or metabolite.

(b) “Dietary supplement” means a product taken by mouth that contains a dietary ingredient or a new dietary ingredient intended to supplement the diet.

(b.2) “Grain” means a small hard fruit or seed produced by a cereal grass and the seeds of such plants as a whole.

(b.3) “Grain storage facility” means any establishment, structure, or structures under one management at one general physical location that holds grain without further manufacturing or processing after harvest.

(b.5) “Large wholesale food manufacturer or storage facility” means a wholesale food manufacturer or storage facility with gross annual sales of more than one hundred fifty thousand dollars.

(b.7) “Manufacturing or processing” means making food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating food, including food crops or ingredients. Examples include, but are not limited to: cutting, peeling, trimming,

washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juices, distilling, labeling, or packaging.

(c) "Medium wholesale food manufacturer or storage facility" means a wholesale food manufacturer or storage facility with gross annual sales of between fifty thousand one dollars and one hundred fifty thousand dollars.

(d) "New dietary ingredient" means a dietary ingredient that was not sold in the United States as a dietary supplement before October 15, 1994.

(d.5) "Nonprofit facility" means a charitable entity that provides food to the public, including, but not limited to, food banks and nonprofit food facilities. To qualify as a nonprofit facility, the entity shall be exempt from paying federal income tax under the federal internal revenue code.

(e) "Small wholesale food manufacturer or storage facility" means a wholesale food manufacturer or storage facility with gross annual sales of fifty thousand dollars or less.

(f) "Wholesale food manufacturer" and "storage facility" mean a facility that manufactures, produces, packs, processes, treats, packages, transports, or holds human food, including dietary supplements. These terms include, without limitation, any repacker, reshipper, shell stock shipper, and shucker-packer, as defined in section 25-4-1803 (8), (9), (12), and (13), respectively.

(3) The department has the following powers and duties:

(a) To grant or refuse to grant registration pursuant to subsection (4) of this section and to grant or refuse to grant the annual renewal of a registration;

(b) To deny, suspend, or revoke a registration;

(c) To issue a certificate of free sale; and

(d) To review any records of a wholesale food manufacturer or storage facility necessary to verify compliance with the provisions of this section.

(4) (a) Beginning July 1, 2003, and on or before July 1 of each year thereafter, the owner of any wholesale food manufacturing or storage facility shall register such facility with the department. The registration of each wholesale food manufacturing or storage facility shall be accompanied by an annual registration fee as set forth in paragraph (b) of this subsection (4); except that an owner whose gross income is less than fifteen thousand dollars per year, a nonprofit facility, and a grain storage facility shall register but shall not be required to pay the fee. Such registration shall be valid for one year or for the portion of the fiscal year that remains if a registration is granted after July 1 of any fiscal year. If a registration is valid for only a portion of a fiscal year, there shall be no reduction of any fee required by this section. Each registration shall expire on June 30 of the state fiscal year in which the registration is granted.

(b) Subject to paragraph (a) of this subsection (4):

(I) Upon registration of a small wholesale food manufacturer or storage facility, the department shall collect a fee of one hundred eighty-five dollars.

(II) Upon registration of a medium wholesale food manufacturer or storage facility, the department shall collect a fee of three hundred seven dollars.

(III) Upon registration of a large wholesale food manufacturer or storage facility, the department shall collect a fee of three hundred ninety dollars.

(IV) The department shall collect a fee of one hundred twenty-eight dollars for the issuance of a certificate of free sale.

(V) (Deleted by amendment, L. 2008, p. 1000, § 1, effective July 1, 2008.)

(5) Fees collected by the department pursuant to subsection (4) of this section shall be transmitted to the state treasurer, who shall credit such fees to the wholesale food manufacturing and storage protection cash fund, which is hereby created in the state treasury. The general assembly shall annually appropriate the moneys in such fund to the department for the payment of expenses necessary for the administration of this section. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(6) This section is repealed, effective July 1, 2017.

Source: **L. 2003:** Entire section added, p. 1460, § 1, effective May 1. **L. 2004:** (2), (4)(a), and (4)(b) amended and (6) added, p. 628, § 1, effective April 23. **L. 2007:** (6) amended, p. 1576, § 1, effective May 31. **L. 2008:** (4)(b) amended, p. 1000, § 1, effective July 1.

PART 5

HAZARDOUS SUBSTANCES

Editor's note: This part 5 was numbered as article 21 of chapter 66, C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Law reviews: For article, "Local Government and the Environment: Part II, CERCLA", see 17 Colo. Law. 1997 (1988); for article, "Local Government and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988).

25-5-501. Short title. This part 5 shall be known and may be cited as the "Colorado Hazardous Substances Act of 1973".

Source: **L. 73:** R&RE, p. 697, § 1. **C.R.S. 1963:** § 66-21-1.

25-5-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Banned hazardous substance" means:

(a) (I) Any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted.

(II) The department shall exempt by regulation articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings. Proceedings for the issuance, amendment, or repeal of exemption regulations shall be governed by the provisions of section 25-5-508.

(b) Any hazardous substance intended, or packaged in a form suitable, for use in the household which the department by regulation classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this article for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of commerce.

(2) "Combustible" means any substance which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue open cup tester. This definition shall not apply to the flammability or combustibility of solids and of the contents of self-pressurized containers which shall be determined by methods generally applicable to such materials or containers and established by regulations issued by the department.

(3) "Commerce" means any and all commerce within the state of Colorado, and subject to the jurisdiction thereof, and includes the operation of any business or service establishment.

(4) "Corrosive substance" means any substance which, in contact with living tissue, will cause destruction of tissue by chemical action but shall not refer to action on inanimate surfaces.

(5) "Department" means the department of public health and environment.

(6) "Electrical hazard" means an article, the design or manufacture of which, in normal use or when subjected to reasonably foreseeable damage or abuse, may cause personal injury or illness by electric shock.

(7) "Executive director" means the executive director of the department of public health and environment.

(8) "Extremely flammable substance" is a substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue open cup tester. This definition shall not apply to the flammability or combustibility of solids and of the contents of self-pressurized containers which shall be determined by methods generally applicable to such materials or containers and established by regulations issued by the department.

(9) "Flammable substance" is a substance which has a flash point above twenty degrees Fahrenheit to and including eighty degrees Fahrenheit as determined by the Tagliabue open cup tester. This definition shall not apply to the flammability or combustibility of solids and of the contents of self-pressurized containers which shall be determined by the methods generally applicable to such materials or containers and established by regulation issued by the department.

(10) (a) "Hazardous substance" means any substance or mixture of substances which:

(I) Is toxic;

(II) Is corrosive;

(III) Is an irritant;

(IV) Is a strong sensitizer;

(V) Is flammable or combustible; or

(VI) Generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(b) "Hazardous substance" also means:

(I) Any substances which the department by regulation finds, pursuant to the provisions of section 25-5-508, meet the requirements of paragraph (a) of this subsection (10);

(II) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this article in order to protect the public health;

(III) Any toy or other article intended for use by children which the department by regulation determines, in accordance with section 25-5-508, presents an electrical, mechanical, or thermal hazard.

(c) The term "hazardous substance" shall not apply to an economic poison subject to regulation by the federal government; to a substance regulated by the "Pesticide Act"; to food, drugs, and cosmetics subject to regulation by the federal government or the "Colorado Food and Drug Act"; or to anhydrous ammonia as an agricultural fertilizer as regulated by article 13 of title 35, C.R.S. "Hazardous substance" shall not include a substance intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house or any source material, special nuclear material, or by-product material as defined in the federal "Atomic Energy Act of 1954", as amended, and regulations issued pursuant thereto by the atomic energy commission.

(11) (a) "Highly toxic" means any substance which falls within any of the following categories:

(I) Produces death within fourteen days in one-half or more than one-half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or

(II) Produces death within fourteen days in one-half or more than one-half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(III) Produces death within fourteen days in one-half or more than one-half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of

body weight when administered by continuous contact with the bare skin for twenty-four hours or less.

(b) If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(12) "Irritant" means any substance not corrosive within the meaning of subsection (4) of this section which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(13) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement made by or under authority of this part 5 that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

(14) "Mechanical hazard" means an article, the design or manufacture of which, in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness from fracture, fragmentation, or disassembly of the article; from propulsion of the article or any part or accessory thereof; from points or other protrusions, surfaces, edges, openings, or closures of the article; from moving parts of the article; from lack or insufficiency of controls to reduce or stop the motion of the article; as a result of self-adhering characteristics of the article; because the article, or any part or accessory thereof, may be aspirated or ingested; because of the instability of the article; or because of any other aspect of the article's design or manufacture.

(15) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, which substance, except as otherwise provided by or pursuant to section 25-5-508, fails to bear a label:

(a) Which states conspicuously:

(I) The name and place of business of the manufacturer, packer, distributor, or seller;

(II) The common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by regulation permits or requires the use of a recognized generic name;

(III) The signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic;

(IV) The signal word "WARNING" or "CAUTION" on all other hazardous substances;

(V) An affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard;

(VI) Precautionary measures describing the action to be followed or avoided, except when modified by regulation of the department pursuant to section 25-5-508;

(VII) Instruction, when necessary or appropriate, for first-aid treatment;

(VIII) The word "poison" for any hazardous substance which is highly toxic;

(IX) Instructions for handling and storage of packages which require special care in handling or storage; and

(X) The statement "Keep out of the reach of children" or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard.

(b) On which any statement required under paragraph (a) of this subsection (15) is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(16) "Person" means an individual, partnership, corporation, or association or its legal representative or agent.

(17) "Radioactive substance" means a substance which emits ionizing radiation.

(18) "Strong sensitizer" means a substance which will cause, on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of frequency of occurrence and severity of the reaction, shall find that the substance has significant potential for causing hypersensitivity.

(19) "Thermal hazard" means an article, the design, or manufacture of which, in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness because of heat, as from heated parts, substances, or surfaces.

(20) "Toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

Source: L. 73: R&RE, p. 697, § 1. C.R.S. 1963: § 66-21-2. L. 94: (5) and (7) amended, p. 2778, § 484, effective July 1.

Cross references: (1) For the "Pesticide Act", see "Pesticide Chemicals Act", July 22, 1954, ch. 559, 68 Stat. 511; for the "Colorado Food and Drug Act", see part 4 of this article; for the federal "Atomic Energy Act of 1954", see Act Aug. 30, 1954, ch. 1073, 68 Stat. 919.

(2) For the legislative declaration contained in the 1994 act amending subsections (5) and (7), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-503. Prohibited acts. (1) The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance if such act is done while the substance is in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(c) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(d) The giving of a guarantee or undertaking referred to in section 25-5-504 (2), which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance;

(e) The failure to permit entry, inspection, or sampling as authorized by section 25-5-509 or to permit access to and copying of any record as authorized by section 25-5-510;

(f) The removing or disposing of a detained or embargoed article by sale or otherwise without permission of an authorized agent or court;

(g) The introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery, for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph

(g), the terms “food”, “drug”, and “cosmetic” shall have the same meanings as in the “Colorado Food and Drug Act”.

(h) The use by any person to his own advantage or the revealing, other than to the executive director or officers or employees of the department or to the courts when relevant in any judicial proceeding under this part 5, of any information acquired under authority of section 25-5-509 concerning any method or process which as a trade secret is entitled to protection.

Source: L. 73: R&RE, p. 701, § 1. C.R.S. 1963: § 66-21-3.

Cross references: For the “Colorado Food and Drug Act”, see part 4 of this article.

25-5-504. Penalties. (1) Any person who violates any of the provisions of section 25-5-503 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; but, for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than three thousand dollars, or both such imprisonment and fine. Each violation shall be considered a separate offense.

(2) No person shall be subject to the penalties of this section for having violated section 25-5-503 (1) (c) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the executive director, the name and address of the person from whom he purchased or received such hazardous substance and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or for having violated section 25-5-503 (1) (a) if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this part 5.

Source: L. 73: R&RE, p. 702, § 1. C.R.S. 1963: § 66-21-4.

25-5-505. Injunction proceedings. In addition to the remedies provided in this part 5, the executive director is authorized to apply to the district court for a temporary or permanent injunction restraining any person from violating any provision of section 25-5-503, irrespective of whether or not there exists an adequate remedy at law.

Source: L. 73: R&RE, p. 703, § 1. C.R.S. 1963: § 66-21-5.

25-5-506. Embargo and seizure. (1) Whenever a duly authorized agent of the department finds or has probable cause to believe that any hazardous substance is misbranded or is a banned hazardous substance within the meaning of this part 5, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the district court.

(2) When an article detained or embargoed under subsection (1) of this section has been found by such agent to be misbranded or a banned hazardous substance, he shall petition the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not misbranded or is not a banned hazardous substance, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or is a banned hazardous substance, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under supervision of the agent, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of such article or his agent; except that, when the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling under the supervision of an agent of the department. The expense of such supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the executive director that the article is no longer in violation of this part 5 and that the expenses of such supervision have been paid.

Source: L. 73: R&RE, p. 703, § 1. C.R.S. 1963: § 66-21-6.

25-5-507. Duties of district attorney. (1) It is the duty of each district attorney to whom the executive director reports any violation of this part 5 to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

(2) Before any violation of this part 5 is reported to any such district attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the executive director or his designated agent, either orally or in writing, or by attorney, with regard to such contemplated proceeding.

Source: L. 73: R&RE, p. 703, § 1. C.R.S. 1963: § 66-21-7.

25-5-508. Regulations. (1) All regulations adopted now or hereafter under the "Federal Hazardous Substances Act", as amended, shall be the hazardous substances regulations in this state. However, the department is authorized to promulgate regulations for the efficient enforcement of this part 5, which regulations shall be no less stringent than the regulations established pursuant to the "Federal Hazardous Substances Act", as amended; except that regulation relating to the precautionary labeling or exemptions thereto shall not differ from the requirements of the "Federal Hazardous Substances Act", as amended, and the regulations promulgated pursuant thereto.

(2) (a) Whenever in the judgment of the executive director such action will promote the objectives of this part 5 by avoiding or resolving uncertainty as to its application, the executive director may by regulation declare to be a hazardous substance, for the purposes of this part 5, any substance or mixture of substances which he finds meets the definition in section 25-5-502 (10).

(b) If the executive director finds that the hazard of an article subject to this part 5 is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the executive director may declare such article to be a banned hazardous substance and require its removal from commerce.

(c) (I) A determination by the executive director that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with article 4 of title 24, C.R.S.

(II) If, before or during a proceeding pursuant to subparagraph (I) of this paragraph (c), the executive director finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and he gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this part 5 until the proceeding has been completed. If not yet initiated when such notice is given, such proceeding shall be initiated as soon as possible.

(d) In the case of any toy, substance, or other article intended for use by children which is determined by the executive director to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the sixtieth day after the regulation making such determination is issued by the executive director, ask for judicial review as provided in section 24-4-106, C.R.S.

(3) All regulations promulgated under this part 5 shall be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.

(4) Hearings authorized or required by this article shall be conducted according to the provisions of article 4 of title 24, C.R.S.

(5) A federal regulation automatically adopted pursuant to this part 5 takes effect in this state on the date it becomes effective as a federal regulation. The department shall publish all other proposed regulations thirty days prior to hearing thereon. A person who may be adversely affected by a regulation may file with the department, in writing, objections and a request for a hearing. The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the regulation in this state.

(6) If no substantial objections are received and no hearing is requested within thirty days after publication of a proposed regulation, it shall take effect on a date set by the department. The effective date shall be at least sixty days after the time for filing objections has expired.

(7) If substantial objections are made to a federal regulation within thirty days after it is automatically adopted or to a proposed regulation within thirty days after it is published, the department, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections. Any interested person or his representative may be heard. The department shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable. The order shall be based on substantial evidence in the record of the hearing. If the order concerns a federal regulation, it may reinstate, rescind, or modify such regulation. If the order concerns a proposed regulation, it may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date shall be at least sixty days after publication of the order.

Source: L. 73: R&RE, p. 704, § 1. C.R.S. 1963: § 66-21-8.

Cross references: For the “Federal Hazardous Substances Act”, see title 15, ch. 30, U.S.C.

25-5-509. Examinations - investigations. (1) For the purposes of enforcement of this part 5, officers or employees duly designated by the executive director, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction or to enter any vehicle being used to transport or hold such hazardous substances in commerce; to inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and to obtain samples of such materials, or packages thereof, and of such labeling.

(2) If the officer or employee obtains any sample prior to leaving the premises, he shall pay or offer to pay the owner, operator, or agent in charge for such sample and give a receipt describing the sample obtained. If analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

Source: L. 73: R&RE, p. 705, § 1. C.R.S. 1963: § 66-21-9.

25-5-510. Records of shipment. For the purpose of enforcing the provisions of this part 5, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the executive director, permit such officer or

employee, at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates. Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained; and carriers shall not be subject to the other provisions of this part 5 by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

Source: L. 73: R&RE, p. 705, § 1. C.R.S. 1963: § 66-21-10.

25-5-511. Publicity. (1) The executive director may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this part 5, including the nature of the charge and the disposition thereof.

(2) The executive director may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the executive director, imminent danger to health. Nothing in this section shall be construed to prohibit the executive director from collecting, reporting, and illustrating the results of the investigations of the department.

Source: L. 73: R&RE, p. 705, § 1. C.R.S. 1963: § 66-21-11.

25-5-512. Exception - discretion as to reporting. (1) Nothing in this part 5 shall be construed as:

(a) Applicable to any person or corporation if the safety of his or its product or service is already regulated by any agency of the state of Colorado;

(b) Requiring the executive director to report minor violations of this part 5 for the institution of proceedings under this part 5 whenever the executive director believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: L. 73: R&RE, p. 706, § 1. C.R.S. 1963: § 66-21-12.

PART 6

SALE OF EYEGLASSES AND SUNGLASSES

25-5-601 to 25-5-604. (Repealed)

Source: L. 90: Entire part repealed, p. 1319, § 2, effective July 1.

Editor's note: This part 6 was numbered as article 33 of chapter 66, C.R.S. 1963. For amendments to this part 6 prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

PASSENGER TRAMWAY SAFETY

25-5-701. Legislative declaration. In order to assist in safeguarding life, health, property, and the welfare of this state, it is the policy of the state of Colorado to establish a board empowered to prevent unnecessary mechanical hazards in the operation of passenger tramways and to assure that reasonable design and construction are used for, that

accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of, passenger tramways.

Source: L. 65: p. 709, § 1. C.R.S. 1963: § 66-25-1. L. 76: Entire section amended, p. 660, § 1, effective May 27. L. 77: Entire section amended, p. 1288, § 2, effective July 1. L. 83: Entire section amended, p. 1071, § 1, effective May 25. L. 93: Entire section amended, p. 1533, § 3, effective July 1.

ANNOTATION

Law reviews. For article, “Ski Injury Liability”, see 43 U. Colo. L. Rev. 307 (1972). For article, “Changes in Colorado Ski Law”, see 13 Colo. Law. 407 (1984). For article, “The Development of the Standard of Care in Colorado Ski Cases”, see 15 Colo. Law. 373 (1986).

Neither this act nor the Ski Safety Act of 1979 (article 44 of title 33, C.R.S.) preempts or supersedes the common law standard of

care applicable to ski lift operators, to use the highest degree of care commensurate with the practical operation of the lift, regardless of the season. The general assembly did not intend for the regulations adopted by the board to preclude common law negligence actions against ski lift operators or the duty to exercise the highest degree of care. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

25-5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) “Area operator” means a person who owns, manages, or directs the operation and maintenance of a passenger tramway. “Area operator” may apply to the state or any political subdivision or instrumentality thereof.

(1.5) “Board” means the passenger tramway safety board created by section 25-5-703.

(1.7) “Commercial recreational area” means an entity using passenger tramways to provide recreational opportunities to the public for a fee.

(2) “Industry” means the activities of all those persons in this state who own, manage, or direct the operation of passenger tramways.

(3) “License” means the formal, legal, written permission of the board to operate a passenger tramway.

(4) “Passenger tramway” means a device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains, or belts, or by ropes, and usually supported by trestles or towers with one or more spans. “Passenger tramway” includes, but is not limited to, the following devices:

(a) Fixed-grip lifts. “Fixed-grip lift” means an aerial lift on which carriers remain attached to a haul rope. The tramway system may be either continuously or intermittently circulating, and may be either monocable or bicable.

(b) Detachable-grip lifts. “Detachable-grip lift” means an aerial lift on which carriers alternately attach to and detach from a moving haul rope. The tramway system may be monocable or bicable.

(c) Funiculars. “Funicular” means a device in which a passenger car running on steel or wooden tracks is attached to and propelled by a steel cable, and any similar devices.

(d) Chair lifts. “Chair lift” means a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, and any similar devices.

(e) Surface lifts. “Surface lift” means a J-bar, T-bar, or platter pull and any similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.

(f) Rope tows. “Rope tow” means a type of transportation which pulls the skier riding on skis as the skier grasps the rope manually, and any similar devices.

(g) Portable aerial tramway devices. “Portable aerial tramway device” means any device designed for temporary use and operation, without permanent foundations, in changing or variable locations, with a capacity of less than five persons, which transports equipment or personnel, and is not used or intended to be used by the general public.

(h) Portable tramway devices. "Portable tramway device" means any device designed to be used and operated as a rope tow or surface lift without permanent foundations and intended for temporary use in changing or variable locations, when used within the boundary of a recognized ski area.

(i) Private residence tramways. "Private residence tramway" means a device installed at a private residence or installed in multiple dwellings as a means of access to a private residence in such multiple dwelling buildings, so long as the tramway is so installed that it is not accessible to the general public or to other occupants of the building.

(j) Reversible aerial tramways. "Reversible aerial tramway" means a device on which passengers are transported in cable-supported carriers and are not in contact with the ground or snow surface, and in which the carriers reciprocate between terminals.

(k) Conveyors. "Conveyor" means a type of transportation by which skiers, or passengers on recreational devices, are transported uphill on top of a flexible, moving element such as a belt or a series of rollers.

(4.5) "Program administrator" means the person who manages the board's offices on a day-to-day basis and works with the supervisory tramway engineer and the board in implementing the policies, decisions, and orders of the board.

(5) "Qualified tramway design engineer" or "qualified tramway construction engineer" means an engineer licensed by the state board of licensure for architects, professional engineers, and professional land surveyors pursuant to part 1 of article 25 of title 12, C.R.S., to practice professional engineering in this state.

(6) "Staff" means the program administrator, the supervisory tramway engineer, and their clerical staff.

(7) "Supervisory tramway engineer" means the tramway engineer who works with the program administrator and the board in implementing the policies, decisions, and orders of the board.

Source: **L. 65:** p. 709, § 1. **C.R.S. 1963:** § 66-25-2. **L. 76:** (1) and (4)(c) amended and (1.5) and (5) added, p. 661, § 2, effective May 27. **L. 83:** (5) amended, p. 1072, § 2, effective May 25. **L. 93:** (1), (3), and (4) amended and (1.7), (4.5), (6), and (7) added, p. 1533, § 4, effective July 1. **L. 2001:** (4)(k) added, p. 118, § 3, effective July 1. **L. 2004:** (5) amended, p. 1311, § 57, effective May 28. **L. 2006:** (5) amended, p. 743, § 11, effective July 1.

25-5-703. Passenger tramway safety board - composition - termination. (1) There is hereby created a passenger tramway safety board of six appointive members and one member designated by the United States forest service. The appointive members shall be appointed by the governor from persons representing the following interests: Two members to represent the industry or area operators; two members to represent the public at large; one member who is a licensed professional engineer not employed by a ski area or related industry; and one member familiar with or experienced in the tramway industry who may represent the passenger tramway manufacturing or design industry or an area operator. No person shall be so appointed or designated except those who, by reason of knowledge or experience, shall be deemed to be qualified. Such knowledge or experience shall be either from active and relevant involvement in the design, manufacture, or operation of passenger tramways or as a result of extensive and relevant involvement in related activities. The governor, in making such appointments, shall consider recommendations made to him or her by the membership of the particular interest from which the appointments are to be made.

(2) Each of the appointed members shall be appointed for a term of four years and until a successor is appointed and qualified and no board member shall serve more than two consecutive four-year terms. A former board member may be reappointed to the board after having vacated the board for one four-year term. Vacancies on the board, for either an unexpired term or for a new term, shall be filled through prompt appointment by the governor. The member of the board designated by the United States forest service shall serve for such period as such federal agency shall determine and shall serve without compensation or reimbursement of expenses.

(3) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) Board members appointed by the governor shall have been residents of this state for at least three years.

(5) No member of the board who has any form of conflict of interest or the potential thereof shall participate in consideration of the deliberations on matters to which such conflict may relate; such conflicts may include, but are not limited to, a member of the board having acted in any consulting relationship or being directly or indirectly involved in the operation of the tramway in question.

(6) A majority of the board shall constitute a quorum. When necessary, the board may conduct business telephonically during a public meeting for purposes of obtaining a quorum, facilitating the participation of members in remote locations, or both.

(7) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the passenger tramway safety board created by this section.

Source: L. 65: p. 711, § 1. C.R.S. 1963: § 66-25-3. L. 76: Entire section amended, p. 661, § 3, effective May 27. L. 77: Entire section amended, p. 1289, § 3, effective July 1. L. 93: Entire section amended, p. 1535, § 5, effective July 1. L. 2001: (1) amended, p. 119, § 4, effective July 1. L. 2008: (1) amended, p. 369, § 4, effective July 1.

ANNOTATION

Law reviews. For article, “Ski Injury Liability”, see 43 U. Colo. L. Rev. 307 (1972).

25-5-703.5. Board subject to termination - repeal of article. (Repealed)

Source: L. 76: Entire section added, p. 627, § 39, effective July 1. L. 91: Entire section amended, p. 688, § 56, effective April 20. L. 93: Entire section repealed, p. 1536, § 6, effective July 1.

25-5-704. Powers and duties of board. (1) The board has the following powers and duties in addition to those otherwise described by this part 7:

(a) To promulgate, amend, and repeal such rules as may be necessary and proper to carry out the provisions of this article. In adopting such rules, the board may use as general guidelines the standards contained in the “American National Standard for Passenger Ropeways - Aerial Tramways and Aerial Lifts, Surface Lifts, Tows, and Conveyors - Safety Requirements”, as adopted by the American national standards institute, incorporated, as amended from time to time. Such rules shall not be discriminatory in their application to area operators and procedures of the board with respect thereto shall be as provided in section 24-4-103, C.R.S., with respect to rule-making.

(b) To investigate matters relating to the exercise and performance of the powers and duties of the board;

(c) To receive complaints concerning violations of this part 7;

(d) To conduct meetings, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties of the board, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to the subject inquiry. The program administrator may issue subpoenas on behalf of the board at the board’s direction. If any person refuses to obey any subpoena so issued, the board may petition the district court, setting forth the facts, and thereupon the court in a proper case shall issue its subpoena. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The board may elect to hear the matter itself with the assistance of an administrative law judge, who shall rule on the evidence and otherwise conduct the hearing in accordance with the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

- (e) To discipline area operators in accordance with this part 7;
- (f) To approve and renew licenses in accordance with this part 7;
- (g) To elect officers;
- (h) To establish standing or temporary technical and safety committees composed of persons with expertise in tramway-related fields to review, as the board deems necessary, the design, construction, maintenance, and operation of passenger tramways and to make recommendations to the board concerning their findings. Committees established pursuant to this paragraph (h) shall meet as deemed necessary by the board or the supervisory tramway engineer.
- (i) To collect fees, established pursuant to section 24-34-105, C.R.S., for any application for a new construction or major modification, for any application for licensing, and for inspection and accident investigations;
- (j) To cause the prosecution and enjoinder of all persons violating such provisions and to incur the necessary expenses thereof;
- (k) To delegate duties to the program administrator;
- (l) To keep records of its proceedings and of all applications.

Source: L. 65: p. 711, § 1. C.R.S. 1963: § 66-25-4. L. 77: Entire section amended, p. 1289, § 4, effective July 1. L. 79: Entire section amended, p. 912, § 15, effective July 1. L. 93: Entire section amended, p. 1536, § 7, effective July 1. L. 2001: (1)(a) and (1)(i) amended, p. 119, § 5, effective July 1.

25-5-705. Responsibilities of area operators. The primary responsibility for design, construction, maintenance, operation, and inspection rests with the area operators of passenger tramway devices.

Source: L. 65: p. 711, § 1. C.R.S. 1963: § 66-25-5. L. 76: Entire section amended, p. 661, § 4, effective May 27. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1538, § 8, effective July 1.

25-5-706. Disciplinary action - administrative sanctions - grounds. (1) Disciplinary action of the board pursuant to this section shall be taken in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) Disciplinary action of the board may be imposed as an alternative to or in conjunction with the issuance of orders or the pursuit of other remedies provided by section 25-5-707 or 25-5-716, and may consist of any of the following:

(a) Denial, suspension, revocation, or refusal to renew the license of any passenger tramway. The board may summarily suspend a license pursuant to the authority granted by this part 7 or article 4 of title 24, C.R.S.

(b) (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, issuance and sending of a letter of admonition, by certified mail, to the area operator.

(II) When a letter of admonition is sent by the board, by certified mail, to an area operator such area operator shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(c) Assessment of a fine, not to exceed ten thousand dollars per act or omission or, in the case of acts or omissions found to be willful, fifty thousand dollars per act or omission, against any area operator;

(d) Imposition of reasonable conditions upon the continued licensing of a passenger tramway or upon the suspension of further disciplinary action against an area operator.

- (3) The board may take disciplinary action for any of the following acts or omissions:
- (a) Any violation of the provisions of this part 7 or of any rule or regulation of the board promulgated pursuant to section 25-5-704 when the act or omission upon which the violation is based was known to, or reasonably should have been known to, the area operator;
 - (b) Violation of any order of the board issued pursuant to provisions of this part 7;
 - (c) Failure to report any incident or accident to the board as required by any provision of this part 7 or any rule or regulation of the board promulgated pursuant to section 25-5-704 when the incident or accident was known to, or reasonably should have been known to, the area operator;
 - (d) Willful or wanton misconduct in the operation or maintenance of a passenger tramway;
 - (e) Operation of a passenger tramway while a condition exists in the design, construction, operation, or maintenance of the passenger tramway which endangers the public health, safety, or welfare, which condition was known, or reasonably should have been known, by the area operator;
 - (f) Operation of a passenger tramway by an operator whose license has been suspended;
 - (g) Failure to comply with an order issued under section 25-5-707 or 25-5-716.

Source: L. 65: p. 711, § 1. C.R.S. 1963: § 66-25-6. L. 86: Entire section amended, p. 974, § 1, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1538, § 8, effective July 1. L. 2004: (2)(b) amended, p. 1863, § 123, effective August 4. L. 2006: (3)(f) and (3)(g) added, p. 96, § 64, effective August 7.

25-5-707. Orders - enforcement. (1) If, after investigation, the board finds that a violation of any of its rules or regulations exists or that there is a condition in passenger tramway design, construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings and the corrective action to be taken and fixing a reasonable time for compliance therewith. Such order shall be served upon the area operator involved in accordance with the Colorado rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and shall become final unless the area operator applies to the board for a hearing in the manner provided in section 24-4-105, C.R.S.

(2) If any area operator fails to comply with a lawful order of the board issued under this section within the time fixed thereby, the board may take further action as permitted by sections 25-5-706 and 25-5-716 and may commence an action seeking injunctive relief in the district court of the judicial district in which the relevant passenger tramway is located.

(3) Any person who violates an order issued pursuant to this section shall be subject to a civil penalty of not more than five thousand dollars for each day during which such violation occurs.

(4) Any area operator who operates a passenger tramway which has not been licensed by the board or the license of which has been suspended, or who fails to comply with an order issued under this section or section 25-5-716, commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Fines collected pursuant to this section shall be deposited in the general fund of the state.

Source: L. 65: p. 711, § 1. C.R.S. 1963: § 66-25-7. L. 86: (3) and (4) amended, p. 974, § 2, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1539, § 8, effective July 1. L. 2002: (4) amended, p. 1537, § 268, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-5-708. Disciplinary proceedings. (1) The board may investigate all matters which present grounds for disciplinary action as specified in this part 7.

(2) Disciplinary hearings shall be conducted by the board or by an administrative law judge in accordance with section 25-5-704 (1) (d).

(3) Any person aggrieved by a final action or order of the board may appeal such action to the Colorado court of appeals in accordance with section 24-4-106 (11), C.R.S.

Source: L. 65: p. 712, § 1. C.R.S. 1963: § 66-25-8. L. 67: p. 200, § 1. L. 76: (1) amended and (2) added, p. 662, § 6, effective May 27. L. 77: (1) amended, p. 1290, § 6, effective July 1. L. 79: Entire section R&RE, p. 1661, § 120, effective July 19. L. 83: (2) repealed, p. 1073, § 6, effective May 25. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1540, § 8, effective July 1.

25-5-709. Passenger tramway licensing required. (1) The state, through the board, shall license all passenger tramways, unless specifically exempted by law, establish reasonable standards of design and operational practices, and cause to be made such inspections as may be necessary in carrying out the provisions of this section.

(2) A passenger tramway shall not be operated in this state unless it has been licensed by the board. No new passenger tramway shall be initially licensed in this state unless its design and construction have been certified to this state as complying with the rules and regulations of the board promulgated pursuant to section 25-5-704. Such certification shall be made by a qualified tramway design engineer or a qualified tramway construction engineer, whichever the case requires.

(3) The board shall have no jurisdiction over the construction of a new private residence tramway or over any modifications to an existing private residence tramway when such tramway is not used, or intended to be used, by the general public.

(4) The board shall have no jurisdiction over a portable aerial tramway device.

(5) The board shall have no jurisdiction over a portable tramway device when such tramway device is not used, or intended to be used, by the general public.

Source: L. 65: p. 712, § 1. C.R.S. 1963: § 66-25-9. L. 73: p. 1373, § 29. L. 79: Entire section amended, p. 1661, § 121, effective July 19. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1540, § 8, effective July 1. L. 2001: (3) and (5) amended, p. 119, § 6, effective July 1.

25-5-710. Application for new construction or major modification. Any new construction of a passenger tramway or any major modification to an existing installation shall not be initiated unless an application for such construction or major modification has been made to the board and a permit therefor has been issued by the board.

Source: L. 65: p. 712, § 1. C.R.S. 1963: § 66-25-10. L. 67: p. 200, § 2; L. 76: (1)(f) amended and (1)(g) added, p. 662, § 7, effective May 27; L. 77: (1)(b) amended, p. 308, § 14, effective June 10; (1)(h), (1)(i), and (2) added, p. 1290, §§ 8, 7, effective July 1. L. 79: (1)(i) amended, p. 1661, § 122, effective July 19; L. 83: (1)(f) amended and (1)(g) repealed, pp. 1072, 1073, §§ 5, 6, effective May 25; L. 86: (1)(a) to (1)(c) amended, p. 975, § 3, effective April 3. L. 87: (1)(b) amended, p. 971, § 83, effective March 13. L. 88: (1)(h) amended, p. 317, § 11, effective April 14. L. 91: (1)(a) amended, p. 1917, § 40, effective June 1. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1540, § 8, effective July 1.

ANNOTATION

Law reviews. For note, "Exculpatory Clauses and Public Policy: A Judicial Dilemma", see 53 U. Colo. L. Rev. 793 (1982).

25-5-711. Application for licensing. Each year, every area operator of a passenger tramway shall apply to the board, in such form as the board shall designate, for licensing

of the passenger tramways which such area operator owns or manages or the operation of which such area operator directs. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramway sought to be licensed by such area operator complies with the intent of this part 7 as specified in section 25-5-701 and the rules and regulations promulgated by the board pursuant to section 25-5-704.

Source: L. 65: p. 713, § 1. C.R.S. 1963: § 66-25-11. L. 77: Entire section amended, p. 637, § 5, effective July 1; entire section amended, p. 1291, § 9, effective July 1. L. 86: Entire section amended, p. 975, § 4, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1540, § 8, effective July 1.

25-5-712. Licensing of passenger tramways. (1) The board shall issue to the applying area operator without delay licensing certificates for each passenger tramway owned, managed, or the operation of which is directed by such area operator when the board is satisfied:

(a) That the facts stated in the application are sufficient to enable the board to fulfill its duties under this part 7; and

(b) That each such passenger tramway sought to be licensed has been inspected by an inspector designated by the board according to procedures established by the board and that such inspection disclosed no unreasonable safety hazard and no violations of the provisions of this part 7 or the rules and regulations of the board promulgated pursuant to section 25-5-704.

(2) In order to satisfy itself that the conditions described in subsection (1) of this section have been fulfilled, the board may cause to be made such inspections described in section 25-5-715 as it may reasonably deem necessary.

(3) Repealed.

(4) Licenses shall expire on dates established by the board.

(5) Each area operator shall cause the licensing certificate, or a copy thereof, for each passenger tramway thus licensed to be displayed prominently at the place where passengers are loaded thereon.

Source: L. 65: p. 714, § 1. C.R.S. 1963: §66-25-12. L. 77: Entire section amended, p. 1291, § 10, effective July 1. L. 86: Entire section amended, p. 976, § 5, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1541, § 8, effective July 1. L. 2001: (3) repealed, p. 120, § 7, effective July 1.

25-5-713. Licensing and certification fees. The application for new construction or major modification and the application for licensing shall be accompanied by a fee established pursuant to section 24-34-105, C.R.S.

Source: L. 65: p. 714, § 1. C.R.S. 1963: § 66-25-13. L. 77: Entire section amended, p. 1291, § 11, effective July 1. L. 86: Entire section amended, p. 976, § 6, effective April 6. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1541, § 8, effective July 1. L. 2001: Entire section amended, p. 120, § 8, effective July 1.

25-5-714. Disposition of fees and fines. (1) All fees collected by the board under the provisions of this part 7 shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board incurred in the performance of its duties under this part 7, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(2) Fines collected pursuant to section 25-5-707 shall be deposited in the general fund of the state.

Source: L. 65: p. 714, § 1. C.R.S. 1963: § 66-25-14. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1541, § 8, effective July 1. L. 2006: Entire section amended, p. 96, § 65, effective August 7.

25-5-715. Inspections and investigations - costs - reports. (1) The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require.

(2) Such inspections shall include, at a minimum, two inspections per year or per two thousand hours of operation, whichever occurs first, of each passenger tramway, one of which inspections shall be during the high use season and shall be unannounced, and shall be carried out under contract by independent contractors selected by the board or by the supervisory tramway engineer. Additional inspections may be required by the board if the area operator does not, in the opinion of the board, make reasonable efforts to correct any deficiencies identified in any prior inspection or if the board otherwise deems such additional inspections necessary. The board shall provide in its rules and regulations that no facility shall be shut down for the purposes of a regular inspection during normal operating hours unless sufficient daylight is not available for the inspection.

(3) The board may employ independent contractors to make such inspections for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of inspections provided for in this part 7 shall be paid in the first instance by the board, but each area operator of the passenger tramway which was the subject of such inspection shall, upon notification by the board of the amount due, reimburse the board for any charges made by such personnel for such services and for the actual expenses of each inspection.

(4) The board may cause an investigation to be made in response to an accident or incident involving a passenger tramway, as the board may reasonably require. The board may employ independent contractors to make such investigations for reasonable fees plus expenses. The expenses incurred by the board in connection with the conduct of investigations provided for in this part 7 shall be paid in the first instance by the board, and thereafter one or more area operators may be billed for work performed pursuant to subsection (3) of this section.

(5) If, as the result of an inspection, it is found that a violation of the board's rules and regulations exists, or a condition in passenger tramway design, construction, operation, or maintenance exists, endangering the safety of the public, an immediate report shall be made to the board for appropriate investigation and order.

Source: L. 65: p. 714, § 1. C.R.S. 1963: § 66-25-15. L. 86: Entire section amended, p. 976, § 7, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1542, § 8, effective July 1.

25-5-716. Emergency shutdown. When facts are presented tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, after such verification of said facts as is practical under the circumstances and consistent with the public safety, the board, any member thereof, or the supervisory tramway engineer may, by an emergency order, require the area operator of said tramway forthwith to cease using the same for the transportation of passengers. Such emergency order shall be in writing and signed by a member of the board or the supervisory tramway engineer, and notice thereof may be served by the supervisory tramway engineer, any member of the board, or as provided by the Colorado rules of civil procedure or the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Such service shall be made upon the area operator or the area operator's agent immediately in control of said tramway. Such emergency shutdown shall be effective for a period not to exceed seventy-two hours from the time of service. The board shall conduct an investigation into the facts of the case and shall take such action under this part 7 as may be appropriate.

Source: L. 65: p. 714, § 1. C.R.S. 1963: § 66-25-16. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1543, § 8, effective July 1.

25-5-717. Provisions in lieu of others. The provisions for regulation, registration, and licensing of passenger tramways and the area operators thereof under this part 7 shall be in

lieu of all other regulations or registration or licensing requirements, and passenger tramways shall not be construed to be common carriers within the meaning of the laws of this state.

Source: L. 65: p. 715, § 1. C.R.S. 1963: § 66-25-17. L. 77: Entire section amended, p. 1292, § 13, effective July 1. L. 85: Entire section amended, p. 411, § 23, effective July 1. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1543, § 8, effective July 1.

ANNOTATION

Even though a ski lift operator is not a common carrier, the attendant circumstances of operating a ski lift demand that the ski lift operator be held to the highest degree of care

commensurate with the practical operation of the lift. *Bayer v. Crested Butte Mountain Resort*, 960 P.2d 70 (Colo. 1998).

25-5-718. Governmental immunity - limitations on liability. The board, any member of the board, any person on the staff of the board, any technical advisor appointed by the board, any member of an advisory committee appointed by the board, and any independent contractor hired to perform or acting as a state tramway inspector on behalf of the board with whom the board contracts for assistance shall be provided all protections of governmental immunity provided to public employees by article 10 of title 24, C.R.S., including but not limited to the payment of judgments and settlements, the provision of legal defense, and the payment of costs incurred in court actions. These protections shall be provided to the board, board members, staff, technical advisors, committee members, and independent contractors hired to perform or acting as a state tramway inspector on behalf of the board only with regard to actions brought because of acts or omissions committed by such persons in the course of official board duties.

Source: L. 65: p. 715, § 1. C.R.S. 1963: § 66-25-18. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1543, § 8, effective July 1.

ANNOTATION

Law reviews. For article, "Ski Injury Liability", see 43 U. Colo. L. Rev. 307 (1972).

25-5-719. Independent contractors - no general immunity. The provisions of section 25-5-718 shall be construed as a specific exception to the general exclusion of independent contractors hired to perform or acting as a state tramway inspector on behalf of the board from the protections of governmental immunity provided in article 10 of title 24, C.R.S.

Source: L. 86: Entire section added, p. 977, § 8, effective April 3. L. 93: Sections 25-5-705 to 25-5-719 R&RE, p. 1543, § 8, effective July 1.

25-5-720. Confidentiality of reports and other materials. (1) Reports of investigations conducted by an area operator or by a private contractor on an area operator's behalf and filed with the board or the board's staff shall be presumed to be privileged information exempt from public inspection under section 24-72-204 (3) (a) (IV), C.R.S., except as may be ordered by a court of competent jurisdiction.

(2) Except as otherwise provided in subsection (1) of this section, all information in the possession of the board's staff and all final reports to the board shall be open to public inspection in accordance with part 2 of article 72 of title 24, C.R.S.

Source: L. 93: Entire section added, p. 1544, § 9, effective July 1.

25-5-721. Repeal of part. (1) This part 7 is repealed, effective July 1, 2019.

(2) Prior to such repeal, the passenger tramway safety board shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 93:** Entire section added, p. 1544, § 9, effective July 1. **L. 2001:** (1) amended, p. 120, § 9, effective July 1. **L. 2008:** (1) amended, p. 369, § 1, effective July 1.

PART 8

SWIMMING AREAS

25-5-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Natural swimming area" means a designated portion of a natural or impounded body of water in which the designated portion is devoted to swimming, recreative bathing, or wading and for which an individual is charged a fee for the use of such area for such purposes. Appurtenances used in connection with the natural swimming area shall also be included.

(2) "Swimming area" means a designated body of water of such volume and depth that one or more persons can swim in it and which is used for the purpose of swimming, recreative bathing, or wading and includes natural swimming areas and swimming pools.

(3) "Swimming pool" means a body of water, other than a natural swimming area, maintained exclusively for swimming, recreative bathing, or wading and includes appurtenances used in connection with the swimming pool.

Source: **L. 63:** p. 541, § 1. **C.R.S. 1963:** § 66-22-1.

ANNOTATION

Public bath comes within the definition of "swimming area". People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971).

25-5-802. Submission of plans and specifications. Prior to the construction, extension, enlarging, remodeling, or modification of a swimming area, the plans and specifications for the work to be done shall be submitted for review and recommendation to the department of public health and environment by the owner of the swimming area. The department of public health and environment may direct that such plans and specifications be submitted to the municipality or other political subdivision in which the swimming area is or may be located rather than to the department of public health and environment. This section does not prohibit any municipality from requiring that the plans also be submitted to the proper authority of the municipality.

Source: **L. 63:** p. 541, § 2. **C.R.S. 1963:** § 66-22-2. **L. 94:** Entire section amended, p. 2778, § 485, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-803. Sanitation of swimming areas. (1) A swimming area shall be kept clean and free of all accumulations of trash, garbage, filth, and debris. Concentrations of any other matter in the water shall not be injurious to health.

(2) All swimming areas shall provide separate toilet facilities for both males and females, and swimming pools shall also provide separate shower and locker room facilities; except that swimming pools used in connection with hotels, motels, apartment houses, and private clubs shall not be required to furnish separate shower, toilet, and locker room

facilities. All such facilities shall be kept clean and free from dirt, refuse, soiled toweling, or other noxious material.

(3) A swimming pool shall have an apparatus for the continuous removal from the water of suspended, floating, and settleable substances. Equipment for the disinfection of water shall be provided that shall be capable of either maintaining a minimum concentration of not less than twenty-five hundredths part per million of free chlorine residual or maintaining the minimum standards for drinking water in effect on January 1, 1969, as specified by the public health service of the United States department of health, education, and welfare. The water shall be kept clear enough to permit the bottom of the pool to be visible from the surface.

Source: L. 63: p. 542, § 3. C.R.S. 1963: § 66-22-3. L. 69: p. 470, § 1.

ANNOTATION

Applied in *People ex rel. Dunbar v. Gior-dano*, 173 Colo. 567, 481 P.2d 415 (1971).

25-5-804. Safety standards for swimming areas. (1) All natural swimming areas shall have a sanded beach the slope of which shall not be steeper than one foot of fall to ten feet of horizontal distance and shall be posted with warning signs, buoys, or other markers located not more than one hundred feet apart and visible to a person of ordinary visual acuity at a distance of not less than one hundred feet to mark water over three feet in depth and to mark the exterior limits of the designated swimming area. There shall also be provided not less than one life ring fifteen inches in diameter with seventy-five feet of three-sixteenths inch manila line attached which shall be hung in a conspicuous place on the beach where it shall be kept readily available for use. Each natural swimming area shall also have not less than one square-sterned boat with oars and oarlocks which shall be used only for lifesaving purposes. All other floating craft shall be excluded from the swimming areas except for enforcement craft when necessary to provide adequate supervision. When night swimming is permitted in the natural swimming area, the beach shall be fully illuminated.

(2) The diving tower or springboard, when provided, shall be rigidly constructed and securely anchored.

(3) Swimming pools shall be equipped with not less than one lightweight reaching pole of not less than twelve feet in length and not less than one life ring fifteen inches in diameter with seventy-five feet of three-sixteenths inch manila line attached, both of which shall be kept in a conspicuous place readily available to persons in the pool. When night swimming is permitted, the pool, adjacent area, and all appurtenances shall be fully illuminated.

Source: L. 63: p. 542, § 4. C.R.S. 1963: § 66-22-4.

25-5-805. Connection with potable water. All potable water supply sources connected to the swimming pool or pool appurtenances shall be protected against contamination by means of an air gap or equivalent device, and such device shall be placed between the source of the potable water supply and the pool or pool appurtenance.

Source: L. 63: p. 543, § 5. C.R.S. 1963: § 66-22-5.

25-5-806. Inspection. All swimming areas shall be open to inspection at any time they are in use and at any other reasonable time by agents of the department of public health and environment.

Source: L. 63: p. 543, § 6. C.R.S. 1963: § 66-22-6. L. 94: Entire section amended, p. 2779, § 486, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-807. Injunctive relief. The operation of a swimming area in violation of any provision of this part 8 may be restrained by the executive director of the department of public health and environment; by any city, county, city and county, or district health officer; or by any of their authorized agents in an action brought in a court of competent jurisdiction pursuant to the Colorado rules of civil procedure.

Source: L. 63: p. 543, § 7. C.R.S. 1963: § 66-22-7. L. 94: Entire section amended, p. 2779, § 487, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-808. Municipalities may regulate. Any city, town, or city and county may by ordinance regulate swimming areas. Any such ordinance may include standards which are the same or more restrictive than the standards set forth in this part 8 but shall not supersede the state law except insofar as they are more restrictive than the state standards.

Source: L. 63: p. 543, § 8. C.R.S. 1963: § 66-22-8. L. 69: p. 471, § 1.

25-5-809. Applicability of part 8. This part 8 shall not apply to any swimming pool constructed in connection with or appurtenant to a single-family dwelling, condominium, or apartment house, which pool is used solely by the persons living within such dwelling, condominium, or apartment house and the guests of such persons.

Source: L. 63: p. 543, § 9. C.R.S. 1963: § 66-22-9.

25-5-810. Rules and regulations. The department of public health and environment may adopt any rules and regulations necessary for the proper administration and enforcement of this part 8.

Source: L. 63: p. 543, § 10. C.R.S. 1963: § 66-22-10. L. 94: Entire section amended, p. 2779, § 488, effective July 1.

Cross references: (1) For rule-making procedures, see article 4 of title 24.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Applied in *People ex rel. Dunbar v. Gior-dano*, 173 Colo. 567, 481 P.2d 415 (1971).

PART 9

DANGEROUS DRUGS - THERAPEUTIC USE

25-5-901 to 25-5-907. (Repealed)

Source: L. 95: Entire part repealed, p. 203, § 19, effective April 13.

Editor's note: This part 9 was added in 1979. For amendments to this part 9 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 10

ARTIFICIAL TANNING DEVICES

25-5-1001. Short title. This part 10 shall be known and may be cited as the “Artificial Tanning Device Operation Act”.

Source: L. 92: Entire part added, p. 1284, § 1, effective July 1.

25-5-1002. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that injuries may result from improperly supervised use of artificial tanning devices which expose the human body to ultraviolet radiation. Artificial tanning devices may emit more than ten times the amount of ultraviolet radiation than normal exposure to the sun. Injuries from intense exposure may result in cases of premature aging, adverse reactions to medication, skin burns, eye burns, retinal damage, formation of cataracts, precancers, and the promotion of several types of skin cancers including, but not limited to, melanoma.

(2) The general assembly further finds, determines, and declares that artificial tanning device users may be unaware of and lack access to information that they may experience a heightened photosensitivity to artificial tanning as a result of the use of medications such as birth control pills, antibiotics, high blood pressure medications, diuretics, antihistamines, and oral diabetes medications; commonly available cosmetics; and certain citrus products such as limes.

(3) The general assembly further finds, determines, and declares that establishments which provide users with access to artificial tanning devices may fail to establish basic sanitary precautions against the transmission of communicable skin disorders, may fail to protect the user from either direct contact with bulbs or from shards of glass if a bulb explodes, and may fail to provide users with appropriate health or physical safety information.

Source: L. 92: Entire part added, p. 1284, § 1, effective July 1.

25-5-1003. Definitions. As used in this part 10, unless the context otherwise requires:

(1) “Artificial tanning device” means any equipment that emits ultraviolet radiation with wavelengths in the air between two hundred and four hundred nanometers and that is used for the tanning of human skin, including, but not limited to, sunlamps, tanning beds, and tanning booths. “Artificial tanning device” does not include phototherapy devices.

(2) “Board” means the state board of health.

(3) “Department” means the department of public health and environment.

(4) “Fund” means the artificial tanning device education fund created in section 25-5-1004.

(5) “Phototherapy device” means a piece of equipment that emits ultraviolet radiation and that is used by or under the supervision of a licensed health care professional in the treatment of disease.

(6) “Tanning facility” means any location, premises, place, area, structure, or business, whether permanent or mobile, which provides persons access to artificial tanning devices.

(7) “Ultraviolet radiation” means electromagnetic radiation with wavelengths in the air between two hundred and four hundred nanometers.

Source: L. 92: Entire part added, p. 1285, § 1, effective July 1. **L. 94:** (3) amended, p. 2779, § 489, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5-1004. Registration required - fee - artificial tanning device education fund - creation. (1) Commencing January 1, 1993, and on each January 1 thereafter, the owner of any artificial tanning facility which makes artificial tanning devices available for public use shall register said facility with the department.

(2) (a) The registration of each artificial tanning facility as required in subsection (1) of this section shall be accompanied by an annual registration fee for each artificial tanning facility in the amount of one hundred twenty dollars for each calendar year. The annual registration fee shall be prorated on a monthly basis for any initial registration received after January 1 of any year.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (2), the board by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(3) All fees shall be collected by the department and transmitted to the state treasurer, who shall credit the same to the artificial tanning device education fund, which fund is hereby created. The fund shall be comprised of the annual registration fees. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. The moneys in the fund shall be annually appropriated by the general assembly to the department for the direct and indirect costs of the administration and implementation of the provisions of this part 10.

Source: L. 92: Entire part added, p. 1285, § 1, effective July 1. L. 98: (2) amended, p. 1334, § 47, effective June 1.

25-5-1005. Exemptions. (1) The following devices are exempt from the requirements of this part 10:

(a) Artificial tanning devices which are used exclusively for personal, noncommercial purposes by the owner, members of the owner's family, or persons authorized by the owner to use the device;

(b) Phototherapy devices used by or under the supervision of a licensed physician or other licensed health care professional within the scope of such person's practice for the purposes of treating diseases; and

(c) Artificial tanning devices which are in transit or storage and are not made available for use during such transit or storage.

(2) Nothing in this section shall be construed to mean that the department endorses any type of artificial tanning device, any location of such devices, any business which provides artificial tanning devices for use by the public, or the use of any such devices.

Source: L. 92: Entire part added, p. 1286, § 1, effective July 1.

25-5-1006. Rule-making authority - board. (1) The standards established by the United States food and drug administration shall be the minimum standards for exposure to radiation through an artificial tanning device in this state; except that the board may establish rules adopting standards for exposure to radiation through artificial tanning devices which are no less stringent than the federal standards.

(2) (a) The board may, by rule, adopt any further standards or regulations necessary to protect the public from unsafe artificial tanning devices or other unsafe equipment, and from unsafe operational methods, and any such other rules and regulations as are necessary for the implementation of this part 10.

(b) The board shall formulate, adopt, and promulgate rules and regulations concerning on-site inspections of tanning facilities, and the department shall conduct such on-site inspections in accordance with the rules and regulations promulgated under this paragraph (b).

Source: L. 92: Entire part added, p. 1286, § 1, effective July 1.

25-5-1007. Owner responsibilities. (1) The owner of each registered artificial tanning device shall provide to the department such information concerning the safe and proper operation of the owner's artificial tanning device as is required by this part 10.

(2) The owner shall post a sign on the premises where the artificial tanning device is located which notifies operators and potential users of the safety and health risks associated with the use of such devices. The board shall establish standards concerning the information to be contained in said notice and the size and location of posting the notice on the premises. Said notice shall be of a size and in a location on the premises which allows it to be easily read by users before being exposed to the artificial tanning device.

(3) The owner shall provide each user with a written handout as specified by the board containing, at a minimum, the following information:

(a) The risks of potential negative health effects as a result of improperly supervised exposure to ultraviolet radiation and the general health and sanitation risks associated with the use of such devices;

(b) The risks of potential negative health effects as a result of exposure to ultraviolet radiation while in poor health or on certain medications; and

(c) Specific safety and operation information on the artificial tanning device which is to be used.

(4) The owner shall provide to users the safety equipment required by the board.

(5) The owner shall provide and maintain such general sanitation and cleaning of equipment as required by the board.

(6) The owner shall inform the department of any accident or adverse reaction to the use of an artificial tanning device and provide such detailed information as required by the department. A written report in the format required by the department shall be submitted within fifteen days after discovery of the event. Any records, reports, or information obtained from a person pursuant to the provisions of this subsection (6) shall be closed and confidential.

(7) No owner, employee, or operator of any artificial tanning device or tanning facility shall advertise or promote that the use of any artificial tanning device is safe or without risk to the user or that registration with the department constitutes approval or endorsement of either the use of the device or the use of artificial tanning in general.

Source: L. 92: Entire part added, p. 1287, § 1, effective July 1.

Editor's note: In 1995, the provisions of subsection (3) were renumbered on revision to conform to statutory format.

25-5-1008. Complaints - investigation. The department shall have the authority to investigate complaints regarding any injury, accident, or the unsafe operation of an artificial tanning device.

Source: L. 92: Entire part added, p. 1288, § 1, effective July 1.

25-5-1009. Penalties. (1) Upon a finding by the board that an owner or lessee of a tanning facility is in violation of any of the provisions of this part 10, or the standards, rules, or regulations adopted by the board pursuant to this part 10, the board may assess a penalty of up to two hundred dollars for each day of violation, and each day of violation shall be considered a separate offense. Actions may be brought by the attorney general in the district court of the district within which the tanning device is located. In determining the amount of the penalty, the board shall consider the degree of danger to the public caused by the violation, the duration of the violation, and whether the owner or lessee has committed any similar violations. Any penalty fees collected by the board shall be remitted to the state treasurer, who shall credit the same to the tanning device education fund, created in section 25-5-1004.

(2) An owner or lessee subject to a penalty assessment pursuant to this section may appeal the penalty to the board by requesting a hearing before the board. Such a request shall be filed within thirty days after the penalty assessment is issued. A hearing before the board shall be conducted in accordance with article 4 of title 24, C.R.S.

Source: L. 92: Entire part added, p. 1288, § 1, effective July 1.

25-5-1010. Enforcement. (1) (a) Whenever the department has reasonable cause to believe a violation of this part 10 or any rule made pursuant to this part 10 has occurred and immediate enforcement is deemed necessary, the department may issue a cease-and-desist order, which may require any person to cease violating any provision of this part 10 or any rule made pursuant to this part 10. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the department may apply to the district court of the district within which the tanning device is located for a temporary or permanent injunction restraining any person from violating any provision of this part 10 regardless of whether there is an adequate remedy at law.

(c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(2) Whenever it appears to the department, upon evidence satisfactory to the department, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part 10 or of any rule or of any order promulgated under this part 10, the department may apply to the district court of the district within which the tanning device is located to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this part 10 or any rule or order promulgated under this part 10. In any such action, the department shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the department to post a bond.

(3) It is a violation of this part 10 for:

(a) Any person to knowingly operate a tanning facility without having registered said facility with the department in accordance with the provisions of this part 10;

(b) Any person to offer for use to the public any artificial tanning device which is not registered with the department as required by the provisions of this part 10;

(c) Any person to violate any provision of this part 10 or any provision of any standards, rules, or regulations adopted by the board;

(d) Any person to refuse to permit entry for the purpose of inspection of a tanning facility during normal business hours.

Source: L. 92: Entire part added, p. 1289, § 1, effective July 1.

25-5-1011. Assumption of risk inapplicable. In any civil action for damages for an injury sustained as the result of the use of an artificial tanning device, it shall be presumed that the defense of assumption of risk as set forth in section 13-21-111.7, C.R.S., shall not apply if the owner has failed to provide the injured party with the written handout or the safety equipment as required by section 25-5-1007, or if the owner has failed to provide a safe artificial tanning device.

Source: L. 92: Entire part added, p. 1290, § 1, effective July 1.

PART 11

PREVENTION, INTERVENTION, AND REDUCTION OF LEAD EXPOSURE

25-5-1101. Legislative declaration. (1) (a) The general assembly hereby declares that this part 11 is enacted for the purpose of reducing exposure of children to lead hazards

and reducing the prevalence of elevated blood lead levels in children under seven years of age. The general assembly finds and determines that:

(I) Exposure of children to lead represents a significant environmental health problem in the state that is preventable;

(II) The existence of elevated blood lead levels in children is of great concern to the citizens of Colorado because lead poisoning in children may necessitate large expenditures of public funds for health care and special education, which expenditures could be avoided if exposure of children to lead is reduced;

(III) A comprehensive lead hazard reduction program is needed to prevent elevated blood lead levels in children and, if implemented, such program could prevent hundreds of Colorado's children, many of whom currently go undiagnosed or untreated, from being exposed to lead at levels believed to be harmful.

(b) Therefore, it is the intent of the general assembly to establish and fund a statewide lead hazard prevention, intervention, and reduction program within the department of public health and environment for the purposes of:

(I) Compiling information concerning the prevalence, causes, and geographic occurrence of elevated levels of lead in children's blood;

(II) Identifying areas of the state where children's lead exposures are significant;

(III) Analyzing lead information and, where indicated, designing and implementing a program of medical monitoring and follow-up and environmental intervention that will reduce the incidence of excessive exposure of children to lead in residences and child-occupied facilities in Colorado; and

(IV) Providing comprehensive educational materials that are targeted to health care providers, child care providers, schools, parents of young children, the real estate industry, and owners of rental properties.

Source: L. 97: Entire part added, p. 1083, § 1, effective July 1.

25-5-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Child-occupied facility" has the same meaning as that set forth in section 25-7-1102 (2).

(2) "Department" means the department of public health and environment.

(3) "Lead-based paint" has the same meaning as that set forth in section 25-7-1102 (5).

Source: L. 97: Entire part added, p. 1084, § 1, effective July 1.

25-5-1103. Lead hazard reduction program. There is hereby created the lead hazard reduction program in the department of public health and environment to perform prevention, intervention, and general hazard reduction activities needed to reduce exposure of children to lead-based paint hazards. As part of the program, the department shall coordinate actions between the department and the departments of education, human services, health care policy and financing, and local affairs to produce a comprehensive plan and program to prevent elevated blood lead levels in children and to control exposure to lead-based paint hazards in residences and child-occupied facilities in Colorado. The provisions of this part 11 apply only to lead-based paint hazards.

Source: L. 97: Entire part added, p. 1084, § 1, effective July 1.

25-5-1104. Comprehensive plan. (1) On or before July 1, 1998, the department shall establish a comprehensive plan to prevent elevated blood lead levels in children and to control exposure of children to lead-based paint hazards in residences and child-occupied facilities. The plan shall include:

(a) Development of standards by the state board of health concerning the method and frequency of screening of young children for elevated blood lead levels. The state board of health shall consult with recognized medical, public health, and environmental professionals and appropriate professional organizations in the development of such standards.

- (b) Development of a comprehensive education program regarding lead contamination that makes appropriate educational materials available to health care providers, child care providers, schools, owners and tenants of residential dwellings built prior to 1978, and parents of young children;
- (c) Case management and environmental follow-up services by state or local health agencies to ensure that all cases of elevated blood lead levels in children receive service appropriate for the severity of the lead exposure;
- (d) Recommendations concerning further legislative actions to address lead exposure, including, but not limited to, requiring third-party insurers or payers, including medicaid, to provide coverage for screening, treatment, environmental investigations, and environmental intervention;
- (e) Proposed regulations governing the requirement, timing, and conduct of environmental investigations and interventions; and
- (f) A detailed fiscal analysis of the lead hazard reduction program.

Source: L. 97: Entire part added, p. 1085, § 1, effective July 1.

25-5-1105. Report. (Repealed)

Source: L. 97: Entire part added, p. 1085, § 1, effective July 1. L. 2008: Entire section repealed, p. 1907, § 101, effective August 5.

- 25-5-1106. Acceptance of gifts, grants, and donations - lead hazard reduction cash fund.** (1) The department is authorized to accept gifts, grants, and donations for the purpose of implementing this part 11 and part 11 of article 7 of this title.
- (2) There is hereby established in the state treasury the lead hazard reduction cash fund, referred to in this part 11 as the “fund”. The fund shall consist of any fees, gifts, grants, and donations received from any person or entity. Any interest derived from the deposit and investment of moneys in the fund shall remain in the fund and may not be credited or transferred to the general fund or any other fund.
- (3) The general assembly shall make appropriations from the fund to the department for the implementation of this part 11 of article 7 of this title.

Source: L. 97: Entire part added, p. 1085, § 1, effective July 1.

ARTICLE 5.5

Dairy Products, Imitation Dairy Products,
and Frozen Desserts

Editor’s note: Prior to the enactment of this article in 1985, substantive provisions concerning dairy products and imitation dairy products were found in article 24 of title 35 and substantive provisions concerning frozen desserts were found in article 34 of title 35.

PART 1		25-5.5-107.	Testing and sampling of dairy products - unlawful acts - licensing - dairy protection cash fund - created.
DAIRY PRODUCTS		25-5.5-108.	Condensed milk and cream.
25-5.5-101.	Definitions.	25-5.5-109.	Brands and marks - defacement.
25-5.5-102.	Butter defined - standards.	25-5.5-110.	Milk, cream, and cheese - standards.
25-5.5-103.	Powers and duties.	25-5.5-111.	Treated milk to be labeled.
25-5.5-104.	Unsanitary dairy products.	25-5.5-112.	Weight ticket to be furnished.
25-5.5-105.	Unsanitary utensils, equipment, and premises - prohibited.	25-5.5-113.	Sample taken upon arrival.
25-5.5-106.	Containers of dairy products - prompt delivery - removal of products.		

25-5.5-114. Interference with officer - pen-
alty.

PART 3

25-5.5-115. Analyses prima facie evidence.

FROZEN DESSERTS

25-5.5-116. Penalty.

25-5.5-117. Raw milk.

25-5.5-301. Short title.

25-5.5-302. Definitions.

25-5.5-303. Ice cream - standards.

25-5.5-304. French ice cream and custards -
standards.

PART 2

IMITATION DAIRY PRODUCTS

25-5.5-305. Ice milk - standards.

25-5.5-305.5. Low-fat frozen dairy dessert -
standards.

25-5.5-201. Short title.

25-5.5-202. Purpose.

25-5.5-203. Definitions.

25-5.5-204. Imitation dairy products - label-
ing.

25-5.5-205. Enforcement and power - rules.

25-5.5-206. Enforcement by injunction.

25-5.5-207. Subpoena of defendant.

25-5.5-208. Seizure of products.

25-5.5-209. Penalty.

25-5.5-306. Sherbet - standards.

25-5.5-307. Water ice - standards.

25-5.5-308. Adulterated and misbranded -
when.25-5.5-309. Administration and enforce-
ment.

25-5.5-310. Regulations.

25-5.5-311. Products detained or embar-
goed - when.

25-5.5-312. Violations - penalty.

PART 1

DAIRY PRODUCTS

25-5.5-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Cheese" means the fresh or matured product obtained by the draining, after coagulation, of milk, cream, skimmed or partly skimmed milk, or a combination of some or all of these products, including any cheese that conforms to the provisions of the definitions and standards of identity for cheese and cheese products, a regulation of the food and drug administration, 21 CFR 133.3.

(2) "Cream" means the liquid milk product which is high in fat and separated from milk and which may have been adjusted by adding milk, concentrated milk, dry whole milk, or nonfat dry milk and which contains not less than eighteen percent milk fat.

(3) "Dairy farm" means the place or premises on which one or more lactating hooved animals are kept and from which a part or all of the milk produced thereon is delivered, sold, or offered for sale to a dairy plant for manufacturing purposes.

(4) (a) "Dairy plant" means any place, premises, or establishment where milk or dairy products are received or handled for processing or manufacturing and where they are prepared for distribution.

(b) For the purposes of this subsection (4), "dairy plant", when used in connection with the requirements therefor or the licensing thereof, means any establishment that manufactures dairy products; except that any "dairy plant" that is located in an establishment licensed pursuant to part 16 of article 4 of this title is exempt from the licensing requirements of this article if such establishment sells or serves dairy products exclusively and directly to the final consumer of the product.

(5) "Dairy products" means food products manufactured from milk or cream or from any combination of milk and cream with other food ingredients intended for human consumption, including, but not limited to, butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole milk or skim milk, condensed whole milk, condensed skim milk, or ice cream or other frozen desserts specified in part 3 of this article. "Dairy products" does not include milk or milk products as defined in the grade A pasteurized milk ordinance, 1978 recommendations of the United States public health service, food and drug administration, superintendent of documents number HE 20.4002:M59-3.

(6) "Department" means the department of public health and environment or its authorized representative.

(7) “Goat milk” means the lacteal secretion, practically free from colostrum, which is obtained by the complete milking of healthy goats.

(8) “HTST method” means the high temperature short-time method of pasteurization.

(9) “Manufacturing milk” means milk produced for processing and manufacturing into dairy products for human consumption but not subject to grade A or comparable requirements.

(10) “Milk” means the lacteal secretion, practically free from colostrum, which is obtained by the complete milking of healthy cows, excluding that milk obtained less than eight days before and less than four days after calving or for such longer period as may be necessary to render the milk practically colostrum free, and which contains not less than eight and one-quarter percent nonfat milk solids and not less than three percent milk fat; except that, in those instances where the normal secretion of the cows is less than three percent milk fat, this product shall be accepted as milk for manufacturing purposes.

(11) “Milk sampler” means a person licensed by the department who is qualified and trained to sample or test milk or cream for the purpose of payment and includes a bulk milk hauler that collects milk from dairy farms.

(12) “Official methods” means official methods of analysis of the association of official analytical chemists, 13th edition, 1980, a publication of the association of official analytical chemists, as amended, supplemented, or republished.

(13) “Pasteurization” means the process of heating every particle of milk or milk product in properly designed and operated equipment to one of the temperatures provided in the following table and held continuously at or above that temperature for at least the corresponding specified time.

Temperature	Time
*145 degrees F (63 degrees C)	30 minutes
*161 degrees F (72 degrees C)	15 seconds
191 degrees F (89 degrees C)	1 second
194 degrees F (90 degrees C)	0.5 second
201 degrees F (94 degrees C)	0.1 second
204 degrees F (96 degrees C)	0.05 second
212 degrees F (100 degrees C)	0.01 second

*If the fat content of the milk product is ten percent or more or if it contains added sweeteners, the specified temperature shall be increased by five degrees Fahrenheit (three degrees Celsius).

(14) “Pasteurized” means treated pursuant to the pasteurization process specified in subsection (13) of this section.

(15) “Person” means any individual, firm, association, corporation, or partnership doing business in this state, in whole or in part, and any officer, agent, servant, and employee thereof.

(16) “Producer” means the person who exercises control over the production of the milk delivered to a processing plant or receiving station and who receives payment for this product.

(17) To “sanitize” means to treat a clean surface with any effective method or substance acceptable to the department for the destruction of pathogens and other organisms as far as is practical without adversely affecting the equipment, the milk or milk product, or the health of consumers.

(18) “Standard methods” means the standard methods for the examination of dairy products, 13th edition, 1972, a publication of the American public health association, as amended, supplemented, or republished.

(19) “Test” means the process of determining the milkfat content of milk and milk products for the purpose of buying or selling milk or milk products. All tests shall be conducted and samples shall be collected in accordance with the standard methods specified in subsection (18) of this section or any other method approved by the department.

(20) “Transfer or receiving station” means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another or where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting. The term “transfer or receiving station” shall not include a dairy farm.

Source: **L. 85:** Entire article added, p. 887, § 1, effective April 5. **L. 90:** (4)(b) amended, p. 1319, § 1, effective July 1. **L. 94:** (6) amended, p. 2779, § 490, effective July 1. **L. 2009:** (3) and (4)(b) amended and (20) added, (HB 09-1320), ch. 350, p. 1830, § 1, effective June 30.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (6), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5.5-102. Butter defined - standards. (1) (a) Butter is a food product which is made exclusively from milk, from cream, or from both milk and cream, with or without common salt and with or without additional coloring matter, and which contains not less than eighty percent by weight of milk fat, with all tolerances having been allowed for.

(b) Cream for butter-making shall be pasteurized at a temperature of not less than one hundred sixty-five degrees Fahrenheit and held continuously in a vat at such temperature for not less than thirty minutes or pasteurized by the HTST method at a minimum temperature of not less than one hundred eighty-five degrees Fahrenheit for not less than fifteen seconds or pasteurized by any other equivalent temperature and holding time which will assure adequate pasteurization.

(c) Whipped butter is butter that has been stirred or whipped to incorporate air or inert gas until its volume has been increased up to a range of fifty percent to one hundred percent.

(2) The standards for butter are as follows: The proteolytic count of not more than one hundred per gram, the yeast and mold count of not more than twenty per gram, and the coliform count of not more than ten per gram.

Source: **L. 85:** Entire article added, p. 889, § 1, effective April 5. **L. 2002:** (1)(c) amended, p. 18, § 2, effective August 7.

25-5.5-103. Powers and duties. (1) The department shall cause to be enforced the provisions of this part 1 and all other state laws and regulations regarding the production, manufacture, and sale of dairy products. The department shall inspect or cause to be inspected any milk, butter, or cheese or any other dairy product which it suspects or has reason to believe is unsanitary, adulterated, or counterfeit and shall inspect or cause to be inspected any cow, building, dairy farm, dairy plant, vehicle, or premises used for the production, manufacture, sale, or transportation of any dairy product when it suspects or has reason to believe that such product is unsanitary, adulterated, or counterfeit. Unsanitary or adulterated dairy products shall be subject to condemnation by the department and, when condemned, must be so treated that it cannot be manufactured or renovated for human food.

(2) For the purpose of enforcing this part 1, the department shall have free access to any barn or stable where any cow is kept or milked or to any factory, building, dairy farm, dairy plant, premises, or place in which it has reason to believe that any dairy product or counterfeit dairy product is manufactured, handled, prepared, sold, or offered for sale and may enforce such measures as may be necessary to secure perfect cleanliness in and around the same, and of any utensil used therein, and to prevent the sale of any unsanitary, adulterated, or counterfeit dairy product.

(3) For the purpose of enforcing this part 1, the department may open any package or receptacle of any kind which contains, or which is supposed to contain, any dairy product or counterfeit dairy product and examine or analyze the contents thereof. Any such article or sample thereof may be seized or taken for the purpose of having it analyzed; but, if the person from whom it is taken so requests at the time of taking, the officer shall then, and

in the presence of that person, securely seal two samples of such article, one of which shall be for analysis under the direction of the department and the other for delivery to the person from whom the sample or article was obtained.

Source: L. 85: Entire article added, p. 890, § 1, effective April 5.

25-5.5-104. Unsanitary dairy products. (1) The following types of dairy products are declared to be unsanitary: Milk drawn within eight days before or four days after calving; milk drawn from cows that are kept in barns or stables which are not reasonably well-lighted and well-ventilated or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; milk which is drawn from cows which are themselves filthy or in an unhealthy condition; milk kept or transported in dirty, rusty, or open seamed cans, tanks, or other containers; cream produced from any such milk, or milk, cream, butter, or any other dairy product that is stale or putrid, or milk, cream, butter, or any other dairy product which has been exposed to foul or noxious air or gases in barns occupied by animals or drawn or kept exposed in dirty, foul, or unclean places or under unclean conditions or where transmissible human disease exists; cream containing less than sixteen percent butterfat; cream produced by the use of a cream separator, which separator has not been thoroughly washed, cleansed, and sanitized after previous use in the separation of cream from milk; cream produced by the use of a separator placed or stationed in any unclean or filthy room or place or in any building containing a stable wherein cattle or other animals are kept, unless said cream separator is so separated and shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; cream which when delivered at the point of shipment is more than three days old during the months of May to October inclusive or more than four days old during the months of November to April inclusive; milk or cream to which has been added, in any quantity, any foreign substance or coloring matter, chemical or preservative, or butter or butterfat, whether for the purpose of increasing the quantity of milk or for preserving the condition of sweetness thereof or for any purpose whatever.

(2) Nothing in this part 1 shall be construed to prohibit the sale of homogenized cream made from butter and milk, if such product is labeled or stamped as imitation cream according to the requirements of the department, or the sale of standardized milk which otherwise meets with the requirements of this part 1.

(3) No person shall sell or offer for sale, or furnish or deliver or have in his possession or under his control with intent to sell or offer for sale, or furnish or deliver to any other person as food for man or to any creamery, cheese factory, milk-condensing factory, or milk or cream dealer any unsanitary milk, cream, or butter or any adulterated dairy product.

(4) No person shall manufacture for sale any article of food for man from any unsanitary milk or from any unsanitary cream.

Source: L. 85: Entire article added, p. 890, § 1, effective April 5.

25-5.5-105. Unsanitary utensils, equipment, and premises - prohibited. It is unlawful for any person using such premises, equipment, or utensils, or causing them to be used, to maintain them in an unsanitary condition.

Source: L. 85: Entire article added, p. 891, § 1, effective April 5.

25-5.5-106. Containers of dairy products - prompt delivery - removal of products. Any person who receives in cans, tanks, or other containers any milk, cream, or other dairy products intended as food for man which has been transported by any private or common carrier, when such cans, tanks, or containers are to be returned, shall cause the said cans, tanks, or other containers to be thoroughly washed, cleansed, and sanitized before return shipment. It is unlawful for any common or private carrier to neglect or fail to remove or ship from any transportation facility, on the day of its arrival there for shipment, any milk,

cream, or other dairy products left at such facility for transportation unless a refrigerated facility is provided for holding such products. It is unlawful for any person, firm, or corporation using cans, tanks, or other containers in which milk or cream is shipped to allow the same to remain at a transportation facility longer than one day from the date of their arrival unless such product is maintained in a refrigerated facility at a temperature not exceeding forty-five degrees Fahrenheit.

Source: L. 85: Entire article added, p. 891, § 1, effective April 5.

25-5.5-107. Testing and sampling of dairy products - unlawful acts - licensing - dairy protection cash fund - created. (1) It is unlawful for any person engaged in buying, selling, testing, or handling, or engaged in determining the value of, milk, cream, or any other dairy product by the use of an approved test to give, by himself or his agent, any false reading of the test, or to manipulate the test in any way so as to give a higher or lower percent of butterfat than the milk, cream, or other dairy product actually contains, or to cause any inaccuracy in reading the percent of butterfat by securing from any quantity of the milk, cream, or other dairy product to be tested an inaccurate sample for the test. It is unlawful for any person to use any test tube, bottle, pipette, or instrument in connection with such test which is not perfectly clean; and any such unclean glassware is declared to be inaccurate.

(2) It is unlawful for any person to sample or test milk, cream, or any other dairy product to determine the value of such product when bought and sold or to instruct another person for such purpose without first having a license granted by the department, which license shall be conspicuously displayed in the person's place of business. Licenses shall be granted to those persons who have completed a course in milk and cream testing in any recognized college or dairy school or to those persons who have passed a satisfactory examination under the direction of the department. Payment of a yearly fee of fifty dollars is required, and the license shall be issued for a period of one year from the July 1 next preceding the actual date of issue; however, the license shall be subject to cancellation by the department at any time if it finds that the person holding the license is incompetent or guilty of violating this part 1.

(3) Every person engaged in receiving, buying, selling, or otherwise handling milk or cream for sale, shipment, manufacture, or distribution, except public transportation companies, is required to hold a license to be known as a dairy plant license for the operation of each receiving station, skimming station, concentrating station, milk plant condensary, creamery, cheese factory, ice-cream factory, or other dairy plant being so operated.

(4) (a) (I) A temporary permit to operate the following dairy plants may be issued by the department upon application and upon the payment of a yearly license fee in the amount specified in subparagraph (II) of this paragraph (a) for each condensary, cheese factory, ice-cream factory, or other place of business where dairy products are manufactured or put in containers for sale or distribution.

(II) Except for a transfer or receiving station, which shall be charged the fee set forth in sub-subparagraph (A) of this subparagraph (II), the fee for a license issued under this subsection (4) shall be determined and paid according to the annual average daily amount of milk received for manufacturing by the dairy plant, as follows:

Annual average daily amount of milk received	Fee
(A) Under 1,000 pounds	\$ 300
(B) 1,000 to 19,999 pounds	\$ 600
(C) 20,000 to 449,999 pounds	\$1,000
(D) 450,000 or more pounds	\$1,600

(b) A temporary permit is valid until an inspection has been made by an agent of the department; whereupon, if the applicant has complied with the requirements of the dairy laws, the department shall issue a license for a period of one year from the July 1 next preceding the actual date of issue.

(5) The department has the power to issue necessary regulations for the government of licensed dairy plants and licensed milk samplers covering such points as disposal of sewage, location with regard to living rooms and other possible sources of contamination, and other points not specifically mentioned in the dairy laws.

(6) These regulations shall have the force and effect of law, and the department has the power to cancel a license for a period not exceeding ninety days when it finds that the holder thereof has violated the law or regulations. Suit may be brought against the state to establish the reasonableness of a regulation, and, if the decision affirms the reasonableness of the regulation, it shall be enforced.

(7) All moneys collected by the department for the license fees provided for in this section shall be transmitted to the state treasurer, who shall credit the same to the dairy protection cash fund, referred to in this subsection (7) as the "fund", which is hereby created in the state treasury. The general assembly shall annually appropriate the moneys in the fund to the department for the payment of expenses necessary to administer this section. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall not revert to the general fund or any other fund.

Source: L. 85: Entire article added, p. 892, § 1, effective April 5. **L. 2009:** (2), (4)(a), and (7) amended, (HB 09-1320), ch. 350, p. 1831, § 2, effective June 30.

25-5.5-108. Condensed milk and cream. (1) No person shall manufacture for sale within this state or offer or expose for sale or have in his possession with intent to sell or exchange any sweetened condensed milk, unless the same contains not less than twenty-eight percent by weight of milk solids and not less than seven and five-tenths percent butterfat, or any unsweetened condensed milk, unless the same contains not less than seven and five-tenths percent butterfat. Nothing in this part 1 shall be construed to prohibit the handling, manufacture, or sale of bulk condensed or evaporated skim milk when properly tagged and labeled in accordance with rulings of the department.

(2) No person shall manufacture for sale within this state or offer or expose for sale, have in his possession with intent to sell, or sell or exchange for evaporated or condensed cream any substance except the product obtained by the evaporation of a portion of water from cream containing not less than eighteen percent by weight of butterfat. Nothing in this part 1 shall apply to goods manufactured within this state for sale and shipment outside of the state.

Source: L. 85: Entire article added, p. 893, § 1, effective April 5.

25-5.5-109. Brands and marks - defacement. (1) Any person engaged in the transportation or manufacture of any dairy product or ice cream or in bottling milk and cream for sale and use may adopt a brand or mark of ownership to be stamped or marked on any can, bottle, or other receptacle used in the handling and transportation of any of said products and may file in the office of the secretary of state a description of the brand or mark so used by them and the use to be made of any such can, bottle, or other receptacle. The brand or mark so selected and adopted may consist of a name, design, or mark or some particular color of paint or enamel used upon the can, bottle, or other receptacle or any part thereof.

(2) It is unlawful for any person to adopt or use any brand or mark which has already been designed, appropriated, or obtained under the provisions of this section. It is unlawful for any person, other than the rightful owner thereof, to use any can, bottle, or other receptacle marked or branded for any purpose or for the transportation or handling of any other article or dairy product than the one designed or provided for by such brand or mark. It is unlawful for any person, other than the rightful owner thereof, to deface or remove any such brand or mark put upon any such can, bottle, or other receptacle.

(3) To prevent the use of said cans, bottles, or other receptacles for any purpose other than those provided for in this part 1 and to insure the wholesomeness and high quality of

the dairy products and the sanitary conditions of the receptacles in which the same are transported, it is the duty of the department to enforce the provisions of this section.

Source: L. 85: Entire article added, p. 893, § 1, effective April 5.

25-5.5-110. Milk, cream, and cheese - standards. (1) Whole milk sold or offered for retail sale shall contain not less than three and one-fourth percent butterfat. Cream for the same use shall contain not less than eighteen percent butterfat.

(2) Full cream cheese shall contain not less than fifty percent butterfat in comparison with the total solids. Cheese containing less than the said amount of fat shall be branded "skim" cheese or "part skim" cheese, as the case may be.

Source: L. 85: Entire article added, p. 893, § 1, effective April 5.

25-5.5-111. Treated milk to be labeled. It is unlawful for any milk or cream to be sold or offered for sale which has been homogenized, viscolized, emulsified, or treated in any manner which will give it the appearance of containing more butterfat than it actually contains, unless it is so labeled as such.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-112. Weight ticket to be furnished. An itemized daily weight ticket covering every shipment of milk or cream shall be furnished with each settlement to the producer or his agent.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-113. Sample taken upon arrival. At any plant where a bacterial test is used as a basis of price-fixing, the sample for such test shall be taken at the dairy farm or immediately upon arrival of the milk at the receiving plant.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-114. Interference with officer - penalty. Any person who refuses to allow the inspections provided for in this part 1 or in any way hinders or obstructs the proper officers from performing their duties under this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-115. Analyses prima facie evidence. Reports of analyses and tests signed by the department shall be accepted in all courts and places as prima facie evidence of the properties, constituency, or condition of the article analyzed.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-116. Penalty. Any person or any agent or servant thereof who violates any of the provisions of this part 1, if the punishment for the violation is not elsewhere prescribed in this part 1, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than two hundred dollars and by imprisonment in the county jail for not more than sixty days for each such offense.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-117. Raw milk. (1) The acquisition of raw milk from cows or goats by a consumer for use or consumption by the consumer shall not constitute the sale of raw milk and shall not be prohibited if all of the following conditions are met:

(a) The owner of a cow, goat, cow shares, or goat shares shall receive raw milk directly from the farm or dairy where the cow, goat, or dairy herd is located and the farm or dairy is registered pursuant to subsection (2) of this section. A person who is the owner of a cow share or goat share in a cow, goat, or dairy herd may receive raw milk on behalf of another owner of the same cow, goat, or dairy herd. A person who is not an owner of a cow share or goat share in the same cow, goat, or dairy herd shall not receive raw milk on behalf of the owner of a cow share or goat share.

(b) The milk is obtained pursuant to a cow share or a goat share. A cow share or a goat share is an undivided interest in a cow, goat, or herd of cows or goats, created by a written contractual relationship between a consumer and a farmer that includes a legal bill of sale to the consumer for an interest in the cow, goat, or dairy herd and a boarding contract under which the consumer boards the cow, goat, or dairy herd in which the consumer has an interest with the farmer for care and milking, and under which the consumer is entitled to receive a share of milk from the cow, goat, or dairy herd.

(c) A prominent warning statement that the milk is not pasteurized is delivered to the consumer with the milk or is displayed on a label affixed to the milk container; and

(d) Information describing the standards used by the farm or dairy with respect to herd health, and in the production of milk from the herd, is provided to the consumer by the farmer together with results of tests performed on the cows or goats that produced the milk, tests performed on the milk, and an explanation of the tests and test results.

(2) Registration of a farm or dairy as required by paragraph (a) of subsection (1) of this section shall be accomplished by delivering to the Colorado department of public health and environment a written statement containing:

(a) The name of the farmer, farm, or dairy;

(b) A valid, current address of the farmer, farm, or dairy; and

(c) A statement that raw milk is being produced at the farm or dairy.

(3) Retail sales of raw, unpasteurized milk shall not be allowed. Resale of raw milk obtained from a cow share or goat share is strictly prohibited. Raw milk that is not intended for pasteurization shall not be sold to, or offered for sale at, farmers' markets, educational institutions, health care facilities, nursing homes, governmental organizations, or any food establishment.

(4) No person who, as a consumer, obtains raw milk in accordance with this section shall be entitled to sell or redistribute the milk.

(5) No producer of raw milk shall publish any statement that implies approval or endorsement by the Colorado department of public health and environment.

Source: L. 2005: Entire section added, p. 365, § 1, effective April 22.

PART 2

IMITATION DAIRY PRODUCTS

25-5.5-201. Short title. This part 2 shall be known and may be cited as the "Colorado Imitation Dairy Products Act".

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-202. Purpose. (1) The purpose of this part 2 is to prevent fraud in sales and to protect the public health by informing the public of the ingredients making up imitation dairy products.

(2) Even though imitation dairy products are manufactured and sold on the basis of reduced costs to the consumer and certain nutritional advantages of some or all of the ingredients, they should be sampled and inspected on the same basis as the product imitated for sanitary quality and composition.

Source: L. 85: Entire article added, p. 894, § 1, effective April 5.

25-5.5-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Department" means the department of public health and environment or its authorized representative.

(2) (a) "Imitation dairy product" means any milk, cream, skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom to which is added, or which is blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped or whipping cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice-cream mix, sherbet or other frozen desserts, condensed milk, evaporated milk, or concentrated milk. "Imitation dairy product" also means any food product that does not contain milk or dairy products but which is made in imitation or semblance of any milk or dairy product defined in part 1 of this article and, on the basis of its appearance, flavor, and texture, closely resembles such product.

(b) "Imitation dairy product" does not mean or include:

(I) Any distinctive proprietary food compound not readily mistaken for a dairy product, if such product is customarily used on the order or prescription of a physician, is prepared or designed for medicinal or special dietary use, and is prominently so labeled;

(II) Any dairy product which is flavored with chocolate or cocoa, or the vitamin content of which has been increased, or which is both so flavored and which contains such increased vitamin content, if the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, in no event in excess of one-hundredth of one percent of the weight of the finished product, is used as a carrier of such vitamins; or

(III) Oleomargarine.

(3) "Person" includes an individual, firm, partnership, association, trust, estate, and corporation, any other business unit, device, arrangement, or organization, and any officer, agent, servant, and employee thereof.

Source: L. 85: Entire article added, p. 895, § 1, effective April 5. L. 94: (1) amended, p. 2780, § 491, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5.5-204. Imitation dairy products - labeling. (1) It is unlawful for a person to manufacture, sell, or exchange, to offer for sale or exchange, or to transport or possess any imitation dairy product unless the imitation dairy product is properly labeled, branded, or otherwise marked for identification. The department is authorized to evaluate and rule upon compliance with this requirement.

(2) Ingredients shall be listed by the common or usual name in the order of descending predominance. The declaration shall be presented on any appropriate information panel in adequate type size without obscuring design or vignettes and without crowding. The entire ingredient statement shall appear on a single panel of the label.

Source: L. 85: Entire article added, p. 895, § 1, effective April 5.

25-5.5-205. Enforcement and power - rules. (1) The department is authorized to administer and supervise the enforcement of this part 2. To this end, the department shall:

(a) Provide for and have complete power to make such periodic inspections and investigations as may be deemed necessary to disclose violations of this part 2;

(b) Receive and provide for the investigation of complaints of violations of this part 2;

(c) To carry out the terms and provisions of this part 2, have the power to promulgate rules and regulations for the enforcement of this part 2, not inconsistent with or violative of the terms and provisions thereof, and to publish the same.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

Cross references: For rule-making procedures, see article 4 of title 24.

25-5.5-206. Enforcement by injunction. The provisions of this part 2 may be enforced by injunction in any court having jurisdiction to grant injunctive relief at the suit and upon the petition of the department or any other person, and it shall not be requisite in such action for an injunction that the plaintiff plead, prove, or show pecuniary loss, damage, or injury or personal damage or injury.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

25-5.5-207. Subpoena of defendant. Any defendant, in an action brought under the provisions of section 25-5.5-205, may be required to testify under a subpoena duly issued or in pursuance of the Colorado rules of civil procedure; and the books and records of any such defendant may be brought into court and introduced into evidence; but no information so obtained may be used against the defendant as the basis for a misdemeanor prosecution under the provisions of this part 2.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

Cross references: For the procedure concerning subpoenas, see C.R.C.P. 45.

25-5.5-208. Seizure of products. Imitation dairy products illegally held or otherwise involved in a violation of this part 2 shall be subject to seizure and disposition in accordance with an appropriate order of court.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

25-5.5-209. Penalty. Any person who violates any of the provisions of this part 2 or who directs or knowingly permits such violation or aids or assists therein is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

PART 3

FROZEN DESSERTS

25-5.5-301. Short title. This part 3 shall be known and may be cited as the “Colorado Frozen Desserts Act”.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5.

25-5.5-302. Definitions. As used in this part 3, unless the context otherwise requires:

- (1) “Confectionery” means candy, cakes, cookies, and glazed fruit.
- (2) “Department” means the department of public health and environment or its authorized representative.

(3) "Mix" means the pasteurized unfrozen combination of all ingredients of a frozen dairy dessert with or without fruits, fruit juices, chocolate, cocoa, confectionery, nut meats, flavor, or harmless color.

Source: L. 85: Entire article added, p. 896, § 1, effective April 5. L. 94: (2) amended, p. 2780, § 492, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-5.5-303. Ice cream - standards. (1) Ice cream is a food which is prepared by freezing or partially freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (2) of this section, which is sweetened with one or more of the optional sweetening ingredients specified in subsection (3) of this section, and which is flavored with one or more of the optional flavoring ingredients specified in subsection (4) of this section. One or more of the optional egg ingredients specified in subsection (5) of this section, one or more of the optional stabilizing ingredients specified in subsection (6) of this section, and one or more of the optional pH adjusting and protein stabilizing ingredients specified in subsection (7) of this section may be used, subject to the conditions set forth in subsections (5), (6), and (7) of this section. Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. Water may be added. The kind and quantity of optional dairy ingredients used and the content of milk fat and total milk solids shall be such that the weights of milk fat and total milk solids are not less than ten percent and twenty percent respectively of the weight of the finished ice cream; but, when one or more of the optional flavoring ingredients specified in paragraphs (d) to (k) of subsection (4) of this section are used, then the weights of milk fat and total milk solids shall not be less than ten percent and twenty percent respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in paragraphs (d) to (k) of subsection (4) of this section, but in no case shall it contain less than eight percent of milk fat nor less than eighteen percent of total milk solids. Ice cream shall contain not less than one and six-tenths pounds of total food solids per gallon and shall weigh not less than four and one-half pounds per gallon.

(2) The optional dairy ingredients referred to in subsection (1) of this section are cream, dried cream, butter, butter oil, concentrated milk fat, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, nonfat dry milk solids, liquid or condensed or dried sweet cream buttermilk, or dried whey solids or any of such products from which all or a portion of the lactose has been removed by crystallization or the lactose has been converted to simple sugars by hydrolysis if such products are approved as suitable optional dairy ingredients by the department. Citric acid, ascorbic acid, lecithin, tocopherols, or other harmless optional ingredients, which are approved by the department for the purpose of preventing fat oxidation in any of such optional dairy ingredients, may be added in amounts not to exceed five-thousandths of one percent of the weight of the butterfat present in such dairy ingredients.

(3) The optional sweetening ingredients referred to in subsection (1) of this section are sugar (sucrose), sugar syrup, dextrose, invert sugar (paste or syrup), lactose, corn sugar, dried or liquid corn syrup, glucose syrup, maple syrup, maple sugar, honey, brown sugar, maltose syrup, malt syrup, dried malt syrup, dried maltose syrup, malt extracts in liquid or dried form, refiners' syrup, and molasses other than blackstrap.

(4) The optional flavoring ingredients referred to in subsection (1) of this section are:

(a) Harmless natural food flavoring, including, but not limited to, ground spice, ground vanilla beans, and infusion of coffee or tea;

(b) Harmless artificial food flavoring;

(c) Fruit juice, which may be fresh, frozen, canned, concentrated, or dried and which may be sweetened and thickened with one or more of the optional stabilizing ingredients specified in subsection (6) of this section;

(d) Chocolate;

(e) Cocoa;

(f) Fruit, including cocoanut, which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted, or dried and which may be sweetened, thickened with stabilizer, and acidulated with citric, tartaric, malic, lactic, or ascorbic acid;

(g) Nut meats;

(h) Confectionery;

(i) Malted milk;

(j) Properly prepared and cooked cereal;

(k) Any distilled alcoholic beverage, including a liqueur, or any wine or any mixture of two or more thereof.

(5) The optional egg ingredients referred to in subsection (1) of this section are liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, and dried yolks; but the total weight of egg yolk solids in any of such ingredients used singly or used in any combination of two or more of such ingredients shall be less than the minimum prescribed in section 25-5.5-304 for French ice cream.

(6) The optional stabilizing ingredients specified in subsection (1) of this section are gelatin, algin, sodium carboxymethylcellulose, extract of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, oat gum, guar seed gum, calcium sulfate, monoglycerides or diglycerides or both of fat forming fatty acids except lauric acid, or other harmless stabilizers or emulsifiers (surface active agents) approved by the department; but the total weight of the active material contained in the solids of any of such ingredients used singly or used in any combination of two or more of such ingredients shall not be more than one-half of one percent of the weight of the finished ice cream.

(7) (a) The following optional harmless ingredients or combinations thereof may be added to control viscosity, adjust protein stability, and adjust the pH of the combined mix ingredients:

(I) Neutralizers which are approved by the department;

(II) Sodium citrate;

(III) Sodium phosphates.

(b) The total of ingredients included in subparagraph (I) of paragraph (a) of this subsection (7) shall not exceed one-tenth of one percent by weight of the finished mix; nor shall the weight of ingredients included in subparagraphs (II) and (III) of paragraph (a) of this subsection (7) exceed two-tenths of one percent by weight of the finished mix.

(8) It is further provided that the percentage of developed lactic acid in the mix prior to the addition of the optional ingredients listed in subsections (6) and (7) of this section shall not exceed three-thousandths of one percent by weight for each one percent of milk-solids-non-fat present in the mix.

Source: L. 85: Entire article added, p. 897, § 1, effective April 5.

25-5.5-304. French ice cream and custards - standards. French ice cream, frozen custard, and French custard ice cream shall conform to the definition and standard of identity prescribed for ice cream by section 25-5.5-303 if one or more of the optional egg ingredients permitted by section 25-5.5-303 are used in such quantity that the total weight of egg yolk solids therein is not less than one and four-tenths percent of the weight of the finished French ice cream, except when any of the optional flavoring ingredients specified in section 25-5.5-303 (4) (d) to (4) (k) is used, in which case the weight of egg yolk solids shall not be less than one and twelve-hundredths percent of the weight of the finished French ice cream.

Source: L. 85: Entire article added, p. 899, § 1, effective April 5.

25-5.5-305. Ice milk - standards. Ice milk shall conform in all respects to the definition and standard of identity for ice cream prescribed in section 25-5.5-303; except that it shall contain not less than two percent nor more than seven percent of milk fat, not less than eleven percent of total milk solids, and not less than one and three-tenths pounds of food solids per gallon. When ice milk is packaged in containers of greater than one-half gallon capacity, it shall not contain color or any of the optional flavoring ingredients specified in section 25-5.5-303 (4).

Source: L. 85: Entire article added, p. 899, § 1, effective April 5.

25-5.5-305.5. Low-fat frozen dairy dessert - standards. Low-fat frozen dairy dessert shall conform in all respects to the definition and standard of identity for ice cream prescribed in section 25-5.5-303; except that it shall contain not less than one and five-tenths percent nor more than one and nine-tenths percent of milk fat and not less than twelve percent total milk-solids-non-fat and except that it shall contain not less than one and three-tenths pounds of food solids per gallon.

Source: L. 86: Entire section added, p. 979, § 1, effective April 5.

25-5.5-306. Sherbet - standards. Sherbet is the food prepared by freezing or partially freezing, while stirring, a pasteurized mix composed of one or a combination of the optional dairy ingredients specified in section 25-5.5-303 (2), one or more of the optional sweetening ingredients specified in section 25-5.5-303 (3), fruit, fruit juice, or flavoring as provided in this section. It may contain one or more of the optional stabilizing ingredients specified in section 25-5.5-303 (6) or pectin if the weight of such stabilizer is not more than one-half of one percent of the weight of the finished sherbet. The kind and quantity of optional dairy ingredients used is such that the total milk solids content is not more than five percent by weight of the finished sherbet and the milk fat content is not more than two percent nor less than one percent by weight of the finished sherbet. It shall contain fruit or fruit juice, as described in section 25-5.5-303 (4) (c) and (4) (f), and may contain natural food flavoring. It may contain citric, tartaric, malic, lactic, or ascorbic acid. The acidity of the finished sherbet shall be not less than thirty-five hundredths of one percent of acid as determined by titrating with standard alkali and expressed as lactic acid. It may contain the optional egg ingredients specified in section 25-5.5-303 (5) in amounts not to exceed one-half of one percent of the weight of the finished sherbet. Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. It shall weigh not less than six pounds per gallon.

Source: L. 85: Entire article added, p. 899, § 1, effective April 5.

25-5.5-307. Water ice - standards. Water ice conforms in all respects to the definition and standard of identity for sherbet prescribed in section 25-5.5-306; except that the mix need not be pasteurized and, since it does not contain any of the optional dairy ingredients, it does not meet the provision respecting total milk solids and butterfat.

Source: L. 85: Entire article added, p. 900, § 1, effective April 5.

25-5.5-308. Adulterated and misbranded - when. Any food product which is made in semblance of or in imitation of any food for which a definition and standard of identity is established in sections 25-5.5-303 to 25-5.5-307 or any food which purports to be or is represented as a food for which a definition and standard of identity is established in said sections shall be deemed to be adulterated and misbranded if such food does not conform to such standard, notwithstanding the employment of any fanciful name or the use of the word "imitation" to designate the product.

Source: L. 85: Entire article added, p. 900, § 1, effective April 5.

25-5.5-309. Administration and enforcement. The department is authorized to administer and supervise the enforcement of this part 3; to provide for such periodic inspections and investigations as may be deemed necessary to disclose violations; to collect samples of optional ingredients, mixes, and finished products for analysis; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil actions. The provisions of this part 3 and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated or misbranded articles illegally held or otherwise involved in a violation of this part 3 or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

Source: L. 85: Entire article added, p. 900, § 1, effective April 5.

25-5.5-310. Regulations. Whenever, in the judgment of the department, such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing, for any class of frozen desserts, a reasonable definition and standard of identity. The department may, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate harmless optional ingredients which may be used in a mix as permitted by this part 3 but which may not have been specifically identified in this part 3 by any chemical or trade name.

Source: L. 85: Entire article added, p. 900, § 1, effective April 5.

25-5.5-311. Products detained or embargoed - when. Whenever any duly authorized agent of the department finds or has probable cause to believe that any frozen dessert specified in this part 3 is adulterated or misbranded within the meaning of this part 3, he shall affix to such product container a tag or other appropriate marking, giving notice that such frozen dessert is or is suspected of being adulterated or misbranded and that it is being detained or embargoed and warning all persons not to remove or dispose of such product by sale or otherwise until provision for removal or disposal is given by the department. No person shall remove or dispose of such embargoed product by sale or otherwise without permission of the department or its agent or, after summary proceedings have been instituted, without permission from the court having jurisdiction. If the embargo is removed by the department or by the court, neither the department nor the state shall be held liable for damages because of such embargo in the event that the court finds that there was probable cause for the embargo.

Source: L. 85: Entire article added, p. 900, § 1, effective April 5.

25-5.5-312. Violations - penalty. Any person, firm, or corporation that willfully violates any of the provisions of this part 3 and any officer, agent, or employee thereof who directs or knowingly permits such violation or who aids or assists therein is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: L. 85: Entire article added, p. 901, § 1, effective April 5.

FAMILY PLANNING

ARTICLE 6

Family Planning

PART 1

FAMILY PLANNING

- 25-6-101. Legislative declaration.
- 25-6-102. Policy, authority, and prohibitions against restrictions.
- 25-6-103. Department of public health and environment - powers and duties.

- 25-6-202. strued.
Services to be offered by the county.
- 25-6-203. Extent of services.
- 25-6-204. Counties may charge for services.
- 25-6-205. Services may be refused.
- 25-6-206. Interviews conducted in language recipient understands.
- 25-6-207. County employee exemption.

PART 2

FAMILY PLANNING AND BIRTH CONTROL

- 25-6-201. This part 2 to be liberally con-

PART 3

BREAST-FEEDING

- 25-6-301. Legislative declaration.
- 25-6-302. Breast-feeding.

PART 1

FAMILY PLANNING

25-6-101. Legislative declaration. (1) Continuing population growth either causes or aggravates many social, economic, and environmental problems, both in this state and in the nation.

(2) Contraceptive procedures, supplies, and information are not available as a practical matter to many persons in this state.

(3) It is desirable that inhibitions and restrictions be eliminated so that all persons desiring contraceptive procedures, supplies, and information shall have ready and practicable access thereto.

(4) Section 25-6-102 sets forth the policy and authority of this state, its political subdivisions, and all agencies and institutions thereof, including prohibitions against restrictions with respect to contraceptive procedures, supplies, and information.

Source: L. 71: p. 638, § 1. C.R.S. 1963: § 66-32-1.

25-6-102. Policy, authority, and prohibitions against restrictions. (1) All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each person desirous of the same regardless of sex, sexual orientation, race, color, creed, religion, disability, age, income, number of children, marital status, citizenship, national origin, ancestry, or motive.

(2) Medical evaluation and advice is encouraged for all persons seeking any contraceptive procedures, supplies, and information.

(3) No hospital, clinic, medical center, institution, or pharmacy shall subject any person to any standard or requirement as a prerequisite for any contraceptive procedures, supplies, or information, including sterilization, other than referral to a physician.

(4) No hospital, clinic, medical center, or pharmacy licensed in this state, nor any agency or institution of this state, nor any unit of local government shall have any policy which interferes with either the physician-patient relationship or any physician or patient desiring to use any medically acceptable contraceptive procedures, supplies, or information.

(5) Contraceptive procedures, including medical procedures for permanent sterilization, when performed by a physician on a requesting and consenting patient, are consistent with public policy.

(6) Notwithstanding any other provision of this part 1, no unmarried person under eighteen years of age may consent to permanent sterilization procedures without the consent of parent or guardian.

(7) Nothing in this part 1 shall inhibit a physician from refusing to furnish any contraceptive procedures, supplies, or information for medical reasons.

(8) Dissemination of medically acceptable contraceptive information by duly authorized persons at schools, in state, district, and county health and welfare departments or public health agencies, in medical facilities at institutions of higher education, and at other agencies and instrumentalities of this state is consistent with public policy.

(9) No private institution or physician, nor any agent or employee of such institution or physician, shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when such refusal is based upon religious or conscientious objection, and no such institution, employee, agent, or physician shall be held liable for such refusal.

(10) To the extent family planning funds are available, each agency and institution of this state and each of its political subdivisions shall provide contraceptive procedures, supplies, and information, including permanent sterilization procedures, to indigent persons free of charge and to other persons at cost.

Source: L. 71: p. 638, § 1. C.R.S. 1963: § 66-32-2. L. 2008: (1) amended, p. 1603, § 30, effective May 29. L. 2010: (8) amended, (HB 10-1422), ch. 419, p. 2102, § 115, effective August 11.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

25-6-103. Department of public health and environment - powers and duties. The department of public health and environment is authorized to receive and disburse such funds as may become available to it for family planning programs to any organization, public or private, engaged in providing contraceptive procedures, supplies, and information. Any family planning program administered by the department of public health and environment shall be developed in consultation and coordination with other family planning agencies in this state, including but not limited to the department of human services.

Source: L. 71: p. 639, § 1. C.R.S. 1963: § 66-32-3. L. 94: Entire section amended, p. 2780, § 493, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 2

FAMILY PLANNING AND BIRTH CONTROL

25-6-201. This part 2 to be liberally construed. This part 2 shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs, to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to insure a complete freedom of choice in pursuance of constitutional rights.

Source: L. 65: p. 464, § 1. C.R.S. 1963: § 36-20-7.

25-6-202. Services to be offered by the county. The governing body of each county and each city and county or any county or district public health agency thereof or any welfare department thereof may provide and pay for, and each county and each city and county or any public health agency or county or district public health agency thereof or any welfare department thereof may offer, family planning and birth control services to every parent who is a public assistance recipient and to any other parent or married person who might have interest in, and benefit from, such services; except that no county or city and county or public health agency thereof is required by this section to seek out such persons.

Source: L. 65: p. 463, § 1. C.R.S. 1963: § 36-20-1. L. 2010: Entire section amended, (HB 10-1422), ch. 419, p. 2103, § 116, effective August 11.

25-6-203. Extent of services. Family planning and birth control services shall include: Interview with trained personnel; distribution of literature; referral to a licensed physician or advanced practice nurse for consultation, examination, tests, medical treatment, and prescription; and, to the extent so prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices, and similar products.

Source: L. 65: p. 463, § 1. C.R.S. 1963: § 36-20-2. L. 2008: Entire section amended, p. 133, § 20, effective January 1, 2009.

25-6-204. Counties may charge for services. The governmental unit making provision for and offering such services may charge those persons to whom family planning and birth control services are rendered a fee sufficient to reimburse the county or city and county all or any portion of the costs of the services rendered.

Source: L. 65: p. 464, § 1. C.R.S. 1963: § 36-20-3.

25-6-205. Services may be refused. The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or to avail himself of any other public benefit, and every person to whom such services are offered shall be so advised initially both orally and in writing. County and city and county employees engaged in the administration of this part 2 shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual, and nothing in this part 2 shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family planning and birth control services.

Source: L. 65: p. 464, § 1. C.R.S. 1963: § 36-20-4.

25-6-206. Interviews conducted in language recipient understands. In all cases where the recipient does not speak or read the English language, the services shall not be given unless the interviews are conducted and all literature is written in a language which the recipient understands.

Source: L. 65: p. 464, § 1. C.R.S. 1963: § 36-20-5.

25-6-207. County employee exemption. Any county employee or city and county employee may refuse to accept the duty of offering family planning and birth control services to the extent that such duty is contrary to his personal religious beliefs, and such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in his employment, for suspension from employment with the county or city and county, or for any loss in pay or other benefits.

Source: L. 65: p. 464, § 1. C.R.S. 1963: § 36-20-6.

PART 3

BREAST-FEEDING

25-6-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The American academy of pediatrics recommends breast-feeding exclusively for the first six months of an infant's life but continuing with other forms of nutrition for at least the first twelve months of an infant's life and as long thereafter as is mutually desired.

(b) The American academy of pediatrics has continuously endorsed breast-feeding as the optimal form of nutrition for infants and as a foundation for good feeding practices. Extensive research indicates that there are diverse and compelling advantages to breast-feeding for infants, mothers, families, and society.

(c) Epidemiologic research shows that breast-feeding of infants provides benefits to their general health, growth, and development and results in significant decreases in risk for numerous acute and chronic diseases.

(d) Research in developed countries provides strong evidence that breast-feeding decreases the incidence and severity of diarrhea, lower respiratory infection, otitis media, and urinary tract infection.

(e) Research studies have also shown that human milk and breast-feeding have possible protective effects against the development of a number of chronic diseases, including allergic diseases and some chronic digestive diseases. In addition, human milk and breast-feeding may prevent obesity.

(f) In addition, breast-feeding has been related to the possible enhancement of cognitive development.

(g) Breast-feeding has been shown to have numerous health benefits for mothers, including an earlier return to prepregnant weight, delayed resumption of ovulation with increased child spacing, improved bone remineralization postpartum with reduction in hip fractures in the postmenopausal period, and reduced risk of ovarian cancer and premenopausal breast cancer, as well as increased levels of oxytocin, resulting in less postpartum bleeding and more rapid uterine involution.

(h) In addition to individual health benefits, breast-feeding results in substantial benefits to society, including reduced health care costs, reduced environmental damage, reduced governmental spending on the women, infants, and children supplementary feeding programs, and reduced employee absenteeism for care attributable to infant illness.

(i) Breast-feeding is a basic and important act of nurturing that should be encouraged in the interests of maternal and infant health.

(2) The general assembly further declares that the purpose of this part 3 is for the state of Colorado to become involved in the national movement to recognize the medical importance of breast-feeding, within the scope of complete pediatric care, and to encourage removal of societal boundaries placed on breast-feeding in public.

Source: L. 2004: Entire part added, p. 596, § 1, effective April 23.

25-6-302. Breast-feeding. A mother may breast-feed in any place she has a right to be.

Source: L. 2004: Entire part added, p. 597, § 1, effective April 23.

ENVIRONMENTAL CONTROL

ARTICLE 6.5

Environmental Control

Law reviews: For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995).

PART 1

PROVISIONS FOR RULES AND
REGULATIONS CONCERNING
ENVIRONMENTAL CONTROL

- 25-6.5-101. Legislative declaration.
25-6.5-102. Requirements for environmen-
tal rules - publication.

PART 2

POLLUTION CONTROL EQUIPMENT
CERTIFICATION

- 25-6.5-201. Definitions.
25-6.5-202. Certification of pollution con-
trol equipment.
25-6.5-203. Pollution control equipment
certification fund - creation -
purpose.

PART 1

PROVISIONS FOR RULES AND REGULATIONS CONCERNING
ENVIRONMENTAL CONTROL

25-6.5-101. Legislative declaration. (1) The general assembly hereby finds and determines that the protection of the natural environment of this state is important to the public health and welfare of the citizens of Colorado.

(2) The general assembly further finds and determines that the environmental laws of this state relating to air quality control in article 7 of this title, water quality control in article 8 of this title, hazardous waste in article 15 of this title, and solid waste in article 20 of title 30, C.R.S., may be highly technical, complex, and subject to varying interpretation.

(3) The general assembly, therefore, declares that the provisions of this article are enacted to enhance public notice and awareness of rules, regulations, and interpretations of the environmental laws of this state and to ensure public confidence in the fairness of the enforcement of any agency requirements.

Source: L. 94: Entire article added, p. 1363, § 1, effective July 1.

25-6.5-102. Requirements for environmental rules - publication. (1) All agency policies and guidance, including any amendments or revisions thereto, relating to the implementation, administration, and enforcement of article 7, 8, 11, or 15 of this title, article 20.5 of title 8, C.R.S., or article 20 of title 30, C.R.S., except for policies relating to personnel or other internal administrative matters not directly related to enforceable requirements under such articles, shall be reduced to writing and published. Three copies shall be filed with the state librarian for the state publications depository and distribution center. Copies of each such policy or guidance issued under article 7, 8, 11, or 15 of this title, article 20.5 of title 8, C.R.S., or article 20 of title 30, C.R.S., shall be made available to the public upon request. Interpretive rules issued under article 15 of this title shall also be made available to the public upon request. Each affected agency shall maintain and make available to the public a current index of all such policies, guidance, and interpretive rules in effect. Copies of any policy, guidance, interpretive rule, or index shall be provided to the public at cost.

(2) No policy or guidance referred to in subsection (1) of this section shall have the force and effect of a rule unless it has been promulgated by the relevant commission pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and applicable provisions of article 7, 8, 11, or 15 of this title, article 20.5 of title 8, C.R.S., or article 20 of title 30, C.R.S., pertaining to rule-making procedures or authorizing the promulgation of rules, and made available to the public in accordance with section 24-4-103, C.R.S.

(3) (a) Any policy or guidance, including any amendments or revisions thereto, may be brought to the attention of the relevant division director and thereafter may be brought to the relevant commission for review. The review shall determine whether such policy or guidance is within the statutory authority of the relevant agency, is consistent with applicable statutes and any applicable regulations, including the provisions of subsection (1) of this section, and is appropriate for the relevant commission to undertake rule-making

with respect to the subject matter of the policy or guidance and shall consider other questions within the scope of the relevant commission's authority related to such policy or guidance.

(b) Following such review, the commission shall take action or, if appropriate, refer the matter to the relevant division director to take action within a specified period of time in accordance with its determination.

(4) Any obligation to submit payment of any monetary penalty arising from an enforcement action that concerns a matter under review by the relevant commission shall be stayed until the relevant commission completes its review.

(5) The commission review regarding the policy or guidance shall not constitute an adjudication of any facts of a specific enforcement action.

(6) Failure to request a review under this section shall not be considered in any permit appeal or enforcement action.

(7) As used in this section:

(a) "Relevant commission" means the commission or agency responsible for the promulgation of rules for the environmental program under which the guidance or policy is issued.

(b) "Relevant division director" means the director of the division within the department of public health and environment, responsible for the subject matter of the guidance or policy at issue.

Source: L. 94: Entire article added, p. 1364, § 1, effective July 1. L. 96: (1) and (2) amended, p. 1471, § 20, effective June 1.

PART 2

POLLUTION CONTROL EQUIPMENT CERTIFICATION

25-6.5-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Division" means the division of administration of the department of public health and environment.

(2) "Pollution control equipment" means any personal property, including, but not limited to, equipment, machinery, devices, systems, buildings, or structures, that is installed, constructed, or used in or as a part of a facility that creates a product in a manner that generates less pollution by the utilization of an alternative manufacturing or generating technology. "Pollution control equipment" includes, but is not limited to, gas or wind turbines and associated compressors or equipment or solar, thermal, or photovoltaic equipment.

Source: L. 2000: Entire part added, p. 1466, § 2, effective August 2.

25-6.5-202. Certification of pollution control equipment. (1) Within twelve months after the date of acquisition of an ownership or lease interest, a person owning or leasing property may file a request for certification of such property as pollution control equipment with the division on forms prescribed by the division.

(2) At any time after the filing of a request for certification pursuant to subsection (1) of this section and prior to a determination, the division may schedule a conference with the applicant to obtain further information relevant to the determination of eligibility for certification as pollution control equipment.

(3) Within six months after the filing of a request pursuant to subsection (1) of this section, the division shall determine the eligibility of such property as pollution control equipment and shall certify its determination to the applicant and the executive director of the department of revenue. The division may certify as pollution control equipment all of the property for which a request has been filed pursuant to subsection (1) of this section, specified portions of the property, or none of the property. In making its determination, the division shall consider any available and pertinent information.

(4) If the division denies a request for certification in whole or in part, the applicant may file with the division a written objection to the determination within thirty days after receipt of written notice of the determination. If a written objection is filed, the division shall grant the applicant a hearing in accordance with section 24-4-105, C.R.S., within thirty days after receipt of the written objection and shall make a final determination based on the hearing.

(5) If the final determination of the division denies the request for certification in whole or in part, the final determination shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S.

(6) The division may assess against an applicant a fee sufficient to cover the actual and direct cost incurred by the division in making a determination pursuant to this section, including, but not limited to, the actual and direct cost of any hearing or appeal related to the denial of certification if the denial is upheld. Any fee assessed by the division pursuant to this subsection (6) shall be credited to the pollution control equipment certification fund created in section 25-6.5-203.

Source: L. 2000: Entire part added, p. 1467, § 2, effective August 2.

25-6.5-203. Pollution control equipment certification fund - creation - purpose.

(1) There is hereby established in the state treasury the pollution control equipment certification fund, which shall consist of all moneys collected by the division pursuant to section 25-6.5-202. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended or unencumbered moneys in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund.

(2) The moneys in the pollution control equipment certification fund shall be subject to annual appropriation by the general assembly to the department of public health and environment to defray the costs incurred by the division in performing its obligations pursuant to section 25-6.5-202.

Source: L. 2000: Entire part added, p. 1467, § 2, effective August 2.

ARTICLE 6.6

Environmental Management System Permit Program

25-6.6-101.	Short title.		ment - rules.
25-6.6-102.	Legislative declaration.	25-6.6-105.	Enforcement - self-audit -
25-6.6-103.	Definitions.		review.
25-6.6-104.	Powers and duties of depart-	25-6.6-106.	Repeal of article.

25-6.6-101. Short title. This article shall be known and may be cited as the “Environmental Management System Permit Program”.

Source: L. 2004: Entire article added, p. 475, § 1, effective April 19.

25-6.6-102. Legislative declaration. (1) The general assembly finds that while Colorado’s existing environmental laws play an important role in protecting the environment, environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods and approaches. The general assembly finds that Colorado should promote and develop environmental regulatory approaches that:

(a) Encourage facility owners and operators to assess the environmental impact of their operations;

(b) Encourage innovation by and measure success through facility owners and operators setting measurable goals;

(c) Provide facility owners and operators with flexibility to implement the most

effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;

(d) Encourage superior environmental performance, continuous improvement toward sustainable levels of resource usage, and minimal levels of pollution discharges, emissions, and releases;

(e) Recognize facility owners and operators that are considered environmental leaders and that reduce pollution to levels below what is required by applicable law, through participation in the environmental management system permit program;

(f) Consolidate environmental requirements into one permit, while respecting local agency jurisdiction and encouraging local agencies to participate, and allow facility owners and operators to make environmental decisions based upon all environmental considerations;

(g) Reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment, including streamlining permit, record-keeping, and reporting requirements;

(h) Increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory approaches and methods for monitoring the environmental performance of projects pursuant to this title;

(i) Encourage groups of facilities and communities to work together to reduce pollution to levels below what is required by applicable law;

(j) Provide reasonable assistance to facilitate meaningful stakeholder participation; and

(k) Increase understanding and transparency of environmental laws and promote communication among agencies, regulated entities, and the public.

Source: L. 2004: Entire article added, p. 475, § 1, effective April 19.

25-6.6-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Department” means the state department of public health and environment.

(2) “Environmental permit” means a permit issued pursuant to article 20.5 of title 8, C.R.S., articles 7, 8, 11, and 15 of this title or article 20 of title 30, C.R.S., or rules promulgated under such provisions, and may also include permits issued pursuant to local government authority, with the consent of such local government authority.

(3) “Environmental requirement” means a requirement in a law administered by the department, a rule adopted by a statutorily designed state board or commission, a permit or order issued by the department, or an agreement entered into with the department.

Source: L. 2004: Entire article added, p. 476, § 1, effective April 19.

25-6.6-104. Powers and duties of department - rules. (1) The department is authorized to implement a voluntary environmental management system permit program, which shall be a pilot program until May 15, 2007, that allows a limited number of participants as determined by the department to obtain an environmental management system permit. The environmental management system permit shall allow participants to meet existing environmental standards of a law, rule, order, or permit related to the control or abatement of pollution through the use of alternative methods and procedures while ensuring compliance with an established ambient air or water standard. Nothing in this section shall be construed to authorize a participant to exceed an established ambient air or water standard.

(2) Notwithstanding the provisions of section 25-1-102, the executive director of the department has the sole authority to promulgate and amend rules, to the extent that such rules and amendments to the rules are consistent with federal law, in order to specify the procedures and other necessary requirements for issuing, implementing, revoking, and enforcing an environmental management system permit and to establish alternative methods or procedures for meeting environmental standards. The procedures outlined in the rules shall include the opportunity for public notice and comment.

(3) The department shall include, but not be limited to, the following elements in the environmental management system permit:

- (a) The elements of an environmental management system;
- (b) A requirement and criteria for audits of the environmental management system;
- (c) A requirement and criteria for environmental compliance audits;
- (d) A requirement and criteria for reporting a summary of the results of the environmental compliance audits;
- (e) Environmental performance standards and limits;
- (f) A requirement that program participants commit to measurable environmental benefits and continual environmental improvement;
- (g) Monitoring, reporting, and record-keeping requirements;
- (h) The ability for an analysis and consideration of all environmental impacts in developing environmental requirements;
- (i) A requirement for community involvement and a communications plan; and
- (j) Procedures that reduce otherwise required permit modification procedural requirements.

(4) (a) An entity may apply to participate in the voluntary environmental management system permit program if the entity meets the requirements for any of the following tiers:

(I) **Platinum tier.** The department shall establish the criteria for the platinum tier by rule, which criteria shall be more stringent than the gold tier criteria and shall include that the entity has assisted the department in developing proposals for streamlining environmental requirements and easing the regulatory burden on businesses of environmental compliance.

(II) **Gold tier.** The criteria are as follows:

(A) The entity has no serious violations of applicable local, state, or federal environmental requirements or environmental permits for a period of three years prior to the date of submission of the application for participation in the program;

(B) The entity has no convictions or out-of-court settlements of formal charges of a criminal violation of an environmental requirement or environmental permit within a five-year period prior to the date of submission of the application for participation in the program; and

(C) The entity has not entered into a settlement agreement and no compliance or consent order has been issued for a serious violation of an environmental requirement or environmental permit for three years prior to the date of submission of the application for participation in the program.

(III) **Silver tier.** The criteria are as follows:

(A) The entity has no serious violations of applicable local, state, or federal environmental requirements or environmental permits for a period of one year prior to the date of submission of the application for participation in the program;

(B) The entity has no convictions or out-of-court settlements of formal charges of a criminal violation of an environmental requirement or environmental permit within a two-year period prior to the date of submission of the application for participation in the program;

(C) The entity has not entered into a settlement agreement and no compliance or consent order has been issued for serious violations of an environmental requirement or environmental permit for a one-year period prior to the date of submission of the application for participation in the program; and

(D) No permit shall be issued to silver tier applicants pursuant to this article until the applicant achieves compliance with gold or platinum tier requirements.

(b) Any facility that will be subject to the program and that is part of a corporation, partnership, sole proprietorship, municipality, county, city and county, special district, or state or federal agency or department that has other Colorado facilities shall not be eligible for the program unless all of such facilities located in Colorado are in compliance with applicable local, state, and federal environmental requirements and environmental permits. The department shall determine the applicability of this paragraph (b) on a case-by-case basis.

(5) The department shall develop and make available to the public information on any alternative monitoring, record keeping, reporting, method, or condition that the environmental management system permit prescribes and any other incentive provided to the applicant within the environmental management system permit.

(6) An entity subject to an environmental management system permit shall be subject to the same fee provisions as other existing permits, unless the department reduces the fee as an operational flexibility incentive. The department is authorized to exercise such flexibility.

(7) The department shall establish performance measures, including public notice and comment, to assess the pilot program's performance after public notice and comment.

Source: L. 2004: Entire article added, p. 477, § 1, effective April 19. **L. 2007:** (4) amended, p. 1584, § 4, effective May 31.

25-6.6-105. Enforcement - self-audit - review. (1) The department is authorized to enter and inspect any property, premises, or place, and all facilities, on- or off-site, that is or are covered by an environmental management permit or where relevant documents may be located, for the purpose of investigating any actual, suspected, or potential source of pollution or ascertaining compliance or noncompliance with any requirement of this article, any rule promulgated pursuant to this article, or any permit issued pursuant to this article. The department may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any emissions or wastes, including mixtures of waste with environmental media or other materials required pursuant to this article; except that, if the permit holder denies or does not consent to such entry or inspection, the department has the authority to seek a warrant from a court of competent jurisdiction in the county in which the property, premises, or place is located prior to inspection. The court shall issue such a warrant upon a proper showing of the need for such entry and inspection. Any trade secrets and proprietary information obtained in the course of the inspection or investigation shall be kept confidential unless the permit holder consents to the release of the information; except that information required to be made available to the department pursuant to any other law shall not be confidential. The department shall provide a permit holder with a duplicate of any analytical report or observation of a pollutant made by the department. If samples are taken, the permittee shall be entitled to a receipt for such samples. Upon request of the permit holder, the department shall provide the permit holder with a sufficient sample so that the permit holder may perform its own test.

(2) In addition to the rights of entry and inspection by the department pursuant to subsection (1) of this section, the terms and conditions of the environmental management system permit shall be enforced in any manner provided by law for the enforcement of permits issued pursuant to department rules. Appeals of initial determinations shall be made to the executive director or a designated hearing officer in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(3) This section shall not be interpreted to exclude a participant in the environmental management system permit program that performs an audit as required by the program from exercising or applying any rights or privileges granted in section 13-25-126.5, C.R.S., and sections 25-1-114.5 and 25-1-114.6.

(4) The department, in consultation with interested parties, including applicable environmental boards and commissions, shall review the pilot permit program to assess its effectiveness in improving, enhancing, and protecting the environment of the state, garnering resource efficiencies, and decreasing administrative burdens. The department shall report the results of the review to the general assembly and the governor on or before January 1, 2007. The report shall include recommendations concerning whether the pilot project should be allowed to continue, and, if so, the recommended form and structure of the program.

Source: L. 2004: Entire article added, p. 478, § 1, effective April 19.

25-6.6-106. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the environmental management system permit program shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2004: Entire article added, p. 479, § 1, effective April 19. **L. 2007:** Entire section amended, p. 1583, § 1, effective May 31.

ARTICLE 6.7

Environmental Leadership Act

25-6.7-101 to 25-6.7-110. (Repealed)

Editor’s note: (1) This article was added in 1998. For amendments to this article prior to its repeal in 2003, consult the 2003 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 25-6.7-110 (2) provided for the repeal of this article, effective December 31, 2003. (See L. 98, p. 877.)

ARTICLE 7

Air Quality Control

Editor’s note: This article was numbered as article 31 of chapter 66, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1979, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

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PART 1

AIR QUALITY CONTROL PROGRAM

Cross references: For the automobile inspection and readjustment program, see §§ 42-4-301 to 42-4-316.

Law reviews: For article, “A Practitioners Guide to the Colorado Air Quality Control Commission”, see 16 Colo. Law. 1405 (1987); for article, “Colorado’s New Clean Air Program”, see 22 Colo. Law. 541 (1993); for article, “Colorado’s Clean Air Act Amendments Regulations”, see 23 Colo. Law. 861 (1994).

25-7-101. Short title. This article shall be known and may be cited as the “Colorado Air Pollution Prevention and Control Act”.

Source: L. 79: Entire article R&RE, p. 1017, § 1. **L. 92:** Entire section amended, p. 1165, § 3, effective July 1.

ANNOTATION

Law reviews. For article, “1974 Land Use Legislation in Colorado”, see 51 Den. L.J. 467 (1974). For comment, “Environmental Law — Requirement of Notice in Visual Opacity Readings — Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)”, see 51 Den. L.J. 603 (1974). For comment, “Pre-Enforcement Judicial Review: CF & I Steel Corp.

v. Colorado Air Pollution Control Commission”, see 58 Den. L.J. 693 (1981). For article, “Pollution or Resources Out-of-place: Reclaiming Municipal Wastewater for Agricultural Use”, see 53 U. Colo. L. Rev. 559 (1982). **Applied** in CF&I Steel Corp. v. Colo. Air Pollution Control Comm’n, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-102. Legislative declaration. In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards, and to prevent the significant

deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards. To that end, it is the purpose of this article to require the use of all available practical methods which are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado; to require the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost-effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the most accurate and complete inventory possible and to provide for the most accurate enforcement program achievable based upon that inventory.

Source: L. 79: Entire article R&RE, p. 1017, § 1, effective June 20. L. 92: Entire section amended, p. 1165, § 4, effective July 1.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

A. Fry Roofing Co. v. State, 179 Colo. 223, 499 P.2d 1176 (1972).

Control of air pollution is a legitimate subject of legislation under the police power. Lloyd

25-7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of the federal environmental protection agency.

(1.3) "Adverse environmental effect", as a term used in the context of regulating hazardous air pollutants, means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(1.5) "Air pollutant" means any fume, smoke, particulate matter, vapor, or gas or any combination thereof which is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter, but "air pollutant" does not include water vapor or steam condensate or any other emission exempted by the commission consistent with the federal act. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the United States environmental protection agency or the commission has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(2) "Air pollution control authority" means the division, or any person or agency given authority by the division, or a local governmental unit duly authorized with respect to air pollution control.

(3) "Air pollution source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air pollutant.

(4) "Allowable emissions" means the emission rate calculated for a stationary source using the maximum rated capacity of the source (unless the source is subject to enforceable

permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards promulgated pursuant to the federal act for new source performance or hazardous air pollutants;

(b) The applicable Colorado emission control regulation; or

(c) The emission rate specified as a permit condition.

(5) "Ambient air" means that portion of the atmosphere, external to the sources, to which the general public has access.

(5.5) "Appliance" means any device which contains and uses as a refrigerant a class I or class II ozone depleting compound as defined by the administrator and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(5.7) "Approved motor vehicle refrigerant recycling equipment" means any equipment models certified by the administrator, or any independent standards testing organization approved by such administrator, to meet the standards established by the administrator which are applicable to equipment for the extraction of refrigerants from motor vehicle air conditioners. Equipment for such purpose purchased prior to the promulgation of regulations pursuant to section 25-7-105 (11) (c) shall be considered certified if it is substantially identical to equipment which is certified by the administrator.

(6) Repealed.

(6.5) "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, or CFC-502.

(6.7) "Colorado generally available control technology" or "Colorado GACT" means standards imposed pursuant to section 25-7-109.3 (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements utilizing generally available control technologies or management practices by area sources for the reduction of emissions of hazardous air pollutants considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(6.8) "Colorado maximum achievable control technology" or "Colorado MACT" means standards imposed pursuant to section 25-7-109.3 (3) utilizing principles of sound engineering judgment in applying the criteria set forth in section 112 (d) of the federal act respecting the creation of standards or requirements which provide for the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, considering a cost-benefit analysis, economics, the cost and availability of control technology, and the location, nature, and size of the source involved, and the actual or potential impacts on the public health, welfare, and the environment.

(7) "Commission" means the air quality control commission created by section 25-7-104.

(8) "Construction" means fabrication, erection, installation, or modification of an air pollution source.

(9) "Division" means the division of administration of the department of public health and environment.

(9.5) "Effects on public welfare" means all language referring to effects on public welfare, which includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(10) "Emission" means the discharge or release into the atmosphere of one or more air pollutants.

(11) "Emission control regulation" means and includes any standard promulgated by regulation which is applicable to all air pollution sources within a specified area and which prohibits or establishes permissible limits for specific types of emissions in such area, and also any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted

from such type of facility, process, or activity, any regulation adopted for the purpose of preventing or minimizing emission of any air pollutant in potentially dangerous quantities, and also any regulation that adopts any design, equipment, work practice, or operational standard. Emission control regulations shall not include standards which describe maximum ambient air concentrations of specifically identified pollutants or which describe varying degrees of pollution of ambient air. Emission control regulations pertaining to hazardous air pollutants, as defined in subsection (13) of this section, shall be consistent with the emission standards promulgated under section 112 of the federal act or section 25-7-109.3 in reducing or preventing emissions of hazardous air pollutants, and may include application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which:

- (a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;
- (b) Enclose systems or processes to eliminate emissions;
- (c) Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
- (d) Are design, equipment, or work practice standards (including requirements for operator training or certification); or
- (e) Are a combination of the provisions of paragraphs (a) to (d) of this subsection (11).

(11.5) "Emission data" means, with reference to any source of emission of any substance into the air:

(a) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been, or will be, emitted by the source (or of any pollutant resulting from any emission by the source), or any combination thereof;

(b) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emission which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source), or any combination thereof;

(c) A general description of the location or nature, or both, of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(12) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as the same is in effect on November 15, 1990.

(12.1) "Generally available control technology" or "GACT" means standards promulgated pursuant to section 112 of the federal act which provide for the use of generally available control technologies or management practices for the control of hazardous air pollutants for area sources, as defined in section 112 of the federal act, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(13) "Hazardous air pollutant" means an air pollutant which presents through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise and which has been listed pursuant to section 112 of the federal act or section 25-7-109.3.

(14) "Indirect air pollution source" means any facility, building, structure, or installation, or any combination thereof, excluding dwellings, which can reasonably be expected to cause or induce substantial mobile source activity which results in emissions of air pollutants which might reasonably be expected to interfere with the attainment and maintenance of national ambient air standards.

(15) "Issue" or "issuance" means the mailing of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of

issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(16) "Local air pollution law" means any law, ordinance, resolution, code, rule, or regulation adopted by the governing body of any city, town, county, or city and county, pertaining to the prevention, control, and abatement of air pollution.

(16.5) "Maximum achievable control technology" or "MACT" means emission standards promulgated under section 112 of the federal act requiring the maximum degree of emissions reduction that has been demonstrated to be achievable for the control of hazardous air pollutants, including equivalent emission limitations by permit pursuant to section 112 (j) of the federal act.

(17) "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or unintended failure of a process to operate in a normal or usual manner. Failures that are primarily caused by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(18) "Motor vehicle" means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(18.3) "Motor vehicle air conditioner" means any air conditioner designed for installation in a motor vehicle which uses as a refrigerant any class I or class II ozone depleting compound as defined by the administrator.

(18.4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(18.5) "Ozone depleting compound" means any substance on the list of class I and class II ozone depleting compounds as defined by the administrator and as referenced in section 602 of the "Federal Clean Air Act of 1990".

(19) "Person" means any individual, public or private corporation, partnership, association, firm, trust, estate, the United States or the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(19.5) "Refrigeration system" includes refrigerators, freezers, cold storage warehouse refrigeration systems, and air conditioners, any of which hold more than one hundred pounds of refrigerant or more than one hundred pounds total if more than one refrigeration unit or system exists at the same location.

(20) "Shutdown" means the cessation of operation of any air pollution source for any purpose.

(21) "Start-up" means the setting in operation of any air pollution source for any purpose.

(22) "State implementation plan" means the plan required by and described in section 110(a) of the federal act.

(23) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

Source: L. 79: Entire article R&RE, p. 1018, § 1, effective June 20. L. 84: (6) repealed, p. 768, § 1, effective July 1. L. 89: (6.5) and (19.5) added, p. 1156, § 2, effective January 1, 1990. L. 92: (1), (11), (12), (13), and (19) amended and (1.3), (1.5), (6.7), (6.8), (9.5), (11.5), (12.1), (16.5), and (18.4) added, p. 1166, § 5, effective July 1; (1) amended and (1.5), (5.5), (5.7), (18.3), and (18.5) added, p. 1291, § 1, effective July 1. L. 94: (9) amended, p. 2780, § 494, effective July 1. L. 2006: IP added, p. 1504, § 46, effective June 1.

Editor's note: (1) Amendments to subsection (1.5) by Senate Bill 92-105 and House Bill 92-1178 were harmonized.

(2) Subsection (18.4) was enacted as subsection (18.3) by Senate Bill 92-105, Session Laws of Colorado 1992, chapter 179, section 5, but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (9), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Regulation of fugitive dust emission. Regulations adopted to accomplish the regulation of fugitive dust emission must be sufficiently definitive and specific that everyone involved will be able to determine what it is that he may or may not do. Such regulations must be uniformly

applicable to all persons creating the same type of emission while engaged in the same function for the same purposes. *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 44 Colo. App. 111, 640 P.2d 238 (1981).

25-7-104. Air quality control commission created. (1) There is hereby created in the department of public health and environment the air quality control commission, which shall consist of nine citizens of this state who shall be appointed by the governor with the consent of the senate.

(2) Appointments to the commission shall be made so as to include persons with appropriate scientific, technical, industrial, labor, agricultural, and legal training or with experience on the commission; although no specific number of its members shall be required to be so trained or experienced, three members shall have appropriate private sector, technical, or industrial employment experience. No more than five commissioners shall be members of one political party.

(3) Terms of members shall be for three years, and said terms shall commence on February 1 of the year of appointment. Any vacancy occurring during the term of office of any member shall be filled by appointment by the governor of a qualified person for the unexpired portion of the regular term.

(4) The governor may remove any member of the commission for malfeasance in office, failure to regularly attend meetings, or any cause that renders such a member incapable or unfit to discharge the duties of his office, and any such removal, when made, shall not be subject to review. If any member of the commission is absent from two consecutive meetings, the chairman of the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor, who shall appoint a qualified person for the unexpired portion of the regular term.

(5) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem of forty dollars for each day actually and necessarily spent in the discharge of official duties, but not to exceed twelve hundred eighty-four dollars in any one year; and all members shall receive traveling and other necessary expenses actually incurred in the performance of official duties.

(6) Each year the commission shall select from its own membership a chairman, vice-chairman, and secretary. The secretary of the commission shall keep a record of its proceedings. The commission shall hold regular public monthly meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of all meetings shall be mailed by the secretary at least five days in advance of any such meetings to each member.

(7) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence of a majority of the commission in any matter within its powers and duties shall be required for any determination made by the commission.

(8) The commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the commission shall disclose any potential conflicts of interest to the governor and the committee of reference of the general assembly prior to confirmation and shall disclose any potential conflicts of interest which arise during their terms of membership to the governor and to the other commission members in a public meeting of the commission.

(9) (Deleted by amendment, L. 92, p. 1169, § 6, effective July 1, 1992.)

Source: **L. 79:** Entire article R&RE, p. 1020, § 1, effective June 20. **L. 84:** (2) amended, p. 768, § 2, effective July 1. **L. 92:** (7) and (9) amended, p. 1169, § 6, effective July 1. **L. 94:** (1) amended, p. 2780, § 495, effective July 1. **L. 2005:** (2) amended, p. 282, § 17, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Air pollution control commission is “agency” within the meaning of §§ 24-4-102 (3) and 24-4-107 and is subject to the provisions of the state administrative procedure act. *CF&I Steel Corp. v. Colo. Air Pollution Control Comm’n*, 199 Colo. 270, 610 P.2d 85 (1980).

Potential conflict of interest under subsection (8) was not undisclosed and, if an actual conflict existed, it was immaterial to the outcome of the commission’s rule-making. *Sohocki v. Air Quality Control Comm’n*, 12 P.3d 274 (Colo. App. 1999).

Remedy for nondisclosure of conflict of interest is not specified in this section. Therefore,

the court of appeals adopts a balancing test, depending on whether the official with the alleged conflict cast the deciding vote. If so, the agency’s action is invalid. If not, the court must examine three factors: (1) Whether the official disclosed the interest, or whether the other officials were fully aware of it; (2) the extent of the official’s participation in the proceeding; and (3) the magnitude of the official’s alleged interest. *Sohocki v. Air Quality Control Comm’n*, 12 P.3d 274 (Colo. App. 1999).

25-7-105. Duties of commission - rules. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article, including but not limited to:

(a) (I) A comprehensive state implementation plan which will assure attainment and maintenance of national ambient air quality standards and which will prevent significant deterioration of air quality, all in conformity with the provisions of this article. The comprehensive plan shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate.

(II) The comprehensive state implementation plan of the commission shall, wherever feasible, include local or regional air pollution plans and programs adopted or enforceable by municipal or county governments. Before making any changes to those portions of the state implementation plan which include such air pollution plans and programs or to such plans and programs which are suggested for inclusion in the state implementation plan, the commission shall give thirty days’ notice of the proposed changes to the affected municipal or county government to allow a reasonable opportunity to prepare comments on the proposed changes. The commission shall consider such comments in its action on the state implementation plan and shall document in the record of the hearing its reasons for any changes to such plans and programs. Any such plans and programs which are approved by the commission and formally submitted as a part of the state implementation plan shall be deemed a part of the comprehensive program of the commission and shall be enforced as such.

(III) The revisions to the Denver element of the PM-10 state implementation plan adopted by the commission on February 16, 1995, which contain a sixty tons-per-day PM-10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan and shall only apply as a regulation adopted exclusively under reserved state authority pursuant to the provisions of section 25-7-105.1. The sixty tons-per-day emissions budget shall, unless modified by the commission through rule-making, apply for federal transportation conformity and is included in the state implementation plan only as required by the federal act. Any entity with authority to adopt a transportation plan required under section 43-1-1103, C.R.S., shall consider any mobile source emissions budgets in effect under this article in the development of transportation improvement programs for federal purposes.

(IV) Notwithstanding the provisions of section 25-7-133, the expiration of the state implementation plan for ozone maintenance and related rules of the air quality control commission, and the amendments to commission regulations number 3 and 7, which state implementation plan and rules, and amendments to regulations number 3 and 7, were adopted or amended by the commission on March 21, 1996, and which are therefore scheduled for expiration May 15, 1997, is postponed until December 31, 2005, and the provisions of section 24-4-108, C.R.S., shall apply.

(b) Emission control regulations in conformity with section 25-7-109;

(c) A prevention of significant deterioration program in conformity with part 2 of this article and federal requirements; except that definitions used in the program shall not differ from any definitions pertaining to the prevention of significant deterioration program which appear in section 169 of the federal act or in federal regulations promulgated thereunder, and an attainment program in conformity with part 3 of this article;

(d) A satisfactory process of consultation with general purpose local governments and any federal land manager having authority over federal land to which the state implementation plan applies, effective with respect to measures adopted after August 7, 1978, pertaining to transportation controls, air quality maintenance plan requirements, preconstruction review of stationary sources of air pollution, or any measure referred to in the prevention of significant deterioration program established pursuant to part 2 of this article or the attainment program established pursuant to part 3 of this article, or granting delayed compliance orders pursuant to section 25-7-118.

(2) The commission shall provide forms of application and shall receive all such applications for review of the classification of any attainment, nonattainment, or unclassifiable area within the state made pursuant to section 25-7-106 (1) or 25-7-107 (2), all applications for designation or redesignation made pursuant to section 25-7-208, and all applications for any revision of general application of the state implementation plan and shall set such applications for hearing and determination by the commission in accordance with the provisions of section 25-7-119.

(3) The commission shall employ a technical secretary and shall delegate to such secretary such duties and responsibilities as it may deem necessary; except that no authority shall be delegated to such secretary to adopt, promulgate, amend, or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such secretary shall have appropriate practical, educational, and administrative experience related to air pollution control and shall be employed pursuant to the state personnel system laws.

(4) (a) The commission and the state board of health shall hold a joint public hearing during the month of October of each year in order to hear public comment on air pollution problems within the state, alleged sources of air pollution within the state, and the availability of practical remedies therefor; and at such hearing the technical secretary shall answer reasonable questions from the public concerning administration and enforcement of the various provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(b) On or before September 30, 1993, the commission shall publish and revise from time to time thereafter, as is necessary, a regulatory agenda which includes its schedule for future rule-making and its schedule for implementing section 25-7-109.3 and other air quality programs.

(5) Prior to the hearing required under subsection (4) of this section, the commission shall prepare and make available to the public a report, which shall contain the following specific information:

(a) A description of the pollution problem in each of the polluted areas of the state, described separately for each such area;

(b) To the extent possible, the identification of the sources of air pollution in each separate area of the state, such as motor vehicles, industrial sources, and power-generating facilities;

(c) A list of all alleged violations of emission control regulations showing the status of control procedures in effect with respect to each such alleged violation; and

(d) Stationary industrial sources permitting information as follows:

- (I) The total number of permits issued;
 - (II) The total number of hours billed for permitting;
 - (III) The average number of hours billed per permit; and
 - (IV) The number of general permits issued.
- (6) and (7) Repealed.
- (8) (Deleted by amendment, L. 92, p. 1170, § 7, effective July 1, 1992.)
- (9) The commission shall adopt exhaust emissions standards for motor vehicles purchased for state use and shall assist the executive director of the department of personnel in determining those vehicles which meet or exceed such standards.
- (10) The commission shall promulgate such rules and regulations as are necessary to implement the provisions of part 5 of this article concerning asbestos control.
- (11) The commission shall promulgate rules concerning CFC and ozone-depleting compounds as follows:
- (a) Regulations requiring the recycling or reuse of any refrigerant containing CFC which is removed from the refrigeration system of a retail store, cold storage warehouse, or commercial or industrial building by any person who installs, services, repairs, or disposes of such system as a result of service to or disposal of such system;
 - (b) Regulations prohibiting the intentional venting or disposal of any refrigerant containing CFC by the owner or operator of a retail store, cold storage warehouse, or commercial or industrial building and requiring the recycling or reuse of such refrigerant;
 - (c) Regulations requiring the use of approved motor vehicle refrigerant recycling equipment during the repair or servicing of a motor vehicle air conditioner, requiring that such repair or servicing be done by a person certified in accordance with federal regulations, and including requirements for reclamation of refrigerants during the disposal of a vehicle;
 - (d) Repealed.
 - (e) Regulations which establish requirements for recycling;
 - (f) Regulations which conform with the requirements of section 608 of the "Federal Clean Air Act of 1990" to establish standards and requirements regarding the use and disposal of class I and class II ozone depleting compounds during the service, repair, or disposal of appliances and industrial process refrigeration. If federal training and certification requirements are adopted under section 609 of the "Federal Clean Air Act of 1990" as of January 1, 1993, no state training and certification requirements shall be adopted. If the federal regulations are not adopted, then such state regulations shall contain training and certification requirements substantially similar to those required under section 609 of the "Federal Clean Air Act of 1990". Such regulations shall also include provisions for the imposition and collection of a certification fee sufficient to implement the training, certification, and enforcement requirements of this paragraph (f).
 - (g) Repealed.
 - (h) Rules that are necessary for the imposition and collection of a fee for registering as stationary sources refrigeration systems and other appliances that contain a minimum of one hundred pounds or use a drive system of one hundred horsepower or more and use ozone-depleting compounds. The fee set by the commission shall reflect the direct and indirect costs of registering refrigeration systems and appliances; however, such fee shall not exceed seventy-five dollars per unit and shall not exceed a maximum of three hundred dollars per facility.
- (12) The commission shall promulgate such rules and regulations as are necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of a permit program provided in Title V of the federal act.
- (13) (a) The commission shall promulgate rules and regulations requiring motor vehicles which have manufacturer-installed diagnostic systems for emission controls to have such diagnostic systems inspected and maintained consistent with section 202 of the federal act as part of the periodic inspection of vehicle emission control systems required pursuant to this article.
- (b) This subsection (13) shall take effect July 1, 1994.
- (14) The commission shall repeal the clean vehicle fleet program mandated by section 246 of the federal act and shall replace such program if required by federal law. Nothing in

this subsection (14) shall be deemed to impair the availability of the income tax credit established pursuant to section 39-22-516, C.R.S.

(15) The commission shall promulgate rules and regulations as are necessary to provide an emission reduction incentive permit fee credit program which provides for a permit fee reduction in the year following the year in which a permittee achieves an early reduction in emissions of hazardous air pollutants, consistent with the provisions of section 112 of the federal act and section 25-7-114.3.

(16) The commission shall give priority to and take expeditious action upon consideration of the following:

(a) A request by a unit of local government to investigate and resolve air quality problems associated with a source;

(b) A request by a unit of local government for inclusion of a locally developed air pollution control measure in a state implementation plan;

(c) A request by a unit of local government that the commission consider local concerns respecting environmental and economic effects in the context of a proceeding where the state is targeting a source for imposition of additional air pollution controls.

(17) (a) Not later than December 31, 2002, and no less frequently than every five years thereafter, the commission shall conduct rule-making hearings to approve an update to the emission inventories from state and federal public land management agency activities on public lands resulting in emissions of any criteria pollutant, including surrogates or precursors for that pollutant, that affect any mandatory class I federal areas in Colorado by reducing visibility in such areas. At a minimum, such inventories shall report on emissions from the sources set forth in paragraph (d) of this subsection (17).

(b) The commission shall ensure that the division prepares inventories for all state land management agencies with jurisdiction over state lands, including, without limitation, the state land board, the department of agriculture, and the department of natural resources, to provide an inventory of emissions from land management activities that are sources of pollutant emissions that may affect any mandatory class I federal area in Colorado by reducing visibility in such areas; except that the commission shall exempt from the inventory requirement any sources or categories of sources that it determines to be of minor significance.

(c) The commission shall use the emission inventories provided under this subsection (17) to develop control strategies for reducing emissions within the state as a component of the visibility long-term strategies for inclusion in the state implementation plan and for inclusion in any environmental impact statement or environmental assessment required to be performed under the federal "National Environmental Policy Act of 1969", 42 U.S.C. secs. 4321 to 4347.

(d) The rule-making hearing held to approve the inventories provided under this subsection (17) shall require public participation and shall require the reporting of both current emissions and projected future emissions, over at least a five-year period, from the following sources on public land that affect any mandatory class I federal areas in Colorado:

(I) Stationary source emissions, based on existing air pollution emission notices filed with the division;

(II) Mobile sources utilizing state lands, excluding state and federal highways;

(III) Paved and unpaved roads;

(IV) Fires on public lands from all sources;

(V) Biogenic sources, including emissions from flora and fauna.

(e) Each inventory provided under this subsection (17) shall state the basis and methodology used to accumulate the data and shall be based upon data that are:

(I) Developed no later than three years prior to the submittal; and

(II) No more than five years old.

(18) Upon petition by any person or on its own motion, for good cause shown, the commission may determine that the emission inventory of any criteria pollutant, including a surrogate or precursor for that pollutant, for a region of the state is inadequate for purposes of commission rule-making or adjudications in connection with development of the state implementation plan, selection of pollution control strategies, attribution of emissions to sources or categories of sources, or findings of adverse impacts. If, after conducting a public

hearing in accordance with the rule-making provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the commission finds that the emission inventory should be revised to take into consideration existing credible studies or scientific data in order to reasonably attribute emissions to source categories, it shall direct that such revision be performed prior to a final rule-making or adjudication.

(19) The commission may coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop air quality management plans consistent with this article for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712.

Source: **L. 79:** Entire article R&RE, p. 1021, § 1, effective June 20; (9) added, p. 1551, § 14, effective June 20. **L. 81:** (9) amended, p. 1296, § 35, effective January 1, 1982. **L. 84:** (2) and (8) amended and (7) repealed, p. 768, §§ 3, 1, effective July 1. **L. 87:** (10) added, p. 1151, § 2, effective July 1. **L. 89:** (11) added, p. 1156, § 3, effective January 1, 1990. **L. 92:** (1)(c), (4), (8), and IP(11) amended and (11)(c) to (11)(g) and (12) to (16) added, pp. 1170, 1292, §§ 7, 2, effective July 1. **L. 93:** (11)(h) added, p. 958, § 1, effective May 28. **L. 95:** (1)(a)(III) added, p. 1149, § 1, effective May 31. **L. 96:** (1)(a)(IV) added, p. 1038, § 2, effective May 23; (9) amended, p. 1541, § 130, effective June 1; (6) repealed, p. 1257, § 149, effective August 7. **L. 99:** (17) and (18) added, p. 1246, § 1, effective June 2. **L. 2002:** (14) R&RE, p. 1066, § 1, effective August 7. **L. 2003:** (19) added, p. 1035, § 6, effective April 17; (11)(d) repealed, p. 724, § 3, effective July 1. **L. 2005:** (11)(g) repealed, p. 282, § 18, effective August 8. **L. 2008:** IP(11) and (11)(h) amended, p. 882, § 1, effective May 20. **L. 2010:** (5) amended, (HB 10-1042), ch. 209, p. 908, § 1, effective September 1. **L. 2011:** (14) amended, (SB 11-163), ch. 13, p. 37, § 3, effective March 9.

Cross references: For the legislative declaration contained in the 1996 act enacting subsection (1)(a)(IV), see section 1 of chapter 210, Session Laws of Colorado 1996. For the legislative declaration contained in the 1996 act repealing subsection (6), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2003 act enacting subsection (19), see section 1 of chapter 145, Session Laws of Colorado 2003.

25-7-105.1. Federal enforceability. (1) To the extent that any provision of this article or any standard or regulation promulgated pursuant thereto is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such provision, standard, or regulation is hereby declared to be adopted under powers reserved to the state of Colorado pursuant to section 116 of the federal act. Any such provision, standard, or regulation adopted exclusively under state authority shall not constitute part of the state implementation plan.

(2) Whenever the division or commission grants relief to an owner or operator of a new or modified stationary source from that part of a state standard or regulation which is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or which is otherwise more stringent than other requirements of the federal act and is not included as part of the state implementation plan, such relief shall be governed exclusively by the laws of this state and the regulations of the commission.

(3) To the extent any term or condition contained in any permit issued pursuant to this article is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to

be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such term or condition shall be subject to enforcement exclusively under the laws of this state and the regulations of the commission.

Source: L. 92: Entire section added, p. 1172, § 8, effective July 1.

25-7-106. Commission - additional authority. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall have maximum flexibility in developing an effective air quality control program and may promulgate such combination of regulations as may be necessary or desirable to carry out that program; except that such program and regulations shall be consistent with the legislative declaration set forth in section 25-7-102. Such regulations may include, but shall not be limited to:

(a) Classification and, as appropriate, reclassification of the state into attainment, nonattainment, and unclassifiable areas, and division of the state into such control regions or areas as may be necessary or desirable for effective administration of this article;

(b) Classification and definition of different degrees or types of air pollution;

(c) Emission control regulations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollution is present;

(d) Development of a high altitude performance adjustment program for motor vehicles to the extent authorized by section 215 of the federal act;

(e) Development of a control or prohibition respecting the use of a fuel or fuel additives in a motor vehicle or motor vehicle engine to the extent authorized by section 211(c) of the federal act if, based on sound scientific data, the commission finds that a measurable reduction in ambient concentrations of criteria pollutants or other pollutants shall occur.

(2) The commission may hold public hearings, issue notice of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths, and take such testimony as it deems necessary, all in conformity with article 4 of title 24, C.R.S., and with sections 25-7-110 and 25-7-119.

(3) The commission may adopt such rules and regulations in conformity with article 4 of title 24, C.R.S., governing procedures before the commission as may be necessary to assure that hearings before the commission will be fair and impartial.

(4) (a) In the event the commission, after hearing, finds and determines that a particular style or model of automobile air pollution control device is not sufficiently effective to justify the continued connection and operation of such device, the commission shall so notify the department of revenue; thereafter, all devices of such particular style or model shall be exempt from the provisions of section 42-4-314, C.R.S.

(b) Repealed.

(4.1) Repealed.

(5) The commission may exercise all incidental powers necessary to carry out the purposes of this article.

(6) The commission may require the owner or operator, or both, of any air pollution source to:

(a) Establish and maintain reports as prescribed by the commission;

(b) Install, use, and maintain monitoring equipment or methods as prescribed by the commission;

(c) Record, monitor, and sample emissions in accordance with such methods, at such locations, at such intervals, and in such manner as the commission shall prescribe;

(d) Provide such other information as the commission may require.

(7) (a) The commission is specifically authorized and directed to develop a program to apply and enforce every relevant provision of the state implementation plan and every relevant emission control strategy to minimize emissions, including the impacts of actions by significant users of prescribed fire, including federal, state, and local government, and private land managers that are significant users of prescribed fire. The program developed by the commission under this subsection (7) shall include, but not be limited to, the imposition of any fees necessary to administer the program, including the recovery of costs

by the state for the evaluation of planning documents pursuant to subsection (8) of this section, and the imposition of penalties pursuant to section 25-7-122.

(b) The general assembly hereby finds, determines, and declares that the Grand Canyon visibility transport commission's recommendations for improving western vistas report identified the emissions from fire, both wildfire and prescribed fires, as likely to have the single greatest impact on visibility at class I areas through the year 2040. The emissions from fire, both wildfire and prescribed fire, are an important episodic contributor to visibility impairing aerosols. The Grand Canyon visibility transport commission report identified that significant amounts of visibility impairment result from activities on federal lands, from mobile sources, and from Mexico.

(c) The general assembly further finds, determines, and declares that emissions from grassland and forest fires have substantial episodic impacts on ambient air quality throughout the state and are a major source of visibility impairment over which this state has jurisdiction but has not yet developed a comprehensive program to reduce such impairment.

(d) The general assembly further finds, determines, and declares that the standard in its statement of legislative purpose in section 25-7-102 of the "Colorado Air Pollution Prevention and Control Act" requiring the use of all practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution is an appropriate standard to apply in relation to air pollution emissions resulting from the use of prescribed fire in grassland and forest management.

(e) This subsection (7) and subsection (8) of this section are adopted pursuant to section 118 of the federal act and shall be construed to exercise the full extent of the state's authority as granted by the provisions of said federal act. The federal government, as the only landowner of its size in the state and the only landowner in the state other than the state government itself that routinely prepares plans involving the management of grassland and forest lands using prescribed fire, is appropriately subject to the requirements of this section pertaining to review and approval of planning documents.

(f) Persons owning or managing large parcels of land who significantly use prescribed fire as a grassland or forest management tool shall prepare plans addressing the use and role of prescribed fire and the air quality impacts resulting therefrom, and such plans are appropriately subject to the review requirements of this section. The state, by reviewing these types of plans, can achieve significant progress towards cooperatively reducing emissions from those lands that impact visibility in Colorado.

(g) As used in this subsection (7) and in subsection (8) of this section, the term "significant user of prescribed fire" means a federal, state, or local agency or significant management unit thereof or person that collectively manages or owns more than ten thousand acres of grasslands or forest lands within the state of Colorado and that uses prescribed fire. The adoption of a fire management plan by a local or county unit of government pursuant to section 30-11-124, C.R.S., does not constitute management for purposes of this section unless the county or local unit of government owns or manages more than ten thousand acres and is a significant user of prescribed fire. "Prescribed fire" means fire that is intentionally used for grassland or forest management, regardless of whether the fire is caused by natural or human sources. Prescribed fire does not include open burning in the course of agricultural operations and does not include open burning for the purpose of maintaining water conveyance structures, unless the commission acts pursuant to section 25-7-123. The commission shall by rule exempt from the program developed pursuant to this subsection (7) those sources that have an insignificant impact on visibility and air quality.

(8) (a) The commission, in exercising the powers conferred by subsection (7) of this section and this subsection (8), shall require all significant users of prescribed fire, including federal agencies for activities directly conducted by or on behalf of federal agencies on federal lands, to minimize emissions using all available, practicable methods that are technologically feasible and economically reasonable in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals.

(b) (1) In order to ensure compliance with the requirements of paragraph (a) of this subsection (8), significant users of prescribed fire shall submit planning documents to the

commission. The commission shall then conduct a public hearing to review each planning document submitted relevant to achieving the goal of minimizing emissions and impacts as set forth in paragraph (a) of this subsection (8). Only one hearing shall be held for each planning document. The commission shall hold a hearing and complete its review of the planning documents submitted by any significant user of prescribed fire within forty-five days of their receipt by the commission, unless otherwise agreed to by the significant user of prescribed fire.

(II) As used in this paragraph (b), "planning documents" means documents that summarize the use of prescribed fire as a grassland or forest management tool and the associated discharge or release of air pollution and that demonstrate how compliance with the state standard expressed in section 25-7-102 shall be achieved. "Planning documents" shall include land management plans or a summary of the equivalent information that explains and supports the land management criteria evaluated and the decision to use prescribed fire as the fuel treatment method. Planning documents shall include a discussion of the alternatives considered and a discussion of how prescribed fire, if selected, minimizes the risk of wildfire.

(III) The commission shall have discretion to adopt rules governing the resubmission of planning documents to prevent such plans from becoming outdated.

(c) Following a public hearing, the commission shall comment and make recommendations to the significant user of prescribed fire regarding any changes to elements of the plan relating to the discharge or release of air pollutants that the commission finds necessary to comply with the state standard expressed in section 25-7-102.

Source: **L. 79:** Entire article R&RE, p. 1023, § 1, effective June 20. **L. 81:** (4) amended, p. 1944, § 5, effective July 1; (4.1) added, p. 1951, § 19, effective July 1, 1984. **L. 84:** (3) amended, p. 769, § 4, effective July 1; (4)(b) and (4.1) repealed, p. 1080, § 1, effective July 1. **L. 88:** (1)(e) amended, p. 1073, § 1, effective April 28. **L. 94:** (4)(a) amended, p. 2559, § 62, effective January 1, 1995. **L. 99:** (7) and (8) added, p. 788, § 1, effective May 24. **L. 2000:** (4)(a) amended, p. 1637, § 13, effective June 1. **L. 2001:** (7) and (8) amended, p. 1182, § 1, effective July 1.

25-7-106.1. Commission - duties - visibility standard - report. (Repealed)

Source: **L. 89:** Entire section added, p. 1156, § 4, effective May 26. **L. 90:** (2) amended, p. 1847, § 42, effective May 31. **L. 96:** Entire section repealed, p. 1258, § 152, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-106.3. Commission - duties - wood-burning stoves - episodic no-burn days - rules. (1) The commission shall promulgate, no later than March 1, 1990, such combination of regulations as it may find to be cost-effective and consistent with the legislative declaration set forth in section 25-7-102 in order to establish limitations on the use of wood-burning stoves and fireplaces during those periods of time declared by the Colorado department of health to be a high pollution day. The department may declare a high pollution day based on experienced or anticipated excessive levels of carbon monoxide or particulates when air pollution standards are exceeded for particulates, carbon monoxide, or visibility. The limitations on the use of wood-burning stoves and fireplaces imposed pursuant to this section may include no-burn days, and such no-burn days shall be specific to the separate airsheds within the Denver-Boulder metropolitan area. Such limitations shall be applicable only in those portions of the counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson which are located in the AIR program area, as such area is defined in section 42-4-304 (20), C.R.S. Such regulations shall exclude areas above seven thousand feet unless the commission determines that particulates from wood burning in such areas are contributing to the brown cloud. Such regulations shall not apply to any person who utilizes

wood-burning stoves or fireplaces as the primary source of heat in such person's place of residence. Such regulations shall permit exemptions for wood-burning stoves that meet Phase III emissions standards. For the purposes of this section, "Phase III" means wood stove standards adopted by the commission which are more strict than existing wood stove standards. The regulations promulgated pursuant to this subsection (1) shall not be effective until July 1, 1990.

(2) No regulation promulgated by the commission pursuant to subsection (1) of this section shall apply within any municipality which has in effect on January 1, 1990, an ordinance mandating restricted use of wood-burning stoves and fireplaces during those periods of time declared by the Colorado department of health to be high pollution days.

Source: **L. 89:** Entire section added, p. 1157, § 4, effective May 26. **L. 93:** (1) amended, p. 1922, § 2, effective July 1. **L. 94:** (1) amended, p. 2560, § 63, effective January 1, 1995.

25-7-106.5. Commission - duties - alternative fuels - street-cleaning - time-shifting - reports. (Repealed)

Source: **L. 89:** Entire section added, p. 1158, § 4, effective May 26. **L. 96:** Entire section repealed, p. 1258, § 152, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-106.7. Regulations - studies - AIR program area. The authority of the commission to promulgate regulations pursuant to section 25-7-106.3 is limited to the program area, as defined in section 42-4-304 (20), C.R.S., and such regulations shall not apply outside the program area.

Source: **L. 89:** Entire section added, p. 1158, § 4, effective May 26. **L. 93:** Entire section amended, p. 1923, § 3, effective July 1. **L. 94:** Entire section amended, p. 2560, § 64, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1275, § 37, effective June 5.

25-7-106.8. Colorado clean vehicle fleet program. (1) As used in this section, unless the context otherwise requires:

(a) "Alternative fuel" means compressed natural gas, propane, ethanol, or any mixture of ethanol containing eighty-five percent or more ethanol by volume with gasoline or other fuels, electricity, or any other fuels, which fuels may include, but are not limited to, clean diesel and reformulated gasoline so long as these other fuels make comparable reductions in carbon monoxide emissions and brown cloud pollutants as determined by the air quality control commission. "Alternative fuel" does not include any fuel product, as defined in section 25-7-139 (3), that contains or is treated with methyl tertiary butyl ether (MTBE).

(b) to (f) Repealed.

(2) to (7) Repealed.

Source: **L. 92:** Entire section added, p. 1173, § 8, effective July 1; (1)(a), (1)(b), and (5) amended, p. 1317, § 2, effective July 1. **L. 94:** (1)(c) and (2) amended, p. 2780, § 496, effective July 1; (4) amended, p. 2560, § 65, effective January 1, 1995. **L. 95:** (1)(a) amended, p. 1191, § 1, effective May 31. **L. 98:** (1)(a) amended, p. 1297, § 1, effective June 1. **L. 99:** (1)(b), (2), and (3) amended and (6) and (7) added, p. 854, § 1, effective May 24. **L. 2000:** (1)(a) amended, p. 763, § 3, effective September 1. **L. 2002:** (1)(b) to (1)(f) and (2) to (7) repealed, p. 1066, § 2, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1)(c) and (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-106.9. Alternative fuels financial incentive program. (Repealed)

Source: **L. 89:** Entire section added, p. 1163, § 1, effective May 26. **L. 92:** Entire section amended, pp. 1175, 1315, §§ 9, 1, effective July 1. **L. 94:** (1)(a) and (1)(e)(I) amended, p. 2781, § 497, effective July 1; (1)(e)(II) amended, p. 2561, § 66, effective January 1, 1995.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1997. (See L. 92, p. 1315.)

25-7-107. Commission - area classification. (1) The commission shall, within one hundred eighty days after June 20, 1979, and thereafter from time to time, if evidence indicates a need, review the current classification of any attainment, nonattainment, or unclassifiable area within the state and shall revise the classification of any such area or part thereof which is calculated by air quality modeling or shown by monitored data or other reliable methods to be invalid.

(2) The commission shall, upon application by the owner or operator of any existing or proposed stationary source, review the designation of any attainment, nonattainment, or unclassifiable area within the state and shall revise the designation of any such area or part thereof which is calculated by air quality modeling or shown by monitored data or other reliable methods to be invalid.

(2.5) Whenever monitoring data for any pollutant for which an area is designated nonattainment demonstrate that the national ambient air quality standard for that pollutant has been attained in accordance with the criteria required under the federal act, the division and commission shall take expeditious action to redesignate the area as attainment for that pollutant.

(3) In making any determination regarding the attainment, nonattainment, or unclassifiable designation of any area within the state with regard to particulate matter, the commission shall consider and, if consistent with the requirements of Part D of the federal act, discount the effects of particulate matter not of a size or substance to adversely affect public health or welfare.

(4) All revisions of designations shall be submitted to the administrator of the United States environmental protection agency.

Source: **L. 79:** Entire article R&RE, p. 1024, § 1, effective June 20. **L. 92:** (2.5) added, p. 1177, § 10, effective July 1.

25-7-108. Commission to promulgate ambient air quality standards. (1) In addition to the other powers and duties enumerated in this article, the commission shall have the power to adopt, promulgate, amend, and modify such standards for the quality of ambient air as may be appropriate or necessary to carry out the purposes of this article, including, but not limited to:

(a) Standards which describe the maximum concentrations of specifically described pollutants that can be tolerated, consistent with the protection of the good health of the public at large; such standards may differ for different parts of the state as may be necessitated by variations in altitude, topography, climate, or meteorology;

(b) Standards which describe the air quality goals that are to be achieved by control programs within specified periods of time; such standards may be either statewide or restricted to specified control areas; and

(c) Standards which describe varying degrees of pollution of ambient air.

(2) Ambient air standards shall include such requirements for test methods and procedures as will assure that the samples of ambient air tested are representative of the ambient air.

(3) Notwithstanding any provision of this article to the contrary, no provision of this article shall preclude the commission from adopting ambient air quality standards which are more stringent than the national ambient air quality standards.

(4) Ambient standards may only be implemented and enforced through permit terms and conditions or regulations promulgated to meet requirements for state implementation plans.

Source: L. 79: Entire article R&RE, p. 1024, § 1, effective June 20. L. 92: (4) added, p. 1177, § 11, effective July 1.

ANNOTATION

Precise standards impractical to administer. Precise standards in the area of air pollution enactments are impractical, if not impossible, to administer. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

Broad standards sufficient. Broad standards such as "necessary" have been found sufficient as standards, although incapable of precise definition. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

25-7-109. Commission to promulgate emission control regulations. (1) (a) Except as provided in sections 25-7-130 and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls:

(I) For each significant source or category of significant sources of air pollutants;

(II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

(b) The requirements and prohibitions contained in such regulations shall be set forth with as much specificity and clarity as is practical. Upon adoption of an emission control regulation under subparagraph (II) of paragraph (a) of this subsection (1) for the control of a specific facility, process, or activity, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1); prior to such adoption, the general regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1) shall be applicable to such facility, process, or activity. In the formulation of each emission control regulation, the commission shall take into consideration the following:

(I) The state policy regarding air pollution, as set forth in section 25-7-102;

(II) Federal recommendations and requirements;

(III) The degree to which altitude, topography, climate, or meteorology in certain portions of the state require that emission control regulations be more or less stringent than in other portions of the state;

(IV) The degree to which any particular type of emission is subject to treatment, and the availability, technical feasibility, and economic reasonableness of control techniques;

(V) The extent to which the emission to be controlled is significant;

(VI) The continuous, intermittent, or seasonal nature of the emission to be controlled;

(VII) The economic, environmental, and energy costs of compliance with such emission control regulation;

(VIII) Whether an emission control regulation should be applied throughout the entire state or only within specified areas or zones of the state, and whether it should be applied only when a specified class or type of pollution is concerned.

(2) Such emission control regulations may include, but shall not be limited to, regulations pertaining to:

(a) Visible pollutants;

(b) Particulates;

(c) Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides, and any other chemical substance;

(d) Odors, except for livestock feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2) (b);

(e) Open burning activity;

(f) Organic solvents;

(g) Photochemical substances;

(h) Hazardous air pollutants.

(3) Emission control regulations adopted pursuant to this section shall include, but shall not be limited to, regulations pertaining to the following facilities, processes, and activities:

- (a) Incinerator and incinerator design;
- (b) Storage and transfer of petroleum products and any other volatile organic compounds;
- (c) Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations;
- (d) Specifications, prohibitions, and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;
- (e) Wigwam waste burners, pulp mills, alfalfa dehydrators, asphalt plants, and any other industrial or commercial activity which tends to emit air pollutants as a by-product;
- (f) Industrial process equipment;
- (g) Industrial spraying operations;
- (h) Airplanes;
- (i) Diesel-powered machines, vehicles, engines, and equipment;
- (j) Storage and transfer of volatile compounds and hazardous or toxic gases or other hazardous substances which may become airborne.

(4) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants.

(5) The commission shall promulgate appropriate regulations setting conditions and time limitations for periods of start-up, shutdown, or malfunction or other conditions which justify temporary relief from controls. Operations of any air pollution source during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance or compliance test.

(6) The commission shall establish test methods and procedures for determining compliance with emission control regulations promulgated under this section and, in so doing, shall, to the maximum degree consistent with the purposes of this article, consider the test methods and procedures established by the United States environmental protection agency and shall adopt such test methods and procedures as shall minimize the possibility of inconsistency or duplication of effort.

(7) All regulations promulgated pursuant to this section shall conform with the provisions of part 5 of this article concerning asbestos control.

(8) (a) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2) (b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

(b) Nothing in paragraph (a) of this subsection (8), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(9) (a) The commission shall adopt a procedure consistent with the federal environmental protection agency requirements for determining when there has been a net significant emissions increase which results in a major modification that subjects a source to the permitting requirements of the prevention of significant deterioration program or the nonattainment area new source review. The commission's procedure shall also prohibit sources from circumventing the new source review requirements in a manner consistent with the federal environmental protection agency guidance. Such procedure shall be the same for both the prevention of significant deterioration program and the nonattainment area new source review program and shall not apply to hazardous air pollutants. Such net emissions increase procedure shall be as described in paragraph (b) of this subsection (9),

unless and until the federal environmental protection agency requires otherwise or unless after January 1, 1998, the commission:

(I) Undertakes a collaborative process with the affected industries to determine the cost and emission impacts associated with any proposed changes in this procedure;

(II) Reviews at least three years of emissions increases and decreases under the procedures described in paragraph (b) of this subsection (9);

(III) Delivers reports on the matters required in subparagraphs (I) and (II) of this paragraph (a) to the general assembly for its review;

(IV) Determines through rule-making that an applicability procedure for major modifications more stringent than that described in paragraph (b) of this subsection (9) is equitable when considering minor, area, and mobile source controls; and

(V) Determines through rule-making that such more stringent applicability procedure is necessary to attain and to maintain the national ambient air quality standards.

(b) The procedure for determining when there has been a net significant emissions increase shall be consistent with requirements of the federal environmental protection agency and:

(I) Such requirements shall apply only if there is, in the first instance, a significant emissions increase from an individual proposed project or modification. If the individual proposed project or modification will not result in a significant emissions increase, it shall be exempt from the prevention of significant deterioration program and the nonattainment area new source review requirements.

(II) If a project or modification is not exempt under subparagraph (I) of this paragraph (b), each pollutant for which the project results in a significant emissions increase shall be subject to the prevention of significant deterioration program or the nonattainment area new source review requirements only if the sum of all source-wide, non-de minimis, contemporaneous, and creditable emissions increases and decreases of that pollutant or that regulated precursor exceed applicable significance levels. Each specific regulated precursor shall be considered independently in determining applicable significance levels.

(III) In determining the non-de minimis net emissions increase during the contemporaneous period, the commission's procedures shall be consistent with the federal environmental protection agency's review procedure for determining net emissions increases and decreases. Non-de minimis increases shall exclude all increases which would be exempt under commission rules from a requirement to obtain a construction permit under section 25-7-114.2.

Source: **L. 79:** Entire article R&RE, p. 1025, § 1, effective June 20. **L. 87:** (7) added, p. 1151, § 3, effective July 1. **L. 92:** (2)(h) amended and (8) added, p. 1177, § 12, effective July 1. **L. 94:** (9) added, p. 1418, § 1, effective May 25. **Initiated 98:** (2)(d) and (8) amended, effective upon proclamation of the Governor, December 30, 1998. **L. 2005:** (8) amended, p. 348, § 4, effective August 8.

Editor's note: (1) Subsections (2)(d) and (8) were amended by an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure amending subsections (2)(d) and (8) was effective upon proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR:	790,852
AGAINST:	438,873

ANNOTATION

Law reviews. For comment, "Pre-Enforcement Judicial Review: CF&I Steel Corp. v. Colo. Air Pollution Control Commission", see 58 Den. L.J. 693 (1981).

Factors to be considered in promulgation. Commission-promulgated regulations may and sometimes must be formulated with regard to the various factors which either constitute, pro-

duce, or dispel air pollution: e.g., classifying different types and degrees of air pollution; promulgating regulations applicable to either a part or the whole of the state; describing maximum concentrations of contaminants that can be tolerated depending on variations in altitude, topography, climate, or meteorology; taking into consideration the degree to which any particular

type of emission is subject to treatment; and considering the continuous, intermittent, or seasonal nature of the emission to be controlled. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

Where an electrical generating unit has the same industrial grouping as two other units located on contiguous property and all three units are operated by the same entity, there was no error in concluding that the unit is not a separate source. Therefore, increased emissions

from the unit should be considered in conjunction with reduced emissions from the other two units, and the source-wide emission increases did not exceed the applicable significance levels. *Citizens for Clean Air & Water v. Colo. Dept. of Pub. Health & Env't*, 181 P.3d 393 (Colo. App. 2008).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-109.1. Emergency rule-making. In addition to all other powers of the commission, the commission, pursuant to section 24-4-103 (6), C.R.S., shall have the authority to conduct emergency rule-making for the purpose of adopting an interim emission control regulation to apply for a specified period of time in place of an existing emission control regulation or to create an emission control regulation whenever federal regulations have been adopted and become effective pursuant to section 111 of the federal act and which add to the list of categories of stationary sources, or add new or more restrictive standards of performance for new sources, or whenever federal regulations are adopted and effective pursuant to section 112 of the federal act and which modify or adopt MACT or GACT for new or existing sources, and such regulations are required to be implemented by the states. Interim emission control regulations adopted pursuant to this section shall not be effective for a period greater than twelve months from the date of adoption.

Source: L. 92: Entire section added, p. 1178, § 13, effective July 1.

25-7-109.2. Small business stationary source technical and environmental compliance assistance program - repeal. (1) The commission shall promulgate such rules, regulations, and procedures as are necessary to establish and administer the Colorado small business stationary source technical and environmental compliance assistance program consistent with the requirements of the federal act.

(2) There is hereby created a compliance advisory panel which shall:

(a) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, degree of enforcement, and severity of penalties;

(b) Make periodic reports to the governor and the administrator of the United States environmental protection agency;

(c) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(d) Oversee the small business stationary source technical and environmental compliance assistance program, which shall serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(3) The panel shall consist of:

(a) Two members who are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) Two members who are owners or who represent owners of small business stationary sources, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives;

(c) Two members who are owners or who represent owners of small business stationary sources, one appointed by the president of the senate and one appointed by the minority leader of the senate; and

(d) One member appointed by the executive director of the department of public health and environment to represent such department.

(4) The terms of those members of the panel initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the house of representatives shall expire on January 31, 1994. The terms of those members initially appointed by

the president of the senate, the minority leader of the senate, and the executive director of the department of public health and environment shall expire on January 31, 1995. Thereafter, members of the panel shall serve for terms of two years, such terms to commence on February 1 of the year of appointment. Vacancies occurring during the term of office of any member of the panel shall be filled for the unexpired portion of the regular term in the same manner as for the original appointment.

(5) In furtherance of the small business stationary source technical and environmental compliance assistance program established as provided in subsection (1) of this section, the department of public health and environment shall serve as ombudsman for small business stationary sources. The department shall carry out the ombudsman duties using personnel outside of the air pollution control division.

(6) The general assembly finds, determines, and declares that this section is enacted for purposes of compliance with the provisions of section 507 of the federal act, 42 U.S.C. sec. 7661f. Subsections (2), (3), and (4) of this section and this subsection (6) are repealed, effective July 1, 2015. Prior to said repeal, the compliance advisory panel shall be reviewed by a legislative committee of reference, designated pursuant to section 2-3-1201, C.R.S., to conduct the review pursuant to section 24-34-104, C.R.S.

Source: L. 92: Entire section added, p. 1161, § 3, effective July 1; entire section added, p. 1178, § 13, effective July 1. L. 94: (3)(d) amended, p. 2782, § 498, effective July 1. L. 96: (6) amended, p. 798, § 12, effective May 23; (5) amended, p. 845, § 1, effective July 1, 1997. L. 98: (6) amended, p. 76, § 1, effective March 23. L. 2004: (6) amended, p. 349, § 16, effective July 1. L. 2005: (6) amended, p. 155, § 1, effective April 5.

Editor's note: Amendments to this section by Senate Bill 92-97 and Senate Bill 92-105 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3)(d), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-109.3. Colorado hazardous air pollutant control and reduction program - rules. (1) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants as defined in section 25-7-103 (13) which are consistent with this section and the requirements of and emission standards promulgated pursuant to section 112 of the federal act, including any standard required to be imposed under section 112(r) of the federal act. The commission shall monitor the progress and results of the risk studies performed under section 112 of the federal act to show that Colorado's hazardous air pollutant control and reduction program is consistent with the national strategy.

(2) The commission may only promulgate regulations pertaining to hazardous air pollutants as defined in section 25-7-103 (13) in accordance with this section. In order to minimize additional regulatory and compliance costs to the state's economy, any program created by the commission pursuant to this section shall contain a provision which exempts those sources or categories of sources which it determines to be of minor significance from the requirements of the program. Consistent with the provisions of section 25-7-105.1, the commission shall authorize synthetic minor sources of hazardous air pollutants by the issuance of construction permits or prohibitory rules or other regulations. Such permits, rules, or regulations shall only be as stringent as necessary to establish synthetic minor status. The commission shall expeditiously implement this subsection (2) to assure that all sources may be able to timely qualify as a synthetic minor source, thereby avoiding the costs of the operating permit program.

(3) (a) (I) As soon as adequate scientific, technological, and hazardous air pollutant emissions information is available, the commission may promulgate regulations for the control of hazardous air pollutants utilizing Colorado GACT or Colorado MACT technology-based emission reduction requirements, as defined in section 25-7-103 (6.7) and (6.8).

(II) The division may establish schedules of compliance of up to five years leading to final compliance for any such regulation, which shall be enforced through regulations or conditions in construction permits issued pursuant to section 25-7-114.2 or 25-7-114.5. In

determining any schedule of compliance, the division shall consider the current availability of technology, costs of compliance, and the consequence of delay to the public health or environment or economy.

(III) The division shall issue its determination of Colorado GACT or Colorado MACT and the compliance schedule in writing.

(IV) Within thirty calendar days after receipt of a determination by the division requiring installation of Colorado GACT or Colorado MACT and the compliance schedule, pursuant to this subsection (3), a source may appeal such a determination or compliance schedule by filing with the commission a written petition requesting a hearing to review the determination on a de novo basis.

(V) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(b) This section shall only apply to sources emitting a hazardous air pollutant identified in the list established or amended pursuant to subsection (5) of this section which:

(I) Are not included in categories or subcategories of sources listed or proposed to be listed by the environmental protection agency under section 112 of the federal act and thus will not be required to comply with GACT or MACT under the federal act, as defined in section 25-7-103 (12.1) and (16.5); or

(II) Are included in categories or subcategories of sources listed or proposed to be listed under section 112 of the federal act and which have:

(A) Levels of emissions of hazardous air pollutants listed under section 112 (b) of the federal act which are below thresholds established under the federal act and thus will not be required to comply with GACT and MACT under the federal act and as defined in section 25-7-103 (12.1) and (16.5); except that this section shall not apply to a source included in a category or subcategory for which a lesser quantity emission rate has been proposed or adopted under section 112 of the federal act; or

(B) Hazardous air pollutant emissions above a threshold level of the substance listed under subparagraph (II) of paragraph (a) and paragraph (b) of subsection (5) of this section.

(b.1) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission in making a determination about the need for such regulation under this subsection (3). The commission and the science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(c) The commission shall designate by regulation those classes of minor or insignificant sources of emissions of hazardous air pollutants which are exempt from the requirements of this section because their emissions of hazardous air pollutants will result in an inconsequential risk to public health.

(d) (I) A source subject to the requirements of this section may be exempt from installation of Colorado MACT or Colorado GACT or any Colorado health-based requirement if the division makes a determination that an alternative level of control, including no emission controls, will result in an inconsequential risk to public health.

(II) The division shall issue its determination of a source's request for exemption under this paragraph (d) in writing within sixty days of receipt of a complete application for an exemption and shall publish notice of its determination by at least one publication in a newspaper of general distribution in the area of the source requesting the exemption.

(III) Within thirty calendar days after receipt of a determination by the division of a request for exemption by a source under this paragraph (d), the source or any person may appeal such determination by filing with the commission a written petition requesting a hearing to review the exemption request on a de novo basis. Such request shall be referred to the air quality science advisory board for an advisory opinion which shall be considered by the commission.

(IV) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(e) Any source as defined in section 112(i) of the federal act, and regulations promulgated thereunder, that participates in the early reduction program pursuant to section 112(i) of the federal act, or this article, shall be exempt from the requirements of this section for the same period of time exemptions from federal requirements or requirements under this article are allowed under the early reduction program.

(f) This section shall not apply to sources subject to national emission standards for hazardous air pollutants (NESHAP) established by the administrator pursuant to the federal act, but only for those emissions for which a NESHAP is established.

(g) This section shall not impose requirements on sources included in categories or subcategories of sources which are listed in section 112(n) of the federal act which are inconsistent with the timing of studies or assessments conducted under or definitions set forth in section 112(n) of the federal act.

(4) (a) (I) On or after the risk-based studies required under sections 112(k)(3), 112(o), and 112(f) of the federal act are completed and received by the commission, the commission may adopt regulations pertaining to those sources identified as emitting hazardous air pollutants regulated under this section which may include additional emission reduction requirements to address any residual risk of health effects with respect to actual persons living in the vicinity of sources after installation of technology-based controls. Imposition of such requirements may be made upon a determination by the commission that operation of sources without health-based controls does not or will not represent an inconsequential threat to public health. Regulations as finally adopted pursuant to this subsection (4) may apply on a source-specific basis.

(II) However, if in 1996 the commission determines that the studies referred to in subparagraph (I) of this paragraph (a) and national strategy will not be timely or completed, then the commission shall direct the science advisory board to evaluate or complete similar studies and issue an advisory report to the commission and the commission may then act pursuant to this subsection (4).

(b) In issuing the advisory report, the air quality science advisory board shall take into consideration any studies or reports on health-based assessments which are scientifically sound, including any developed under section 112(k)(3), 112(o), and 112(f) of the federal act.

(c) Subject to paragraph (a) of this subsection (4), for existing sources not subject to regulation under section 25-7-114.3, or not subject to regulation as a modified source, the commission may promulgate health-based regulations on a source-by-source basis, with the exceptions specified in paragraph (d) of this subsection (4).

(d) The commission and the air quality science advisory board may recognize similarities among regulated sources or apply, when appropriate, previous control requirements established by the commission pursuant to paragraph (a) of this subsection (4) in making a determination about the need for such regulation under this subsection (4). The commission and the air quality science advisory board shall also consider fundamentally different factors between sources in making these determinations.

(e) The commission may establish schedules of compliance leading to final compliance for any regulation promulgated pursuant to this subsection (4).

(f) A hearing conducted by the commission under this subsection (4) shall be conducted in accordance with section 25-7-110 or 25-7-119 or article 4 of title 24, C.R.S., as applicable.

(g) In reaching a determination under this subsection (4), the commission shall give consideration to the technical availability of methods of compliance, the costs of compliance, and the consequences of delay. The commission shall also consider cost-benefit analysis and risk-benefit analysis pursuant to section 24-4-103 (4.5), C.R.S.

(h) **Temporary exceptional authority.** (I) (A) This subparagraph (I) shall apply until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4). If the executive director of the department of public health and environment finds that a source in a category or subcategory of sources listed or proposed to be listed under section 112 of the federal act for which MACT or GACT is not scheduled for proposal until after 1997 and presents an unacceptable threat of actual health effects, then the executive director may direct the commission to evaluate and, as necessary, study such

actual health effects. The commission may request the air quality science advisory board to evaluate and, as necessary, study whether the impacts of waiting to regulate the emissions of hazardous air pollutants from this source present an unacceptable threat of actual health effects. If, after considering an advisory opinion issued by the board and other available information, the commission finds by a preponderance of the evidence that waiting until the source would be required to install GACT or MACT under section 112 of the federal act will cause an unacceptable incremental threat of actual health effects to persons living in the vicinity of such source, the commission may promulgate regulations for the control of hazardous air pollutants for the source. The control regulations may include the least restrictive control that will adequately protect the public, including but not limited to: Chemical substitution, pollution prevention, work process modifications, additional control technologies, or Colorado MACT or GACT. In promulgating Colorado GACT or MACT for the source, the commission shall consider and be as consistent as possible with GACT or MACT under section 112 of the federal act, minimization of duplicative capital expenditures and minimization of substantial reconstruction time. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(B) Any source which is required to install Colorado MACT or GACT under regulations promulgated pursuant to sub-paragraph (A) of this subparagraph (I) only and which subsequently is required to install federal MACT or GACT that is significantly different than Colorado MACT or GACT and imposes a significant capital cost on the source, then the general assembly shall study and consider whether an operating permit fee credit or a state tax credit for the capital costs, or a percentage of the costs, is appropriate.

(II) Until such time as the commission is authorized to act pursuant to paragraph (a) of this subsection (4) and upon the recommendation of the executive director of the department of public health and environment, the governor may find, as expressed in an executive order, that after an existing source has installed Colorado or federal MACT or GACT, or Colorado MACT or GACT has been proposed for a new source or a modification of an existing source, the source presents an unacceptable threat of actual health effects. The governor may then direct the commission to evaluate and, as necessary, conduct studies on actual health effects. The commission shall then direct the air quality science advisory board to render an advisory opinion on such information and on whether, after technology-based controls have been installed, emissions of hazardous air pollutants from this source will cause actual health effects to persons in the vicinity of such source. If the commission, after reviewing the advisory opinion, determines by a preponderance of the evidence that emissions of hazardous air pollutants by the source will cause an unacceptable threat of actual health effects to persons living in the vicinity of such source, the commission may then promulgate additional technology-based control regulations, pollution prevention, or health-based measures to protect the public health. The commission shall provide a schedule of compliance leading to final compliance which considers matters identified in paragraphs (b), (c), (e), (f), and (g) of this subsection (4).

(III) This paragraph (h) shall remain effective only until such time as the commission acts pursuant to its authority under paragraph (a) of this subsection (4).

(5) (a) The substances listed in or pursuant to section 112(b) of the federal act, and the following substances, are declared to be hazardous air pollutants and are subject to regulation by the commission under this section:

	Chemical Abstract Service Number	Chemical
(I)	50-18-0	Cyclophosphamide
(II)	50-32-8	Benzo(a)pyrene
(III)	52-24-4	Tris(aziridiny)-phosphine sulfide
(IV)	52-24-4	Thio-tepa
(V)	53-70-3	Dibenz[a,h]anthracene
(VI)	55-98-1	1,4-butanediol dimethanesulphonate

(VII)	56-53-1	Dirthylstulresterol
(VIII)	56-55-3	Benz[a]anthracene
(IX)	70-25-7	N-methyl-n-nitro-n-nitrosoguanidine
(X)	78-98-8	Methylglyoxol
(XI)	115-28-6	Chlorendic acid
(XII)	117-10-2	Chrysazin
(XIII)	122-60-1	Phenyl glycidyl ether
(XIV)	132-27-4	2-biphenylol sodium salt
(XV)	154-93-8	Bischloroethyl nitrosourea
(XVI)	298-81-7	8-methoxypsoralen
(XVII)	299-75-2	Treosulphan
(XVIII)	305-03-3	Clorambucil
(XIX)	370-67-2	Azactidine
(XX)	366-70-1	Procarbazine hydrochloride
(XXI)	446-86-6	Azathioprine
(XXII)	484-20-8	5-methoxypsoralen
(XXIII)	494-03-1	Chlornaphazine
(XXIV)	590-96-5	Methanol, (methyl-onn-azoxy)
(XXV)	607-57-8	2-nitrofluorene
(XXVI)	615-53-2	N-nitroso-n-methylurethane
(XXVII)	817-09-4	Trichlormethine
(XXVIII)	1188-47-2	Nitrilotriacetic acid, copper(2+) salt (1:1)
(XXIX)	1188-48-3	Nitrilotriacetic acid, magnesium salt (1:1)
(XXX)	1309-64-4	Antimony oxide
(XXXI)	1317-98-2	Valentinite
(XXXII)	1402-68-2	Aflatoxins
(XXXIII)	2399-81-7	Nitrilotriacetic acid, beryllium salt (1:1)
(XXXIV)	2399-83-9	Nitrilotriacetic acid, barium salt (1:1)
(XXXV)	2399-85-1	Nitrilotriacetic acid, tripotassium salt
(XXXVI)	2399-86-2	Nitrilotriacetic acid, dipotassium salt
(XXXVII)	2399-87-3	Nitrilotriacetic acid, beryllium potassium salt (1:1)
(XXXVIII)	2399-88-4	Nitrilotriacetic acid, potassium magnesium salt (1:1:1)
(XXXIX)	2399-89-5	Nitrilotriacetic acid, potassium strontium salt (1:1:1)
(XL)	2399-94-2	Nitrilotriacetic acid, calcium salt (1:1)
(XLI)	2455-08-5	Nitrilotriacetic acid, calcium potassium salt (1:1:1)
(XLII)	2475-45-8	Disperse blue 1
(XLIII)	2646-17-5	C1 solvent orange2
(XLIV)	3130-95-8	Nitrilotriacetic acid, scandium (3+) salt (1:1)
(XLV)	3438-06-0	Nitrilotriacetic acid, neodymium (3+) salt (1:1)
(XLVI)	5064-31-3	Nitrilotriacetic acid, trisodium salt
(XLVII)	5522-43-0	1-nitropyrene

(XLVIII)	5798-43-6	Nitrilotriacetic acid, disodium salt, compound with oxo (dihydrogen nit)
(XLIX)	7496-02-8	6-nitrochrysene
(L)	10042-84-9	Nitrilotriacetic acid, sodium salt (unspecified)
(LI)	10043-92-2	Radon decay products
(LII)	10413-71-5	Nitrilotriacetic acid, erbium(3+) salt (3:1)
(LIII)	12412-52-1	Senarmontite
(LIV)	12510-42-8	Erionite
(LV)	13010-47-4	1-(2-chloroethyl)-3- cyclohexyl-1-nitrosoarea
(LVI)	13909-09-6	1,(2-chloroethyl)-3-(4 methyl-cyclohexyl)-1 nitrosoarea
(LVII)	14695-88-6	Nitrilotriacetic acid, compound with iron chloride, as /fecl3/
(LVIII)	14807-96-6	Talc (containing asbestos fibers)
(LIX)	14981-08-9	Nitrilotriacetic acid, calcium salt
(LX)	15414-25-2	Nitrilotriacetic acid, yttrium (3+) salt (1:1)
(LXI)	15467-20-6	Nitrilotriacetic acid, disodium salt
(LXII)	15663-27-1	Cisplatin
(LXIII)	15844-52-7	Nitrilotriacetic acid, copper (2+) complex
(LXIV)	15934-02-8	Nitrilotriacetic acid, monoammonium salt
(LXV)	16448-54-7	Nitrilotriacetic acid, iron (3+) complex
(LXVI)	16568-02-8	Gyromitrin
(LXVII)	18105-03-8	Nitrilotriacetic acid, mercury (2+) salt (2:3)
(LXVIII)	18432-54-7	Nitrilotriacetic acid, cadmium (2+) complex
(LXIX)	18540-29-9	Chromium compounds, hexavalent
(LXX)	18662-53-8	Nitrilotriacetic acid, trisodium salt monohydrate
(LXXI)	18946-94-6	Nitrilotriacetic acid, neodymium (3+) salt (1:1)
(LXXII)	18983-72-7	Nitrilotriacetic acid, beryllium potassium salt (1:1)
(LXXIII)	18994-66-6	Nitrilotriacetic acid, monosodium salt
(LXXIV)	19010-73-2	Nitrilotriacetic acid, aluminium (3+) complex
(LXXV)	19456-58-7	Nitrilotriacetic acid, indium (3+) complex
(LXXVI)	22965-60-2	Nitrilotriacetic acid, nickel (3+) complex
(LXXVII)	23214-92-8	Adrianmycin

(LXXVIII)	23255-03-0	Nitrilotriacetic acid, disodium salt, monohydrate
(LXXIX)	23319-51-9	Nitrilotriacetic acid, cobalt (3+) complex
(LXXX)	23555-96-6	Nitrilotriacetic acid, potassium strontium salt (2:4:1)
(LXXXI)	23555-98-8	Nitrilotriacetic acid, calcium potassium salt (2:1:4)
(LXXXII)	25817-24-7	Nitrilotriacetic acid, potassium salt
(LXXXIII)	28444-53-3	Nitrilotriacetic acid, monopotassium salt
(LXXXIV)	28027-38-0	Nitrilotriacetic acid, holmium salt
(LXXXV)	29027-90-5	Nitrilotriacetic acid, cerium salt
(LXXXVI)	29507-58-2	Nitrilotriacetic acid, zinc (3+) complex sodium salt
(LXXXVII)	32685-17-9	Nitrilotriacetic acid, triammonium salt
(LXXXVIII)	34831-02-2	Nitrilotriacetic acid, copper (2+) hydrogen complex
(LXXXIX)	34831-03-3	Nitrilotriacetic acid, nickel (2+) hydrogen complex
(XC)	36711-58-7	Nitrilotriacetic acid, manganese salt
(XCI)	42397-64-8	1,6-dinitropyrene
(XCII)	42397-65-9	1,8-dinitropyrene
(XCIII)	46242-44-8	Nitrilotriacetic acid, antimony (3+) complex
(XCIV)	50618-02-7	Nitrilotriacetic acid, tricadium (2+) complex
(XCV)	53108-47-7	Nitrilotriacetic acid, copper (2+) complex sodium salt
(XCVI)	53108-50-2	Nitrilotriacetic acid, cobalt (3+) hydrogen complex
(XCVII)	53818-84-1	Nitrilotriacetic acid, tin (2+) salt
(XCVIII)	54749-90-5	Chlorozotocin
(XCIX)	57835-92-4	4-nitropyrene
(C)	59865-13-3	Cyclosporin A
(CI)	60034-45-9	Nitrilotriacetic acid, calcium sodium salt (1:1:1)
(CII)	60153-49-3	3-(n-nitrosomethylamino) propionitrile
(CIII)	61017-62-7	Nitrilotriacetic acid, iron (2+) complex sodium salt (1:1:1)
(CIV)	62450-06-0	trp-p-1
(CV)	62450-07-1	trp-p-2

(CVI)	64091-91-4	Ketone, 3-pyridyl3-(n-methyl-n-nitrosoamino) propyl
(CVII)	67730-10-3	2-aminodipyrido[1,2-a3,2-d]imidazole
(CVIII)	66730-11-4	2-amino-6-methyldipyrido[1,2-a3,2-d]imidazole
(CIX)	68006-83-7	2-amino-3-methyl-9h-pyrido[2,3-b]indole
(CX)	69679-89-6	Nitrilotriacetic acid, calcium salt (2:3)
(CXI)	71484-80-5	Nitrilotriacetic acid, copper (2+) complex ammonium salt
(CXII)	72629-49-3	Nitrilotriacetic acid, dilithium salt
(CXIII)	73772-91-5	Nitrilotriacetic acid, magnesium salt
(CXIV)	76180-96-6	2-amino-3-methylimidazo[4,5-f]quinoline
(CXV)	79217-60-0	Cyclosporine
(CXVI)	79849-02-8	Nitrilotriacetic acid, lead (2+) salt (1:1)
(CXVII)	79915-08-5	Nitrilotriacetic acid, lead (2+) potassium salt (1:1:1)
(CXVIII)	79915-09-6	Nitrilotriacetic acid, lead (2+) salt (2:3)
(CXIX)	80508-23-2	N-nitrososornicotine
(CXX)	86892-89-9	Nitrilotriacetic acid, disodium ammonium salt
(CXXI)	92474-39-0	Nitrilotriacetic acid, trisilver salt
(CXXII)	92988-11-9	Nitrilotriacetic acid, strontium sodium salt
(CXXIII)	108171-26-2	Chlorinated paraffins (c12, 60% chlorine)
(CXXIV)	309-00-2	Aldrin
(CXXV)	60-57-1	Dieldrin
(CXXVI)	55-18-5	N-nitrosodiethylamine
(CXXVII)	319-84-6	L-hexachlorocyclohexane
(CXXVIII)	608-73-1	Hexachlorocyclohexane-tech
(CXXIX)	7644-41-0	1,4 dichloro-2-butene
(CXXX)	924-16-3	N-nitroso-d-n-butyl-amine

(b) The commission may promulgate a regulation which amends by adding to, or deleting from, the list of hazardous air pollutants subject to regulation under this section within the state which are not listed as hazardous air pollutants under the federal act. In amending the list of hazardous air pollutants in paragraph (a) of this subsection (5), the commission shall utilize the same standards and criteria which section 112 of the federal act requires the administrator to utilize in amending the list of hazardous air pollutants under the federal act. The commission shall refer any such proposed amendment to the air quality science advisory board for an advisory opinion prior to conducting a proceeding under this paragraph (b).

(c) The commission shall by regulation establish de minimis emission levels for each

hazardous air pollutant beneath which levels emissions are considered to be of minor significance.

(d) The rule-making authorized under paragraphs (b) and (c) of this subsection (5) shall include a hearing to allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(e) Proceedings of the commission to amend the list of hazardous air pollutants under paragraph (b) of this subsection (5) shall be conducted on a substance-by-substance basis and there shall not be a consolidation of proceedings wherein more than five substances are considered for listing as a hazardous air pollutant in one proceeding.

Source: **L. 92:** Entire section added, p. 1180, § 13, effective July 1. **L. 94:** (2) amended, p. 1419, § 2, effective May 25; (4)(h)(I)(A) and (4)(h)(II) amended, p. 2782, § 499, effective July 1. **L. 96:** (1) amended, p. 1257, § 150, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (4)(h)(I)(A) and (4)(h)(II), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For article, “Colorado’s New Clean Air Program”, see 22 Colo. Law. 541 (1993).

25-7-109.4. Air quality science advisory board - created - repeal. (Repealed)

Source: **L. 92:** Entire section added, p. 1191, § 13, effective July 1. **L. 98:** (10)(a) amended, p. 169, § 1, effective April 6.

Editor’s note: Subsection (10)(a) provided for the repeal of this section, effective July 1, 2008. (See L. 98, p. 169.)

25-7-109.6. Accidental release prevention program. (1) The commission may promulgate such rules, regulations, and procedures as are necessary to establish and implement an accidental release prevention program consistent with and no sooner than the requirements of section 112 (r) of the federal act, including release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

(2) For purposes of this section:

(a) “Accidental release” means an unanticipated emission of a regulated substance or other extremely hazardous substance, defined pursuant to the federal act, into the ambient air from a stationary source;

(b) “Regulated substance” means those substances listed by the administrator pursuant to section 112 (r) (3) of the federal act;

(c) “Stationary source” means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(I) Which belong to the same industrial group;

(II) Which are located on one or more contiguous properties;

(III) Which are under the control of the same person (or persons under common control); and

(IV) From which an accidental release may occur.

(d) “Threshold quantity” shall have the same meaning as defined in section 112 (r) of the federal act.

(3) As appropriate, rules, regulations, and procedures promulgated pursuant to this section shall:

(a) Consider the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and the conduct of periodic inspections;

(b) Include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment;

(c) Cover storage, as well as operations;

(d) As appropriate, recognize differences in size, operations, processes, classes, and categories of sources and the voluntary actions of such sources to prevent accidental releases and respond to such releases;

(e) Require the owner or operator of stationary sources at which a threshold quantity of a regulated substance is present to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection (3) and shall also include each of the following:

(I) A hazard assessment, to be updated periodically and registered with the division, the United States environmental protection agency, and other appropriate local agencies, to assess the potential effects of an accidental release of any regulated substance;

(II) A program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring, and employee training measures to be used at the sources; and

(III) A response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

(f) Coordinate notification, reporting, and response requirements between federal, state, and local agencies to avoid duplicate notification and reporting requirements and to integrate emergency response plans.

(4) In addition to any other action taken, when the division determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the division may take action pursuant to sections 25-7-112 and 25-7-113.

(5) The implementation and effectiveness of this section shall be contingent on the receipt of funding from the federal government in sufficient amount to totally fund the division's costs in implementing this section; except that the small business stationary source technical and environmental compliance assistance program shall be funded as provided in section 25-7-114.7.

Source: L. 92: Entire section added, p. 1195, § 13, effective July 1.

25-7-110. Commission - procedures to be followed in setting standards and regulations. (1) Prior to adopting, promulgating, amending, or modifying any ambient air quality standard authorized in section 25-7-108, or any emission control regulation authorized in section 25-7-109, or any other regulatory plans or programs authorized by sections 25-7-105 (1) (c) or 25-7-106, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S., but such notice shall be given at least sixty days prior to the hearing, and shall include each proposed regulation, and shall be mailed to all persons who have filed with the commission a written request to receive such notices.

(2) Any person desiring to propose a regulation differing from the regulation proposed by the commission or to propose a revision of limited applicability, pursuant to section 25-7-117, to the commission's proposal shall file such other proposal with the commission not less than twenty days prior to the hearing, and, when on file, such proposal shall be open for public inspection.

(3) Witnesses at the hearing shall be subject to cross-examination by or on behalf of the commission and by or on behalf of persons who have proposed regulations pursuant to subsection (2) of this section.

(4) Rules and regulations promulgated pursuant to this article shall not take effect until after they have been published in accordance with section 24-4-103, C.R.S., or on such later date as is stated in such rules and regulations.

Source: L. 79: Entire article R&RE, p. 1027, § 1, effective June 20.

ANNOTATION

Law reviews. For comment, "Environmental Law — Requirement of Notice in Visual Opacity Readings — Air Pollution Variance Bd. v.

Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974).

25-7-110.5. Required analysis of proposed air quality rules. (1) In addition to the requirements of section 25-7-110.8, whenever the commission proposes a rule, the technical secretary of the commission shall provide to the public upon request at cost, at the time the notice for public rule-making is published, a proposed rule-making packet containing:

- (a) A memorandum of notice, as required by subsection (3) of this section;
- (b) The actual language of the proposed rule;
- (c) A statement describing the fiscal and economic impact of the proposed rule, as required by subsection (4) of this section;
- (d) A statement describing the potential justification for terms differing from federal requirements, as required by subsection (5) of this section;
- (e) On or before July 1, 1997, a statement describing the risk analysis, if required by the general assembly under subsection (6) of this section;
- (f) The range of regulatory alternatives, including the no-action alternative, to be considered in adopting the proposed rule; and
- (g) Any other concise background material that would assist the interested and affected public in understanding the impact of the proposed rule.

(1.5) As used in this section, "rule" includes an amendment to an existing rule.

(2) The requirements of subsections (1) (c) to (1) (f), (3) (g), and (4) of this section shall not apply to any rule-making packet for any commission rule, and the requirements of subsections (3) (g) and (4) of this section shall not apply to any commission rule, which adopts by reference applicable federal rules or which rule is adopted to implement prescriptive state statutory requirements, where the commission is allowed no significant policy-making options, or which rule will have no regulatory impact on any person, facility, or activity.

(3) Whenever the commission proposes a rule, the technical secretary of the commission, in cooperation with the proponent of the rule, shall provide a memorandum of notice containing:

- (a) An explanation of the proposed rule;
- (b) A disclosure of materials contained in the proposed rule;
- (c) A preliminary plan for meetings with the commission staff on the proposed rule;
- (d) An explanation of the problem sought to be remedied by the proposed rule;
- (e) An analysis of how the proposed rule solves the problem delineated in paragraph (d) of this subsection (3);
- (f) An explanation of the process that was used to develop the proposed rule;
- (g) An initial analysis of the economic effects of the proposed rule pursuant to subsection (4) of this section;
- (h) An explanation of the substantive differences with federal requirements and the requirements of Utah, Arizona, and New Mexico, where relevant;
- (i) An explanation of how the proposed rule may be implemented;
- (j) Whether there will be any time constraints on the regulated community and state agencies as a result of implementation or a delay in implementation of the proposed rule;

(k) A contact person or persons who may provide additional information on the proposed rule to interested persons; and

(l) A no-action analysis.

(4) (a) Before any permanent rule is proposed pursuant to this section, an initial economic impact analysis shall be conducted in compliance with this subsection (4) of the proposed rule or alternative proposed rules. Such economic impact analysis shall be in writing, developed by the proponent, or the division in cooperation with the proponent and made available to the public at the time any request for hearing on a proposed rule is heard by the commission. A final economic impact analysis shall be in writing and delivered to the technical secretary and to all parties of record five working days prior to the prehearing conference or, if no prehearing conference is scheduled, at least ten working days before the date of the rule-making hearing. The proponent of an alternative proposal will provide, in cooperation with the division, a final economic impact analysis five working days prior to the prehearing conference. The economic impact analyses shall be based upon reasonably available data. Except where data is not reasonably available, or as otherwise provided in this section, the failure to provide an economic impact analysis of any noticed proposed rule or any alternative proposed rule will preclude such proposed rule or alternative proposed rule from being considered by the commission. Nothing in this section shall be construed to restrict the commission's authority to consider alternative proposals and alternative economic impact analyses that have not been submitted prior to the prehearing conference for good cause shown and so long as parties have adequate time to review them.

(b) Before any emergency rule is adopted, any person may request that a regulatory analysis, as defined in section 24-4-103 (4.5), C.R.S., be prepared and made available to the public five working days prior to the hearing, unless there is an imminent and serious hazard to health, welfare, or the environment.

(c) The proponent and the division shall select one or more of the following economic impact analyses. The commission may ask affected industry to submit information with regard to the cost of compliance with the proposed rule, and, if it is not provided, it shall not be considered reasonably available. The economic impact analysis required by this subsection (4) shall be based upon reasonably available data and shall consist of one or more of the following:

(I) Cost-effectiveness analyses for air pollution control that identify:

(A) The cumulative cost including but not limited to the total capital, operation, and maintenance costs of any proposed controls for affected business entity or industry to comply with the provisions of the proposal;

(B) Any direct costs to be incurred by the general public to comply with the provisions of the proposal;

(C) Air pollution reductions caused by the proposal;

(D) The cost per unit of air pollution reductions caused by the proposal; and

(E) The cost for the division to implement the provisions of the proposal; or

(II) Industry studies that examine the direct costs of the proposal on directly affected entities that may be either in the form of a business analysis (The regulatory impacts on the general business climate or subsets thereof) or an industry analysis (the regulatory impacts on specific industries), including:

(A) The characteristics and current economic conditions of the impacted business or industry sector; and

(B) The projected impacts on the growth of the affected industry sectors with and without implementation of the proposal; and

(C) How the proposal may effect or alter the growth of the affected industry sector; and

(D) The direct cost of the proposal on the affected industry sector; or

(III) An economic impact analysis that:

(A) Identifies the industrial and business sectors that will be impacted by the proposal; and

(B) Quantifies the direct cost to the primary affected business or industrial sector; and

(C) Incorporates an estimate of the economic impact of the proposal on the supporting business and industrial sectors associated with the primary affected business or industry sectors.

(d) Repealed.

(e) The economic impact analysis required by this subsection (4) shall not consist of an analysis of any nonmarket costs or external costs asserted to occur notwithstanding compliance by a source with applicable environmental regulations.

(5) (a) Whenever the commission proposes any rule that exceeds the requirements of the federal act or differs from the federal act or rules thereunder, the commission shall make available in writing a copy of any such proposed rule and a detailed, footnoted explanation of the differences between the rule and the federal requirements.

(b) The written explanation required pursuant to paragraph (a) of this subsection (5) shall contain an explanation of the following information:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

(X) Whether demonstrated technology is available to comply with the proposed requirement;

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain; and

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

(6) Repealed.

Source: **L. 95:** Entire section added, p. 1335, § 2, effective July 1. **L. 96:** IP(1), IP(3), (4)(d), and (5)(a) amended and (1.5) added, p. 1285, § 2, effective June 1. **L. 97:** (4)(d) amended, p. 526, § 8, effective July 1. **L. 2001:** (4)(d) amended, p. 640, § 1, effective May 30. **L. 2003:** (4)(d) amended, p. 843, § 1, effective April 7. **L. 2009:** (4)(d) repealed, (HB 09-1332), ch. 318, p. 1707, § 1, effective June 1.

Editor's note: Subsection (6)(e) provided for the repeal of subsection (6), effective July 1, 1997. (See L. 95, p. 1335.)

25-7-110.8. Additional requirements for commission to act under section 25-7-110.5. (1) In issuing any final rule intended to reduce air pollution, except for any rule that adopts by reference applicable federal rules, if the commission has no discretion under state law not to adopt the rules or to adopt any alternative rule, the commission shall make a determination that:

(a) Any rule promulgated under section 25-7-110.5 is based on reasonably available, validated, reviewed, and sound scientific methodologies and that all validated, reviewed,

and sound scientific methodologies and information made available by interested parties has been considered. Such review may include internal organizational review and not peer review.

(b) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution to be addressed by the rule unless such rule is administrative in nature;

(c) On and after July 1, 1997, and in conformance with guidance from the general assembly to incorporate the recommendations of the task force established in section 25-7-110.5 (6), evidence in the record supports the finding that the rule shall bring about reductions in risks to human health or the environment or provide other benefits that will justify the cost to government, the regulated community, and to the public to implement and comply with the rule;

(d) The commission shall choose an alternative that is the most cost-effective under the analysis required by section 25-7-110.5 (4), provides the regulated community flexibility, and which achieves the necessary reduction in air pollution. The commission may reject the most cost-effective alternative and shall provide findings of fact detailing why the most cost-effective alternative is unacceptable.

(e) The selection of the regulatory alternative by the commission will maximize the air quality benefits of regulation pursuant to this article in the most cost-effective manner. For purposes of the required analyses under this section, prior to the completion of the rule-making required pursuant to section 25-7-110.5, no benefit (except for air pollution reductions) can be attributed to regulating a facility already operating in compliance with a permit issued pursuant to applicable law.

(1.5) As used in this section, "rule" includes an amendment to an existing rule.

(2) In the event that the commission and division fail to reasonably comply with requirements of section 25-7-110.5 or this section, the rule shall be void and unenforceable. Judicial review of agency action under this section or section 25-7-110.5 may only be obtained by parties to the rule-making hearing and can only be brought regarding deficiencies or issues alleging a failure to comply with the requirements in section 25-7-110.5 or this section raised during or before the hearing to afford the commission, its staff, or interested parties an opportunity to address the deficiencies or issues raised.

Source: L. 95: Entire section added, p. 1335, § 2, effective July 1. **L. 96:** IP(1) amended and (1.5) added, p. 1285, § 3, effective June 1.

25-7-111. Administration of air quality control programs - directive - prescribed fire - review. (1) The division shall administer and enforce the air quality control programs adopted by the commission. In furtherance of such responsibility of the division, the executive director of the department of public health and environment shall establish within the division a separate air quality control agency, the head of which shall be a licensed professional engineer or shall have a graduate degree in engineering or other specialty dealing with the problems of air quality control. Such person shall also have appropriate practical and administrative experience related to air quality control. Such person shall not be the technical secretary employed pursuant to section 25-7-105 (3). Any potential conflict of interest of such person shall be adequately disclosed prior to appointment and as may from time to time arise. All policies and procedures followed in the administration and enforcement of the air quality control programs that have been adopted by the commission shall be subject to supervision by the state board of health.

(2) In addition to authority specified elsewhere in this article, the division has the power to:

(a) Conduct or cause to be conducted studies and research with respect to air pollution and the control, abatement, or prevention thereof, as requested by the commission;

(b) Collect data, by means of field studies and air monitoring conducted by the division or by individual stationary sources or individual indirect air pollution sources, and determine the nature and quality of existing ambient air throughout the state;

(c) Enter and inspect any property, premises, or place for the purpose of investigating any actual, suspected, or potential source of air pollution or ascertaining compliance or

noncompliance with any requirement of this article or any order or permit, or term or condition thereof, issued or promulgated pursuant to this article; and the division may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any emissions required pursuant to section 25-7-106 (6) or part 5 of this article; except that, if such entry or inspection is denied or not consented to and no emergency exists, the division is empowered to and shall obtain from the district or county court for the district or county in which such property, premises, or place is located a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district and county courts of this state are empowered to issue such warrants upon a proper showing of the need for such entry and inspection. Any information relating to secret processes or methods of manufacture or production obtained in the course of the inspection or investigation shall be kept confidential; except that emission data shall not be withheld from the division as confidential. A duplicate of any analytical report or observation of an air pollutant by the division shall be furnished promptly to the person who is suspected of causing such air pollution.

(d) Furnish technical advice and services relating to air pollution problems and control techniques;

(e) Inform the appropriate governmental agency of the results of atmospheric tests conducted in its jurisdiction and notify the affected city, town, county, or city and county whenever tests establish that the ambient air or source of emission of smoke or air pollution fails to meet the standards established under this article;

(f) Designate one or more persons or agencies in any area of the state as an air pollution control authority as agent of the division to exercise and perform such powers and duties of the division as may be specified in such designation;

(g) Furnish such personnel to the commission as the commission may reasonably require to carry out its duties and responsibilities under this article;

(h) Certify, or otherwise designate, to any other agency or department of this state or of any other state or of the federal government that any facility, land, building, machinery, or equipment, or any part thereof, has been constructed, erected, installed, or acquired in conformity with the requirements of this state or of this article for control of air pollution or in conformity with the requirements for control of air pollution of any other state or the federal government;

(i) Require any source to furnish information which the division may reasonably require relating to emissions of the source or to any investigation authorized by this article. If such request for information is refused, the division is empowered to and may obtain from the district or county court for the district or county in which the source is located a subpoena to compel production of such information.

(3) Repealed.

(4) The division shall assure that any information obtained by the division which is entitled to protection as a trade secret under federal or Colorado law is kept confidential and protected against disclosure, except as required by the federal act.

(5) Repealed.

Source: **L. 79:** Entire article R&RE, p. 1027, § 1, effective June 20. **L. 84:** (2)(c) and (2)(g) amended, p. 769, § 5, effective July 1. **L. 87:** (2)(c) amended, p. 1152, § 4, effective July 1. **L. 92:** (2)(c) amended and (2)(i), (3), and (4) added, pp. 1197, 1293, 1198, §§ 14, 3, 15, effective July 1. **L. 94:** (1) amended, p. 2783, § 500, effective July 1. **L. 96:** (3) repealed, p. 1258, § 153, effective August 7. **L. 2004:** (1) amended, p. 1311, § 58, effective May 28. **L. 2009:** (5) added, (HB 09-1199), ch. 411, p. 2278, § 4, effective June 3.

Editor's note: Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2011. (See L. 2009, p. 2278.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act repealing subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For comment, "Environmental Law — Requirement of Notice in Visual Opacity Readings — Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974). For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

Inspection held not unreasonable search. Where, under the former Colorado air pollution control act, a Colorado department of health

inspector entered respondent's plant yard to make a test of the plumes of smoke being emitted from respondent's plant chimneys, without a warrant or respondent's knowledge, such inspection did not amount to an unreasonable search, since the inspector had sighted what anyone in the city who was near the plant could see, plumes of smoke. Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861, 94 S. Ct. 2114, 40 L.Ed.2d 607 (1974).

25-7-112. Air pollution emergencies endangering public health anywhere in this state. (1) Whenever the division determines, after an investigation initiated either independently by the division or upon the request of an affected member of the public living or working in the vicinity of a suspected discharge, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any such activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, the division shall:

(a) Issue a written cease-and-desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon receipt of such order, such person shall immediately discontinue such activity or discharge; or

(b) Apply to any district court of this state for the district in which the said activity or discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure. Any such action in a district court shall be given precedence over all other matters pending in such district court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceeding; or

(c) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

(1.5) (a) If, upon the request of a member of the public as described in subsection (1) of this section, the division chooses to investigate a suspected discharge, the division shall report the result of its investigation to the person who made the request and shall make such result public no later than sixty days after the completion of the investigation. If the person who made the request is dissatisfied with the result of the investigation, or if no investigation was made, such person may complain to the commission by petition.

(b) Upon receipt of a petition filed under paragraph (a) of this subsection (1.5), the commission shall promptly give notice of receipt of the petition to the owner or operator of the source of the alleged discharge, and, after considering the petition, the response, if any, of such owner or operator, and the response of the division, the commission shall respond to the petition within forty-five days after receipt by:

(I) Ordering the division to proceed with a new or further investigation under this section or section 25-7-113; or

(II) Denying the petition and stating the reasons for denial, which may include, but are not limited to, the lack of a substantial factual basis, the allegation of facts substantially similar to those at issue in a previous or currently pending investigation, or a finding that the petition was interposed for purposes of harassment or delay; or

(III) Providing an opportunity to submit additional factual information in support of, or in response to, the petition. The commission may require any new information to be submitted in writing, or it may convene an informal hearing as soon as is practicable.

(c) A hearing held pursuant to subparagraph (III) of paragraph (b) of this subsection (1.5) shall be subject to the following procedural requirements:

(I) The hearing shall be conducted as an informal hearing, and, in particular, no sworn testimony shall be taken except as the commission deems necessary to clarify the factual basis of the petition;

(II) Parties may represent themselves or be represented by agents who need not be attorneys;

(III) Notice of such hearing shall be given at least twenty days prior to the hearing;

(IV) The purpose of the hearing shall be to enable the commission to decide whether to order an investigation as provided in subparagraph (I) of paragraph (b) of this subsection (1.5); and

(V) To preserve the commission's role as an appellate body, the hearing shall not be used as a forum for determining the merits of the petition.

(2) (a) Whenever the division determines, after investigation, that the condition of the ambient air in any portion of this state constitutes a clear, present, and immediate danger to the environment or to the health of the public, or that any activity or discharge of air pollutants, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, and that the procedures available to the division under subsection (1) of this section will not adequately protect the public, it shall immediately notify the governor of its determination of either of such conditions, and it shall request the governor to declare a state of air pollution emergency in such portion of this state.

(b) Upon such notification and request by the division, the governor is empowered to declare a state of air pollution emergency in such portion of the state and to take any and all actions necessary to protect the health of the public in such portion of the state, including, but not limited to:

(I) Ordering a halt or curtailment of the movement of all motor vehicles except emergency vehicles; and

(II) Ordering a halt or curtailment of all operations, activities, processes, or conditions which he reasonably believes to be contributing to such emergency.

(c) From time to time, whenever appropriate, the governor, in cooperation with his department heads, shall develop or modify such plans as will be necessary or appropriate to control and abate the air pollution conditions most likely to require the exercise of the powers granted in paragraph (b) of this subsection (2).

Source: **L. 79:** Entire article R&RE, p. 1029, § 1, effective June 20. **L. 92:** IP(1) and (2)(a) amended, p. 1198, § 16, effective July 1. **L. 94:** IP(1) amended and (1.5) added, p. 1420, § 3, effective May 25.

Cross references: For injunctions, see C.R.C.P. 65.

ANNOTATION

Law reviews. For comment, "Environmental Law — Requirement of Notice in Visual Opacity Readings — Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)",

see 51 Den. L.J. 603 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

25-7-113. Air pollution emergencies endangering public welfare anywhere in this state. (1) Whenever the division determines, after investigation, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge does not constitute a clear, present, and immediate danger to the health of the public, but is of such a nature as to cause extreme discomfort or that it is an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive, the division shall:

(a) Issue a written cease-and-desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon

receipt of such order, such person shall immediately discontinue such activity or discharge; or

(b) Apply to any district court of this state for the district in which the said activity or discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure. Any such action in a district court shall be given precedence over all other matters pending in such district court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceeding; or

(c) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

Source: L. 79: Entire article R&RE, p. 1030, § 1, effective June 20.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-114. Permit program - definitions. As used in sections 25-7-114 to 25-7-114.7, unless the context otherwise requires:

(1) "Affected source" means a source that includes one or more fossil-fuel fired combustion devices subject to emission reduction requirements or limitations under subchapter IV of the federal act or this article.

(2) "Construction permit" means the same as an "emission permit" as required under this section as it existed prior to July 1, 1992, and is the permit required under section 25-7-114.2 after July 1, 1992.

(3) "Major source" means any stationary source (or group of stationary sources which have the same two-digit standard industrial code, are located on one or more contiguous or adjacent properties, and are under common control) that:

(a) Subject to the provisions of section 112 (n) (4) of the federal act, emits or has the potential to emit considering enforceable controls, in the aggregate, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants, or such lesser quantity of hazardous air pollutants as may be established pursuant to the federal act; or

(b) Directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant; or

(c) Meets any of the definitions of major source set forth in Part D of subchapter I of the federal act.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitations on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Schedule of compliance" means a schedule of required measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, emission prohibition, or emission control regulation.

(6) "Synthetic minor source" means, for purposes of this article, any source which would otherwise meet the definition of major source for any pollutants but for the existence of enforceable emission limitations contained in the permit or regulation applicable to that source.

Source: L. 79: Entire article R&RE, p. 1030, § 1, effective June 20. **L. 82:** (5)(b) amended, p. 423, § 1, effective April 23. **L. 84:** (5)(b) amended, p. 783, § 4, effective

April 12; IP(4), (4)(f)(I)(A), (4)(f)(I)(B), (4)(f)(II), IP(4)(g)(I), (4)(g)(III), (4)(h), and (4)(i) amended, p. 770, § 6, effective July 1. **L. 87:** (5)(b) amended, p. 1140, § 1, effective June 10; (5) amended, p. 1138, § 1, effective July 1; (5)(b) amended, p. 1152, § 5, effective July 1. **L. 89:** (4)(m) and (5)(c) to (5)(f) added and (5)(a) amended, p. 1165, §§ 1, 2, effective May 26. **L. 91:** (5)(d)(III) amended and (5)(f) repealed, p. 940, §§ 1, 2, effective May 16. **L. 92:** Entire section R&RE, p. 1198, § 17, effective July 1. **L. 94:** (6) amended, p. 1421, § 4, effective May 25.

Editor's note: Amendments to subsection (5)(b) by Senate Bill 87-145, House Bill 87-1239, and House Bill 87-1372 were harmonized.

25-7-114.1. Air pollutant emission notices (APEN). (1) No person shall permit emission of air pollutants from, or construction or alteration of, any facility, process, or activity except residential structures from which air pollutants are, or are to be, emitted unless and until an air pollutant emission notice has been filed with the division with respect to such emission. An air pollutant emission notice shall be valid for a period of five years.

(2) All sources existing on or before December 31, 1992, shall file an updated air pollutant emission notice with the division on or before December 31, 1992. In addition, a revised emission notice shall be filed whenever a significant change in emissions, in processes, or in the facility is anticipated or has occurred. The revised air pollutant emission notice shall be valid for five years or until the underlying permit expires. The commission shall exempt those sources or categories of sources which it determines to be of minor significance from the requirement that an air pollutant emission notice be filed.

(3) The commission shall promulgate a list of air pollutants which are required to be reported in an air pollutant emission notice. Prior to the commission's promulgation of such a list of air pollutants to be reported in an air pollutant emission notice, sources shall report any emissions of the following which are in excess of de minimis quantities:

(a) Volatile organic compounds or precursors of air quality problems in Colorado as determined by the commission by regulation;

(b) Any pollutant regulated under section 25-7-109.3 or under section 112(b) of the federal act;

(c) Any pollutant for which a national primary ambient air quality standard has been promulgated under section 109 of the federal act;

(d) All extremely hazardous substances listed pursuant to section 302(a)(2) of the federal "Superfund Amendments and Reauthorization Act of 1986", 42 U.S.C. sec. 11002 (a)(2).

(4) Each such notice shall specify the location at which the proposed emission will occur, the name and address of the person operating or owning such facility, process, or activity, the nature of such facility, process, or activity, and an estimate of the quantity and composition of the expected emission. The division shall make available at all air pollution control authority offices appropriate forms on which the information required by this section shall be furnished.

(5) (Deleted by amendment, L. 2001, p. 640, § 2, effective May 30, 2001.)

(6) (a) The fee for filing an air pollutant emission notice or amendment thereto under this section shall be one hundred fifty-two dollars and ninety cents. The moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund created in section 25-7-114.7 (2) (b) (I).

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (6), the commission by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: **L. 92:** Entire section added, p. 1200, § 18, effective July 1. **L. 93:** (6) amended, p. 941, § 1, effective May 28; (3)(d) and (5)(b)(I) amended, p. 1787, § 68,

effective June 6. **L. 98:** (6) amended, p. 1334, § 48, effective June 1. **L. 2001:** (2), (5), and (6)(a) amended, p. 640, § 2, effective May 30. **L. 2008:** (6)(a) amended, p. 882, § 2, effective May 20.

ANNOTATION

Law reviews. For article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993).

25-7-114.2. Construction permits. No person shall construct or substantially alter any building, facility, structure, or installation, except single-family residential structures, or install any machine, equipment, or other device, or commence the conduct of any such activity, or commence performance of any combinations thereof, or commence operations of any of the same which will or do constitute a new stationary source or a new indirect air pollution source without first obtaining or having a valid construction permit therefor from the division or commission, as the case may be; except that no construction permit shall be required for new indirect air pollution sources until regulations regarding construction permits for such sources have been promulgated by the commission, but in no event shall regulations governing indirect air pollution sources be more stringent than those required for compliance with the federal act and final rules and regulations adopted pursuant thereto. Any emission permit validly issued prior to July 1, 1992, pursuant to section 25-7-114, as said section existed prior to July 1, 1992, and in effect on or after July 1, 1992, shall be deemed to be a valid construction permit issued pursuant to this section. The commission shall designate by regulation those classes of minor or insignificant sources of air pollution which are exempt from the requirement for a permit because of their negligible impact on air quality.

Source: **L. 92:** Entire section added, p. 1202, § 18, effective July 1.

ANNOTATION

Law reviews. For article, "Colorado's New Clean Air Program", see 22 Colo. Law. 541 (1993).

25-7-114.3. Operating permits required for emission of pollutants. (1) No person shall operate any of the following sources without first obtaining a renewable operating permit from the division for such source in a manner consistent with the requirements of this article and the federal act:

- (a) Any affected source;
 - (b) Any major source;
 - (c) Any source required to comply with standards of performance for new stationary sources under section 111 of the federal act, unless otherwise exempted from permitting requirements pursuant to federal rules adopted in accordance with section 502 of the federal act;
 - (d) Any source subject to emission standards or regulations for hazardous air pollutants under section 112 of the federal act, unless otherwise exempted from federal permitting requirements pursuant to federal rules adopted in accordance with section 502 of the federal act;
 - (e) Any source required to have a permit pursuant to part 2 (prevention of significant deterioration program) or part 3 (attainment program) of this article, or Part C (prevention of significant deterioration of air quality) or Part D (plan requirements for nonattainment area) of subchapter I of the federal act;
 - (f) Any other source designated under federal law as requiring an operating permit.
- (2) For those sources located in the state and participating in the federal early reductions program as specified in section 112 (i) (5) of the federal act, or the United States

environmental protection agency's 33/50 program, or the state early reductions program as set forth in subsection (3) of this section, or any of such programs, the commission and division shall establish a system to credit emission permit fees to be established pursuant to sections 25-7-114.6 and 25-7-114.7 and to be assessed against such sources at a ratio of at least two-for-one for every ton of emissions reduced pursuant to the federal early reductions program, the United States environmental protection agency's 33/50 program, or the state early reductions program. A participating source shall be offered a one-time permit fee credit of two tons for each corresponding ton of its reduced emissions that are verified by the division. The permit fee credit shall be available in the year following the year in which the early reduction in emissions is achieved.

(3) The commission shall adopt the federal early reductions program specified in section 112 (i) (5) of the federal act and promulgate a state early reductions program which shall include the following elements:

(a) The state early reductions program shall be consistent with the federal early reductions program; and

(b) A six-year extension of compliance for existing sources with emission standards promulgated pursuant to section 112 (d) of the federal act if the source has achieved an emission reduction of ninety percent or more of hazardous air pollutants (ninety-five percent or more for hazardous air pollutants which are particulates); and

(c) If a source is granted a compliance extension, an alternative limitation to be established by permit to ensure continued achievement of the emission reduction; and

(d) Sources subject to and in compliance with an enforceable commitment under the federal and state early reductions programs shall be considered in compliance with all state regulations and requirements for hazardous air pollutants for the period of such commitment.

(4) For affected sources under Title V of the federal act:

(a) Operating permits and requirements for permit applications, compliance plans, and monitoring and reporting requirements shall be consistent with the provisions of Title IV as well as Title V of the federal act;

(b) In order to ensure reliability of electric power, nothing in the requirements pertaining to renewable operating permits required by this article shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan;

(c) Nothing in this article shall be construed as affecting SO₂ allowances given to sources affected under Title IV of the federal act.

Source: L. 92: Entire section added, p. 1203, § 18, effective July 1. **L. 2010:** (1)(c) and (1)(d) amended, (HB 10-1042), ch. 209, p. 909, § 2, effective September 1.

25-7-114.4. Permit applications - contents - rules. (1) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of construction permits and renewable operating permits. Such regulations shall be in conformity with the provisions of this article and with federal requirements, shall be in furtherance of the policy contained in section 25-7-102, and shall implement, where applicable, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

(a) Identification and address of the owner and operator of the source or facility from which the emission or emissions are to be permitted;

(b) Location, quantity, and quality characteristics of the permitted emissions;

(c) Inspection, monitoring, record-keeping, and reporting requirements consistent with standard procedures, methods, and requirements established by the division;

(d) Deadlines for submitting permit applications and compliance plans, which, for applications for renewable operating permits, shall be no later than twelve months after the source becomes subject to an approved permit program. Deadlines for submitting permit applications for renewal of renewable operating permits shall be consistent with the requirements for filing such applications promulgated under the federal act but in no event earlier than required under the federal act.

(e) Contents of compliance plans to be submitted with renewable operating permit applications, which shall include schedules of compliance and progress reports at least every six months;

(f) Annual certifications of facility compliance with permit requirements, with prompt reporting of deviations from permit requirements;

(g) Submission of pertinent plans and specifications for the facility or source from which the emission is to be permitted;

(h) Restrictions on transfers of the permit;

(i) Procedures to be followed in the event of expansion or modification of the source or facility from which the emission occurs, or change in the quality, quantity, or frequency of the emission;

(j) Duration of the permit and renewal procedures. The duration of construction permits shall be until the renewable operating permit is issued. The duration of renewable operating permits is five years.

(k) Procedures to terminate, modify, or revoke and reissue permits for cause; procedures to revise permits, prior to renewal or termination, to incorporate applicable standards and regulations adopted after the issuance of such permit as expeditiously as practicable, but not later than eighteen months after promulgation of the applicable requirement, or to incorporate otherwise applicable standards and regulations in the permit; except that no such revision shall be required if the effective date of the standards or regulation occurs after the permit term expires, such revision shall be treated as a permit renewal, and the defense established under subsection (3) of this section shall apply until the permit amendment is complete;

(l) Procedures for incorporating emission limitations and other requirements from an applicable implementation plan, and other applicable requirements, into new or renewed permits;

(m) Procedures for notifying other contiguous states whose air quality may be affected by the emissions or that are within fifty miles of the source and for submitting comments and recommendations regarding the proposed permit;

(n) Procedures for modifying or amending permits, and procedures for authorizing any change within a permitted facility without requiring a permit revision, so long as any such change is not a modification under any provision of subchapter I of the federal act, and any such change does not exceed the emissions allowable under the permit, and advance notice is given to the division and the administrator. Such advance notice shall be no earlier than that required under regulations promulgated pursuant to the federal act. Failure of the division to respond by the day following the last day of such advance notice period allows the source to proceed with any such change.

(o) Procedures to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report, subject to the provisions of section 25-7-119 (4). If an applicant is required to submit information entitled to protection from disclosure, the applicant may submit such information separately.

(p) Procedures for issuing general permits after notice and an opportunity for hearing, covering numerous similar sources;

(q) Procedures for issuing single permits for a facility with multiple sources; and

(r) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer all permits required under this article. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the commission.

(3) (a) Compliance with all renewable operating permit terms and conditions shall be deemed compliance with section 25-7-114.3 and shall be deemed compliance with other applicable provisions of this article if:

(I) The permit includes the applicable requirements of such provisions; or

(II) The division or commission, in acting on the permit application, makes a determination that such other provisions are not applicable, and the permit includes the

determination or a concise summary thereof. Such other provisions as are not applicable in each permit shall be identified upon the request of the permittee.

(b) Nothing in paragraph (a) of this subsection (3) shall alter or affect:

(I) The provisions of section 25-7-112 or 25-7-113 or section 303 of the federal act;

(II) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

(4) For any permitted sand and gravel operation or crushed stone quarry or oil and gas well operation, if a breakdown of equipment or changes in market conditions require any additional crusher or screen or skid-mounted compressor or glycol dehydrator to be brought onto a site, the air pollutant emission notice filed under section 25-7-114.1 shall also serve as an application for a permit under the provisions of this section to continue operations at such a site with alternative or additional equipment until such permit is issued stating emission limitations.

Source: L. 92: Entire section added, p. 1205, § 18, effective July 1. L. 95: (4) added, p. 1342, § 3, effective July 1.

25-7-114.5. Application review - public participation. (1) Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(2) The division shall evaluate permit applications to determine, for construction permits, whether operation of the proposed new source at the date of start-up and for operating permits, whether the permitted emissions, will comply with all applicable emission control regulations, regulations for the control of hazardous pollutants, and requirements of part 2 or 3 of this article.

(3) The division shall also determine whether applications are for a new source activity that may have an impact upon areas which, as of the projected new source start-up date, are in compliance with national ambient air quality standards as of the date of the permit application, or for new source activity that may have an impact upon areas which, as of the projected new source start-up date, are not in compliance with national ambient air quality standards as of the date of the permit application.

(4) The division shall prepare its preliminary analysis regarding compliance, as set forth in subsection (2) of this section, and regarding the impact on attainment or nonattainment areas, as set forth in subsection (3) of this section, as expeditiously as possible. For construction permits not subject to part 2 of this article, such preliminary analysis shall be completed no later than sixty calendar days after receipt of a completed permit application. Applicants must be advised within sixty calendar days after receipt of any application, or supplement thereto, if and in what respects the subject application is incomplete. Upon failure of the division to so notify the applicant within sixty calendar days of its filing, the application shall be deemed complete. Applications for construction permits subject to part 2 of this article shall be approved or disapproved within twelve months of receipt of a complete application. Applications for renewable operating permits shall be approved or disapproved within eighteen months after the receipt of the completed permit application; except that those applications submitted within the first year after the effective date of the operating permit program shall be subject to a phased schedule for acting on such permit applications established by the division. The phased schedule shall assure that at least one-third of such permits will be acted on by the division annually over a three-year period. The commission may establish a phased schedule for acting on applications for which a deferral has been granted pursuant to the federal act. A timely and complete permit application operates as a defense to enforcement action for operating without a permit for the period of time during which the division or the commission is reviewing the application and until such time as the division or the commission makes a final determination on the permit application; except that this defense to an enforcement action shall not be available to an applicant which files a fraudulent application.

(5) For those types of projects or activities for which a construction permit application has been filed, defined, or designated by the commission as warranting public comment with respect thereto, the division shall, within fifteen calendar days after it has prepared its preliminary analysis, give public notice of the proposed project or activity by at least one publication in a newspaper of general distribution in the area in which the proposed project or activity, or a part thereof, is to be located or by such other method that is reasonably designed to ensure effective general public notice. The division shall also during such period of time maintain in the office of the county clerk and recorder of the county in which the proposed project or activity, or a part thereof, is located a copy of its preliminary analysis and a copy of the application with all accompanying data for public inspection. The division shall receive and consider public comment thereon for a period of thirty calendar days thereafter.

(6) (a) For any construction permit application subject to the requirements of a new or modified major source in a nonattainment area, or for prevention of significant deterioration as provided in part 2 of this article, or for any application for a renewable operating permit, within fifteen calendar days after the issuance of its preliminary analysis, the division shall:

(I) Forward to the applicant written notice of the applicant's right to a formal hearing before the commission with respect to the application; and

(II) Give public notice of the proposed source or modification and the division's preliminary analysis thereof by at least one publication in a newspaper of general distribution in the area of the proposed source or modification, or by such other method that is reasonably designed to ensure effective general public notice. Such notice shall advise of the opportunity for a public hearing for interested persons to appear and submit written or oral comments to the commission on the air quality impacts of the source or modification, the alternatives to the source or modification, the control technology required, if applicable, and other appropriate considerations. Any such notice shall be printed prominently in at least ten-point bold-faced type. The division shall receive and consider any comments submitted.

(b) If within thirty calendar days of publication of such public notice the applicant or an interested person submits a written request for a public hearing to the division, the division shall transmit such request to the commission along with the application, the division's preliminary analysis, and any written comments received by the division, within five calendar days of the end of such thirty-day period. The commission shall, within sixty calendar days after receipt of the application, comments, and analysis, unless such greater time is agreed to by the applicant and the division, hold a public hearing to elicit and record the comment of any interested person regarding the sufficiency of the preliminary analysis and whether the permit application should be approved or denied. At least thirty calendar days prior to such public hearing, notice thereof shall be mailed by the commission to the applicant, printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk and recorder of the county wherein the project or activity is proposed.

(7) (a) Within thirty calendar days following the completion of the division's preliminary analysis for applications for construction permits not subject to part 2 of this article, or within thirty calendar days following the period for public comment provided for in subsection (5) of this section, or for applications for construction permits subject to part 2 of this article and for renewable operating permits, if a hearing is held, within the appropriate time period established pursuant to this article, the division or the commission, as the case may be, shall grant or deny the permit application. Any permit required pursuant to this article shall be granted by the division or the commission, as the case may be, if it finds that:

(I) The source or activity will meet all applicable emission control regulations and regulations for the control of hazardous air pollutants;

(II) The source or activity will meet the requirements of part 2 or 3 of this article, if applicable;

(III) For construction permits, the source or activity will meet any applicable ambient air quality standards and all applicable regulations;

(III.5) For renewable operating permits, the source or activity will meet all applicable regulations; and

(IV) For renewable operating permits, the United States environmental protection agency has not made a timely objection to issuance of such permit pursuant to the federal act.

(b) Failure of the division or commission, as the case may be, to grant or deny the permit application or permit renewal application within the time prescribed shall be treated as a final permit action for purposes of obtaining judicial review in the district court in which the source is located, to require that action be taken on such application by the commission or division, as appropriate, without additional delay.

(c) If an applicant has submitted a timely and complete application for a renewable operating permit required by this article, including renewals, but final action has not been taken on such application, and, if required to have a construction permit, such construction permit is in place and valid, the source's failure to have a renewable operating permit shall not be a violation of this article, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested by the division to process the application.

(8) If the division denies a permit or imposes conditions upon the issuance of a permit which are contested by the applicant or if the division revokes a permit pursuant to subsection (12) of this section, the applicant may request a hearing before the commission. The hearing shall be held in accordance with sections 25-7-119 and 24-4-105, C.R.S. The commission may, after review of the evidence presented at the hearing, affirm, reverse, or modify the decision of the division but shall, in any event, assure that all the requirements of subsections (6) and (7) of this section are met.

(9) Renewable operating permits shall summarize existing operating restrictions pursuant to section 25-7-114.4 (3).

(10) A permit amendment will not be required to authorize a change in practice which is otherwise permitted pursuant to this article, the state implementation plan, or the federal act merely because an existing permit does not address the practice. Changes in industrial practices and procedures that are not inconsistent with the terms of a renewable operating permit can be made without seeking any change to the terms of said permit.

(11) An order of the division or commission shall be final upon issuance. Any participant in the public comment process and any other person who could obtain judicial review under applicable law shall have standing for purposes of seeking review of any final order of the commission or division regarding applications, renewals, or revisions of any permits. The public participation requirements of subsections (5) and (6) of this section shall apply to all renewable operating permit applications, revisions, and renewals.

(12) (a) A permitted entity shall notify the division within fifteen days after the commencement of any activity for which a construction permit has been issued. Within one hundred eighty days after commencement of operation for which a construction permit has been issued, the source shall demonstrate to the division compliance with the terms and conditions of the construction permit or the division may, pursuant to rules that are adopted by the commission based upon the results of the study conducted under section 25-7-114.7 (2) (a) (V), inspect the project or activity to determine whether or not the terms and conditions of the construction permit have been properly satisfied. At the end of one hundred eighty days after the commencement of operation, the division must:

- (I) Revoke the construction permit; or
- (II) Continue the construction permit, if applicable; or
- (III) Notify the owner or operator that the source has demonstrated compliance with the construction permit.

(b) For those sources subject to the renewable operating permit program, a renewable operating permit will be issued within the appropriate time periods if all requirements for a renewable operating permit are met by the source. The construction permit requirements shall remain in effect until the renewable operating permit is issued.

(12.5) (a) (I) Except for sources involved in agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding, or pesticide application, upon determination by the division that the criteria set forth in paragraph (b) of this

subsection (12.5) applies to a source that is not required to obtain a renewable operating permit, the division may reopen such construction permit for the purpose of imposing any or all of the following additional terms and conditions:

- (A) Enhanced record-keeping requirements;
- (B) Enhanced emissions and ambient monitoring requirements;
- (C) Operating and maintenance requirements; and
- (D) Emission control requirements pursuant to section 25-7-109.3.

(II) Any such condition which is contested by the permittee may be reviewed by the commission in accordance with the provisions of subsection (7) of this section.

(b) With the exception of those sources involved in agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding, and pesticide application, a source's construction permit may be reopened for cause for the purposes of paragraph (a) of this subsection (12.5) only upon a determination by the division that the location of the source is significant in terms of its proximity to residential or business areas, and one or more of the following criteria apply to the permitted source:

(I) The control equipment utilized by the source requires an unusually high degree of maintenance or operational sensitivity when compared to control equipment in general; or

(II) The design characteristics of the source require an unusually high degree of maintenance or operational sensitivity when compared to the design characteristics of all sources in general; or

(III) The application of the control equipment utilized is unique or untested; or

(IV) The operational variability of the source may impact the effectiveness of the controls; or

(V) The emissions from the source will threaten public health, as determined pursuant to section 25-7-109.3.

(c) Nothing in paragraph (a) or (b) of this subsection (12.5), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(13) The commission shall, wherever practicable, promulgate regulations for renewable operating permit application requirements that combine requirements for construction permits with renewable operating permits to avoid duplicative efforts by the source and the division.

(14) (Deleted by amendment, L. 2010, (HB 10-1042), ch. 209, p. 909, § 3, effective September 1, 2010.)

(15) Repealed.

(16) (a) If the division experiences a backlog in processing air quality permit applications caused by an occasional need that is seasonal, irregular, or fluctuating in nature, and the department determines or reasonably expects that, as a result, permits would not be issued within statutory time frames, the division shall make available to sources that are not subject to permitting under part C of the federal act the option to have the air quality modeling that is submitted with the applicant's air permit application reviewed for acceptance as demonstrating compliance by a contract consultant selected by the division in lieu of the review being conducted by division staff.

(b) The division shall select and contract with nongovernmental air quality modeling engineers to perform air quality modeling reviews of applicants who choose contract consultant review of their air quality permit modeling. The division is not subject to the requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S., in selecting and contracting with the consultants. The division shall review and exclude from consideration as a contract air quality modeling consultant any contractors with a conflict of interest regarding air quality permit applications. Applicants that choose consultant review of their air quality modeling are responsible for both the consultant's costs associated with the air modeling review as well as the division's costs associated with the review and determination of the air permit application, to be paid to the division. The division shall transfer the money to the state treasurer, who shall credit it to the stationary sources control fund created in section 25-7-114.7 (2) (b) (I).

(c) The division shall use the results of the modeling conducted pursuant to paragraph (b) of this subsection (16) for purposes of the division's permit application analysis.

Source: L. 92: Entire section added, p. 1207, § 18, effective July 1. **L. 93:** (7)(a) amended, p. 1923, § 4, effective July 1. **L. 96:** IP(12)(a) amended, p. 845, § 2, effective July 1; (15) repealed, p. 1258, § 154, effective August 7. **L. 2005:** IP(12.5)(a)(I) and IP(12.5)(b) amended and (12.5)(c) added, p. 349, § 5, effective August 8. **L. 2010:** (12)(a) and (14) amended, (HB 10-1042), ch. 209, p. 909, § 3, effective September 1. **L. 2011:** (16) added, (SB 11-235), ch. 307, p. 1507, § 1, effective June 9.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (15), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-114.6. Emission notice - fees. (1) The commission shall designate by regulations those classes of minor or insignificant sources of air pollution which are exempt from the requirement for an emission notice or the payment of an emission notice filing fee because of their negligible impact upon air quality.

(2) An air pollution emission notice shall be deemed to run with the land. The moneys collected pursuant to this section and sections 25-7-403 and 25-7-510 shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund created in section 25-7-114.7 and subject to the provisions of said section.

(3) The general assembly shall direct the commission to adjust any fees imposed by this section so that the revenues approximate the annual appropriations to the division to carry out its duties under this subsection (3) with respect to stationary sources.

Source: L. 92: Entire section added, p. 1214, § 18, effective July 1. **L. 93:** (1) amended, p. 941, § 2, effective May 28. **L. 94:** (2) amended, p. 1640, § 60, effective May 31.

25-7-114.7. Emission fees - fund. (1) As used in this section, unless the context otherwise requires:

- (a) Indirect and direct costs include, but are not limited to:
 - (I) Reviewing and acting upon any application for such a permit;
 - (II) Implementing and enforcing the terms and conditions of any such permit (not including court costs or other legal costs associated with any enforcement action);
 - (III) Emissions and ambient monitoring;
 - (IV) Preparing generally applicable regulations or guidance;
 - (V) Modeling, analyses, and demonstrations;
 - (VI) Preparing inventories and tracking emissions; and
 - (VII) Establishing and administering a small business stationary source technical and environmental compliance program, pursuant to section 25-7-109.2.

- (b) (I) "Regulated pollutant" means:
 - (A) A volatile organic compound;
 - (B) Each pollutant regulated under section 25-7-109 or section 111 of the federal act;
 - (C) Each pollutant regulated under section 112 (b) of the federal act;
 - (D) Each pollutant for which a national primary ambient air quality standard has been promulgated, except for carbon monoxide;

(II) The term "regulated pollutant", for the purpose of assessing fees, shall not include fugitive dust or any fraction thereof.

(2) (a) (I) The commission shall designate by rule those classes of sources of air pollution that are exempt from the requirement to pay an annual emission fee. Every owner or operator of an air pollution source not otherwise exempt in accordance with such commission rules shall pay an annual fee as follows:

(A) For fiscal years 2008-09 and thereafter, twenty-two dollars and ninety cents per ton of regulated pollutant reported in the most recent air pollution emission notice on file with the division;

(A.5) A late payment fee. Such fee shall be assessed at the rate of one percent per month for accounts more than sixty days past due; except that no late payment fee may be assessed during a period in which an account is under administrative review by the division in order to respond to a reasonable request by the owner or operator of a source for allocation of the fees among multiple sources or to resolve a good faith claim by the owner or operator of a source that there has been an error in calculation of the amount of fees due. At the end of the administrative review, the division shall inform the owner or operator of the source in writing of any findings.

(B) For fiscal years 2008-09 and thereafter, in addition to the annual fee set forth in sub-subparagraph (A) of this subparagraph (I), for hazardous air pollutants, including ozone-depleting compounds, an annual fee of one hundred fifty-two dollars and ninety cents per ton;

(C) Every local air pollution control authority that adopts any air pollution resolution or ordinance that is more stringent than corresponding state provisions shall pay for the state's enforcement costs;

(II) In no event shall an owner or operator of a major source pay more than a fee based upon total annual emissions of four thousand tons of each regulated pollutant per source.

(III) Every owner or operator subject to the requirements of paying fees set forth in subparagraph (I) of this paragraph (a) shall also pay a processing fee for the costs of processing any application other than an air pollution emission notice under this article. Every significant user of prescribed fire, including federal facilities, submitting a planning document to the commission pursuant to section 25-7-106 (8) (b) shall pay a fee for costs of evaluating such documents. The division shall assess a fee for work it performs, up to a maximum of thirty hours at a rate of seventy-six dollars and forty-five cents per hour. If the division requires more than thirty hours to process the application or evaluate the prescribed fire-related planning documents, the fee paid by the applicant shall not exceed three thousand dollars unless the division has informed the source that the respective billings may exceed three thousand dollars and has provided the source with an estimate of what the actual charges may be prior to commencing the work.

(IV) and (V) Repealed.

(VI) Notwithstanding subparagraph (III) of this paragraph (a), the division shall not assess a fee for work performed to negotiate a voluntary agreement under part 12 of this article above a maximum of one hundred hours at a rate of fifty-nine dollars and ninety-eight cents per hour unless the owner or operator proposing the voluntary agreement consents to a greater fee in writing.

(b) (I) The moneys collected pursuant to this section shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund, which fund is hereby created. From such fund, the general assembly shall appropriate to the department of public health and environment, at least annually, such moneys as may be necessary to cover the division's direct and indirect costs required to develop and administer the programs established pursuant to parts 1 to 4 and 10 of this article for the control of air pollution from stationary sources. Any permit fee moneys not appropriated by the general assembly and any appropriated funds not spent by the division shall remain in the stationary sources control fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such moneys shall be separately accounted for. All interest earned on moneys in the stationary sources control fund shall remain in the fund and shall not revert to the general fund or to any other fund.

(II) Of the portion of fee revenue attributable to the increases enacted during the first regular session of the sixty-third general assembly, the department shall allocate one hundred fifty thousand dollars per year for the purpose of modernizing and maintaining the computer system used for the administration of the stationary source program so as to make the overall system more efficient, and seventy thousand dollars for the purpose of enhancing county and district public health agency participation in air quality control activities. The department may reallocate moneys between these two purposes as reasonably necessary so long as the total amount devoted to such purposes remains at two hundred twenty thousand dollars annually.

(c) The general assembly by bill may annually adjust the fees established in this section and in section 25-7-114.1 as necessary to cover the reasonable costs, both direct and indirect, of the stationary source program and to assure that adequate personnel and funding will be available to administer the permit program.

(d) No permit will be issued if the administrator objects to its issuance in a timely manner under this title.

(e) Repealed.

(f) Notwithstanding the amount specified for any fee in this subsection (2), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: **L. 92:** Entire section added, p. 1214, § 18, effective July 1. **L. 93:** IP(2)(a)(I), (2)(a)(I)(A), and (2)(b) amended, p. 941, § 3, effective May 28. **L. 94:** (2)(a)(I)(A), (2)(b), and (2)(c) amended and (2)(a)(I)(A.5) and (2)(a)(IV) added, pp. 1390, 1392, §§ 2, 3, effective May 25; (2)(b) amended, p. 2783, § 501, effective July 1. **L. 96:** (1)(b)(II) amended, p. 1309, § 1, effective June 1; (2)(b) amended, p. 1451, § 2, effective June 1; (2)(a)(I)(A) and (2)(a)(IV) amended and (2)(a)(V) added, p. 846, § 3, effective July 1; (2)(e) repealed, p. 1259, § 155, effective August 7. **L. 97:** (1)(a)(VII) amended, p. 527, § 9, effective July 1. **L. 98:** (2)(f) added, p. 1335, § 49, effective June 1; (2)(a)(VI) added, p. 1050, § 2, effective July 1. **L. 99:** (2)(a)(III) amended, p. 790, § 2, effective May 24. **L. 2001:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(a)(III), (2)(a)(VI), (2)(b), and (2)(c) amended, p. 642, § 3, effective May 30; (2)(a)(III) amended, p. 1185, § 2, effective July 1. **L. 2008:** IP(2)(a)(I), (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(III) amended, p. 883, § 3, effective May 20. **L. 2010:** (2)(b)(II) amended, (HB 10-1422), ch. 419, p. 2103, § 117, effective August 11.

Editor's note: (1) Amendments to subsection (2)(b) by Senate Bill 94-217 and House Bill 94-1029 were harmonized.

(2) Subsection (2)(a)(IV)(C) and (2)(a)(V)(B) provided for the repeal of subsection (2)(a)(IV) and (2)(a)(V), respectively, effective July 1, 1997. (See L. 96, p. 846.)

(3) Amendments to subsection (2)(a)(III) by Senate Bill 01-214 and House Bill 01-1326 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(b), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act repealing subsection (2)(e), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-114.8. Permit fee credits. (Repealed)

Source: **L. 92:** Entire section added, p. 1217, § 18, effective July 1. **L. 2003:** Entire section repealed, p. 843, § 2, effective April 7.

25-7-115. Enforcement. (1) (a) The division shall enforce compliance with the emission control regulations of the commission, the requirements of the state implementation plan, and the provisions of parts 1 to 4 and part 11 of this article, including terms and conditions of any permit required pursuant to this article.

(b) The division shall enforce the provisions of part 5 of this article pursuant to sections 25-7-112, 25-7-113, and 25-7-511.

(2) If a written and verified complaint is filed with the division alleging that, or if the division itself has cause to believe that, any person is violating or failing to comply with any regulation of the commission issued pursuant to parts 1 to 4 of this article, order issued pursuant to section 25-7-118, requirement of the state implementation plan, provision of parts 1 to 4 of this article, including any term or condition of a permit required pursuant to

this article, the division shall cause a prompt investigation to be made; and, if the division investigation determines that any such violation or failure to comply exists, the division shall act expeditiously and within the period prescribed by law in formally notifying the owner or operator of such air pollution source after the discovery of the alleged violation or noncompliance. Such notice shall specify the provision alleged to have been violated or not complied with and the facts alleged to constitute the violation or noncompliance.

(3) (a) Within thirty calendar days after notice has been given, the division shall confer with the owner or operator of the source to determine whether a violation or noncompliance did or did not occur and, if such violation or noncompliance occurred, whether a noncompliance penalty must be assessed under subsection (5) of this section. The division shall provide an opportunity to the owner or operator at such conference, and may provide further opportunity thereafter, to submit data, views, and arguments concerning the alleged violation or noncompliance or the assessment of any noncompliance penalty.

(b) If, after any such conference, a violation or noncompliance is determined to have occurred, the division shall issue an order requiring the owner or operator or any other responsible person to comply, unless the owner or operator demonstrates that such violation occurred during a period of start-up, shutdown, or malfunction, and timely notice was given to the division of such condition. Such order may include termination, modification, or revocation and reissuance of the subject permit and the assessment of civil penalties in accordance with section 25-7-122. Such order may also require the calculation of a noncompliance penalty under subsection (5) of this section. Unless enforcement of its order has been stayed as provided in paragraph (b) of subsection (4) of this section, the division may seek enforcement, pursuant to section 25-7-121 or 25-7-122, of the applicable regulation of the commission, order issued pursuant to section 25-7-121 or 25-7-122 of the applicable regulation of the commission, order issued pursuant to section 25-7-118, requirement of the state implementation plan, provision of this article, or terms or conditions of a permit required pursuant to this article in the district court for the district where the affected air pollution source is located. The court shall issue an appropriate order, which may include a schedule for compliance by the owner or operator of the source.

(c) The order for compliance shall set forth with specificity the final determination of the division regarding the nature and extent of the violation or noncompliance by the named persons and facilities and shall also include, by reference, a summary of the proceedings at the conference held after the notice of violation and an evaluation of the evidence considered by the division in reaching its final determinations. Any order issued under this subsection (3) which is not reviewed by the commission in accordance with the provisions of subsection (4) of this section shall become final agency action.

(4) (a) (I) Within twenty calendar days after receipt of an order issued pursuant to subsection (3) of this section, the recipient thereof may file with the commission a written petition requesting a hearing to determine all or any of the following:

(A) Whether the alleged violation or noncompliance exists or did exist;

(B) Whether a revision of the state implementation plan or revision of a regulation or standard which is not part of the state implementation plan should be implemented with respect to such violation or noncompliance;

(C) Whether the owner or operator is subject to civil or noncompliance penalties under subsection (5) of this section.

(II) Such hearing shall allow the parties to present evidence and argument on all issues and to conduct cross-examination required for full disclosure of the facts and shall otherwise be conducted in accordance with section 25-7-119.

(b) Except with respect to actions taken pursuant to section 25-7-112 or 25-7-113, upon the filing of such petition, the order and the provisions of the state implementation plan which relate to the alleged violation or noncompliance shall be stayed pending determination of the petition by the commission. Any stay pursuant to this paragraph (b) shall be effective only as to the specific source covered by the order and such petition.

(5) (a) (I) Any order issued pursuant to subsection (3) of this section which pertains to an alleged violation described in section 120(a)(2)(A) of the federal act shall also require each person who is subject to such order, within forty-five calendar days after the issuance of such order, to calculate the penalty owed in accordance with paragraph (b) of this

subsection (5) and submit the calculation, together with a payment schedule and all information necessary for an independent verification thereof, to the division. If the order has been stayed pursuant to subsection (4) of this section, the penalty calculation shall be submitted by the owner or operator to the division within forty-five calendar days after issuance of a final determination of the commission that:

(A) A violation or noncompliance occurred;

(B) If a revision to the state implementation plan has been requested, all or part of such request should be denied; except that, if only part of such request is denied, the penalty calculation shall not be submitted for any aspect of the violation or noncompliance which is excused by reason of approval of a requested revision of the state implementation plan;

(C) The violation is one described in section 120(a)(2)(A) of the federal act; and

(D) If an exemption pursuant to subsection (7) of this section has been claimed, the owner or operator is not entitled thereto.

(II) The division shall review the penalty calculation and schedule submitted pursuant to subparagraph (I) of this paragraph (a) and shall issue an order assessing the noncompliance penalty and providing a payment schedule therefor.

(b) (I) The amount of the penalty which shall be assessed under this subsection (5) shall be equal to:

(A) The amount, determined in accordance with section 120 of the federal act and rules and regulations promulgated under said act by the United States environmental protection agency, which shall be no less than the sum of the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period of not longer than ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such stationary source; less

(B) The amount of any expenditure made by the owner or operator of such stationary source during any such quarter for the purpose of bringing the source into, and maintaining compliance with, such requirement to the extent that such expenditure has not been taken into account in the calculation of the penalty under sub-subparagraph (A) of this subparagraph (I).

(II) To the extent that any expenditure under sub-subparagraph (B) of subparagraph (I) of this paragraph (b) made during any quarter is not subtracted for such quarter from the costs under sub-subparagraph (A) of subparagraph (I) of this paragraph (b), such expenditure may be subtracted for any subsequent quarter from such costs; except that in no event shall the amount paid be less than the quarterly payment minus the amount attributed to the actual cost of construction.

(c) Any penalty assessed pursuant to subsections (5) to (11) of this section shall be paid in equal quarterly installments (except as provided in sub-subparagraph (B) of subparagraph (I) of paragraph (b) of this subsection (5)) for the period which begins either August 7, 1979, if notice pursuant to subsection (2) of this section is issued on or before such date or which begins on the date of issuance of notice pursuant to subsection (2) of this section if such notice is issued after August 7, 1979, and which period ends on the date on which such stationary source is estimated to come into compliance.

(d) Any person who fails to pay the amount of any penalty with respect to any stationary source under this subsection (5) on a timely basis shall be required to pay, in addition, a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such stationary source which are unpaid as of the beginning of such quarter.

(6) Within twenty calendar days after issuance of an order under subparagraph (II) of paragraph (a) of subsection (5) of this section, the owner or operator may file with the commission a written petition requesting a hearing to review such order. Within sixty calendar days after the filing of such petition, the commission shall hold a hearing and issue a decision thereon.

(7) (a) The owner or operator of any stationary source shall be exempt from the duty to pay a noncompliance penalty pursuant to this section if after notice the owner or operator

demonstrates at a hearing that the failure of such stationary source to comply is due solely to:

(I) The conversion by such stationary source from the burning of petroleum products or natural gas, or both, as the primary energy source to the burning of coal pursuant to an order under section 119 of the federal act;

(II) In the case of a coal-burning source granted an extension under section 119 of the federal act, a prohibition from using petroleum products or natural gas, or both, by reason of an order under the provisions of section 2 (a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" or under any legislation which amends or supersedes those provisions;

(III) The use of innovative technology sanctioned by an enforcement order under section 113 (d) (4) of the federal act;

(IV) An inability to comply with such requirements for which the stationary source has received an order pursuant to section 25-7-118, which inability results from reasons entirely beyond the control of the owner or operator of such stationary source or of any entity controlling, controlled by, or under common control with the owner or operator of such stationary source; or

(V) The conditions by reason of which a temporary emergency suspension is authorized under section 110 (f) or (g) of the federal act;

(b) The division may, after notice and opportunity for a public hearing, exempt any stationary source from the duty to pay a noncompliance penalty pursuant to this section with respect to a particular instance of noncompliance if it finds that such instance of noncompliance is inconsequential in nature and duration. Any instance of noncompliance occurring during a period of start-up, shutdown, or malfunction shall be deemed to be inconsequential. If a public hearing is requested by an interested person, the request shall be transmitted to the commission within twenty calendar days of its receipt by the division. The commission shall, within sixty calendar days of its receipt of the request, hold a public hearing with respect thereto and within thirty calendar days of such hearing issue its decision.

(c) An exemption under this subsection (7) shall cease to be effective if the stationary source fails to comply with the interim emission control requirements or schedules of compliance, including increments of progress, under any such extension, order, or suspension.

(8) If the owner or operator of a stationary source who receives an order pursuant to subsection (5) of this section fails to submit a calculation of the penalty, a schedule for payment, and the information necessary for an independent verification thereof, the division may enter into a contract with a person who has no financial interest in the ownership or operation of the stationary source or in any person controlling, controlled by, or under common control with such stationary source to assist in determining the penalty assessment or payment schedule with respect to such stationary source. The cost of such contract may be added to the penalty to be assessed against the owner or operator of such stationary source.

(9) (a) The division or the commission may adjust the amount of the penalty assessment or the payment schedule proposed by the owner or operator if the administrator of the United States environmental protection agency determines that the penalty or schedule does not meet the requirements of the federal act.

(b) Upon making a determination that a stationary source which is subject to a penalty assessment pursuant to this section is in compliance, the division shall review the actual expenditures made by the owner or operator of such stationary source for the purpose of attaining and maintaining compliance and, within one hundred eighty days after such stationary source comes into compliance, shall either provide reimbursement with interest at appropriate prevailing rates for any overpayment by such person or assess and collect any additional payment with interest at prevailing rates for any underpayment by such person.

(10) Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other orders, payments, sanctions, or other requirements of this article.

(11) The division or the commission may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request

the attorney general to bring, and if so requested it is his duty to bring, a suit for recovery of any penalty or nonpayment penalty, with interest, imposed pursuant to subsection (5) of this section if the penalty is not paid when due.

Source: L. 79: Entire article R&RE, p. 1034, § 1, effective June 20. L. 84: IP(4)(a), (4)(b), IP(5)(a)(I), (6), (7)(b), (9)(a), and (11) amended, p. 771, § 7, effective July 1. L. 87: (1) and (2) amended, p. 1152, § 6, effective July 1. L. 92: (1)(a), (2), (3)(b), (3)(c), and (4)(a) amended, p. 1217, § 19, effective July 1. L. 97: (1)(a) amended, p. 1090, § 3, effective July 1.

ANNOTATION

Notice of each inspection is required, regardless of when it occurs, even where the alleged violator is already the subject of a cease-and-desist order. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 191 Colo. 463, 553 P.2d 800 (1976).

When notice should be given. A party who is subject to an inspection that may result in a cease-and-desist order is entitled to notice that an inspection has been conducted within a reasonably short period of time following the inspection. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 191 Colo. 463, 553 P.2d 800 (1976).

Due process contemplates that notice should be given of a visual opacity reading by the department of health within a reasonably short period of time following the completion of inspection of air pollution. *Air Pollution Variance*

Bd. v. W. Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976).

Because surprise may play a crucial role in the course of some inspections, prior or contemporary notice of the inspection is not required. Basic fairness is achieved in this context by delivering actual notice to a plant manager or officer or agent thereof within a short period of time following the inspection. *Air Pollution Variance Bd. v. W. Alfalfa Corp.*, 191 Colo. 455, 553 P.2d 811 (1976).

Investigation of a notice of violation is not a precondition to issuance of a construction permit, because this section addresses enforcement of air quality laws and does not create a separate permitting requirement. *Citizens for Clean Air & Water v. Colo. Dept. of Pub. Health & Env't*, 181 P.3d 393 (Colo. App. 2008).

25-7-116. Air quality hearings board. (Repealed)

Source: Entire article R&RE, L.79, p. 1039, § 1, effective June 20. L. 84: Entire section repealed, p. 768, § 1, effective July 1.

25-7-117. State implementation plan - revisions of limited applicability. (1) The commission, upon application by the owner or operator of a stationary or mobile source or as provided in section 25-7-110 (2), may revise the state implementation plan or any regulation or standard that is not part of the state implementation plan pursuant to this section if it determines that:

(a) Control techniques are not available, compliance with applicable emission control regulations would cause an unreasonable economic burden, compliance with applicable emission control regulations through new or improved technology is economically and technologically beneficial, or compliance with applicable emission control regulations would result in an arbitrary and unreasonable taking of property;

(b) The adoption of such revision would be consistent with, and aid in, implementing the legislative policy set forth in section 25-7-102; and

(c) In any event, adoption of such revision would be consistent with the requirements of section 110 of the federal act.

(2) Any revision of the state implementation plan or of a regulation or standard which is not part of the state implementation plan pursuant to the provisions of subsection (1) of this section may be adopted for such period of time as shall be specified by the commission.

Source: L. 79: Entire article R&RE, p. 1040, § 1, effective June 20. L. 84: IP(1) and (2) amended, p. 772, § 8, effective July 1. L. 98: IP(1) and (1)(a) amended, p. 1014, § 1, effective August 5.

25-7-118. Delayed compliance orders. (1) The division may, after notice and an opportunity for a public hearing, issue an order for any stationary source which specifies a date for final compliance with any requirement of the state implementation plan not later than the date for attainment of any national ambient air quality standard specified in such plan and in no event longer than one year after the date the order was issued, if the requirements of this section are met. If a public hearing is requested by an interested person, the request shall, within twenty days of its receipt, be transmitted to the commission. The commission shall, within sixty days of its receipt of the request, hold a public hearing with respect thereto and, within thirty days of such hearing, issue its decision and order.

(2) An order pursuant to this section may be issued if the order:

(a) Is issued after notice to the public containing the content of the proposed order and after an opportunity for a public hearing thereon;

(b) Contains a schedule and timetable for compliance which requires final compliance as expeditiously as practical, but in no event later than July 1, 1979, or three years after the date for final compliance with such requirement that is specified in the state implementation plan, whichever is later;

(c) In the case of a major stationary source, notifies the source that it will be required to pay a penalty under section 25-7-115 in the event such stationary source fails to achieve final compliance by July 1, 1979, or by such later date as is specified in the order in accordance with section 25-7-115;

(d) Requires emission monitoring and reporting by the stationary source;

(e) Requires the stationary source to use the best practical system of emission reduction for the period during which such order is in effect and requires the stationary source to comply with such interim requirements as the division or commission determines are reasonable and practical.

(3) If any stationary source not in compliance with any requirement of the state implementation plan gives notice to the division or commission that such stationary source intends to comply by means of replacement of the facility, a complete change in its production process, or a termination of its operations, the division or commission may issue an order under this section permitting the stationary source to operate until July 1, 1979, without any interim schedule of compliance. As a condition of the issuance of any such order, the owner or operator of such stationary source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such stationary source by reason of the failure to comply. If the owner or operator of a stationary source for which the bond or other surety required by this subsection (3) has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety, and the commission shall have no discretion to modify the order under this subsection (3) or to compromise the bond or other surety.

(4) Any order pursuant to this section shall be terminated if the commission determines, after notice and a hearing, that the inability of the stationary source to comply no longer exists. If the owner or operator of the stationary source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result but in no event later than the date required under this section.

(5) (a) If, on the basis of any information available to it, the division has reason to believe that a stationary source to which an order has been issued pursuant to this section is in violation of any requirement of such order or of any provision of this section, it shall notify the commission and the owner or operator of the alleged violation and may revoke such order or may commence an appropriate enforcement action pursuant to this article, or both.

(b) The owner or operator shall respond as provided in section 25-7-115, and, within sixty days after receipt of such notice, the division shall issue a determination thereon. If the division determines that the stationary source is in violation of any requirement of such order or of any provision of this section, it shall revoke such order and enforce compliance

with the requirement with respect to which such order was granted or shall order payment of a penalty as provided in section 25-7-115, or both.

(6) During the period of the order issued under this section and when the owner or operator is in compliance with the terms of such order, no other enforcement action pursuant to this article shall be taken against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the stationary source covered by such order.

(7) Nothing in this section, and no delayed compliance order granted pursuant to this section, shall be construed to prevent or limit the application of the emergency provisions of section 25-7-112 or 25-7-113. No order issued under this subsection (7) shall prevent the state from assessing penalties nor otherwise affect or limit the state's authority to enforce under other provisions of this article.

Source: L. 79: Entire article R&RE, p. 1041, § 1, effective June 20. L. 84: (1), (2)(e), (3), and (4) amended, p. 773, § 9, effective July 1. L. 92: (1), (5)(a), and (7) amended, p. 1218, § 20, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Applied in *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-119. Hearings. (1) Not less than fifteen calendar days after a hearing has been requested as provided in this article, the commission shall grant such request and set a time and place therefor not more than ninety calendar days following receipt of such request, unless a shorter period is otherwise specifically provided for in this article. Notice of such hearing shall be printed in a newspaper of general circulation in the area in which the proposed project or activity is located at least thirty days prior to the date of said hearing.

(2) The division shall appear as a party in any hearing before the commission and shall have the same rights to judicial review as any other party.

(2.5) The division or the federal environmental protection agency, or both, may appear as parties pursuant to subsection (5) of this section in any hearing before the commission. The federal environmental protection agency is encouraged to participate in the hearing process early and often so that its interpretations are heard. If the federal environmental protection agency does not comply with the provisions of this subsection (2.5), the commission may not receive evidence from such agency in any hearing related to stationary sources conducted pursuant to this section, and any subsequent opinions by such agency shall carry no weight before the commission or in any judicial proceeding.

(3) All testimony taken at any such hearing before the commission shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be taken and filed. The stenographer shall furnish, upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of the record to any party in such hearing requesting the same.

(4) Any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered shall not be publicly disclosed in public hearings or otherwise and shall be kept confidential by any member, officer, or employee of the commission or the division. Any person seeking to invoke the protection of this subsection (4) in any hearing shall bear the burden of proving its applicability. Except as provided in the federal act, information claimed to be related to secret processes or methods of manufacture or production but which constitutes emission data may not be withheld as confidential; except that such information may be submitted under a claim of confidentiality, and the division shall not disclose any such information to the public unless required under the federal act.

(5) At any hearing, any person who is affected by the proceeding and whose interests are not already adequately represented shall have the opportunity to be a party thereto upon prior application to and approval by the commission in its sole discretion, as deemed reasonable and proper by said commission, and such person shall have the right to be heard and to cross-examine any witness.

(6) After due consideration of the written and oral statements, the testimony, and the arguments presented at any such hearing, the commission shall make its findings and order, based upon evidence in the record, or make such determination of the matter as it shall deem appropriate, consistent with the provisions of this article and any rule, regulation, or determination promulgated by the commission pursuant thereto. Unless a time period is otherwise specifically provided for in this article, such finding and order or determination shall be made within thirty calendar days after the completion of such hearing.

(7) In all proceedings before the commission with respect to any alleged violation of any provision of this article, regulation of the commission, order or permit or terms or conditions thereof, or requirement of the state implementation plan, the burden of proof shall be upon the division.

(8) The applicant for a permit or delayed compliance order, or any modification thereof, and the petitioner for any amendment to the state implementation plan shall bear the burden of proof with respect to the justification therefor and the information, data, and analysis supportive thereof or required with respect to such application or petition.

(9) Repealed.

(10) Every hearing granted by the commission shall be conducted by the commission, and every hearing shall comply with the provisions of this article and the provisions of article 4 of title 24, C.R.S.

Source: **L. 79:** Entire article R&RE, p. 1042, § 1, effective June 20. **L. 84:** (1) to (7) and (10) amended and (9) repealed, pp. 774, 768, §§10, 1, effective July 1. **L. 87:** (10) amended, p. 971, § 84, effective March 13. **L. 92:** (4), (6), and (10) amended, p. 1219, § 21, effective July 1. **L. 95:** (2.5) added, p. 1342, § 4, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

The board or commission possesses unfettered and sole discretion as to granting intervention. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 179 Colo. 223, 499 P.2d 1176 (1972).

Results of visual opacity inspection are admissible. For purposes of a hearing before the air pollution variance board, the results of visual opacity inspection are wholly relevant and admissible. Air Pollution Variance Bd. v. W. Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976).

Visual opacity tests for air pollution meet minimal due process standards and are not so arbitrary or capricious as to foreclose the finding of a violation based upon such tests alone. Air

Pollution Variance Bd. v. W. Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976).

Questions as to such tests rest in discretion of trier of fact. Any question as to the method of conducting a visual opacity inspection, the qualification of the inspector, or the reliability of the testing procedure rests in the sound discretion of the trier of fact. Air Pollution Variance Bd. v. W. Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976).

Former subsection (9) did not require review by commission when variance is denied; rather, this section provides that, upon granting of a variance, the commission must review the variance order to determine whether the variance granted interferes with the attainment of the objectives of the air pollution control act. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 179 Colo. 223, 499 P.2d 1176 (1972).

Applied in CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n, 199 Colo. 270, 610 P.2d 85 (1980).

25-7-120. Judicial review. (1) Any final order or determination by the division or the commission shall be subject to judicial review in accordance with the provisions of this article and the provisions of article 4 of title 24, C.R.S.

(2) Any party may move the court to remand the case to the division or the commission

in the interests of justice for the purpose of adducing additional specified and material evidence and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.

(3) Any proceeding for judicial review of any final order or determination of the division or the commission shall be filed in the district court for the district in which is located the air pollution source affected.

Source: **L. 79:** Entire article R&RE, p. 1044, § 1, effective June 20. **L. 84:** Entire section amended, p. 775, § 11, effective July 1.

ANNOTATION

Law reviews. For article, "The Limits of the Law: Functional Failures of the Air Pollution Variance Board", see 44 U. Colo. L. Rev. 513 (1974). For comment, "Environmental Law — Requirement of Notice in Visual Opacity Readings — Air Pollution Variance Bd. v. Western Alfalfa Corp., 94 S. Ct. 2114 (1974)", see 51 Den. L.J. 603 (1974).

Legislative intent. In prescribing a single local forum for judicial review, the general assembly intended to provide a unified, expedient, and economical means for resolving issues under the air pollution control act. Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

In enacting subsection (3), the general assembly sought to provide a single forum for judicial review of "any" final orders or determinations of the commission, since the legislative judgment was that a single, "local" forum would best ensure proper participation by all those parties which had been joined in the administrative proceeding. Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

Venue in another forum is improper. Where forum for judicial review is properly determined

under subsection (3) of this section, venue in another forum under § 24-4-106 is improper. Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

Every order need not directly affect source. The phrase in subsection (3), "in which is located the air contamination source affected", does not mean that every appealable order or determination arising out of the agency proceeding must directly "affect" the air contamination source. Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

Collateral questions are subject to venue provisions. When an agency proceeding "affects" an air contamination source, then even collateral questions decided in that proceeding will be subject to the venue provisions of subsection (3). Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

Effect of existence of separate ancillary claim. The existence of a separate claim, ancillary to an order properly reviewed under the venue provision of subsection (3), does not create an independent basis for venue in a forum other than that prescribed by subsection (3). Air Pollution Control Comm'n v. District Court, 193 Colo. 146, 563 P.2d 351 (1977).

25-7-121. Injunctions. (1) In the event any person fails to comply with a final order of the division, or the commission, that is not subject to stay pending administrative or judicial review, or in the event any person violates any emission control regulation of the commission, the requirements of the state implementation plan, or any provision of parts 1 to 4 of this article, including any term or condition contained in any permit required under this article, the division or the commission, as the case may be, may request the district attorney for the district in which the alleged violation occurs or the attorney general to bring, and if so requested it is his duty to bring, a suit for an injunction to prevent any further or continued violation.

(2) In any proceedings brought pursuant to this section to enforce an order of the division or the commission, a temporary restraining order or preliminary injunction, if sought, shall not issue if there is probable cause to believe that granting such temporary restraining order or preliminary injunction will cause serious harm to the affected person or any other person and:

(a) That the alleged violation or activity to which the order pertains will not continue or be repeated; or

(b) That granting such temporary restraining order or preliminary injunction would be without sufficient corresponding public benefit.

(3) Notwithstanding any other provision in this section, no action for injunction may be

taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4 (3).

Source: **L. 79:** Entire article R&RE, p. 1044, § 1, effective June 20. **L. 84:** (1) and IP(2) amended, p. 775, § 12, effective July 1. **L. 92:** Entire section amended, p. 1220, § 22, effective July 1.

ANNOTATION

This section deals only with future conduct. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 179 Colo. 223, 499 P.2d 1176 (1972).

Injunctive relief cannot be granted until one violates a final cease-and-desist order, not subject to a stay pending review, which has been issued pursuant to the air pollution control act. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 179 Colo. 223, 499 P.2d 1176 (1972).

Or until notice of violation given. An injunction cannot issue until after notice is given of the alleged violation. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 179 Colo. 223, 499 P.2d 1176 (1972).

Showing of irreparable injury not necessary. The terms of this section do not dictate that a showing of irreparable injury must be made

prior to the granting of an injunction. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 191 Colo. 463, 553 P.2d 800 (1976).

A violation of the air quality standards embodies sufficient injury to the public interest to permit the injunctive remedy. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 191 Colo. 463, 553 P.2d 800 (1976).

Resolution of inconsistencies with C.R.C.P. 65(d). Where the proceeding is a special statutory proceeding under the air pollution control act, any inconsistency regarding the form and scope of an injunction between C.R.C.P. 65(d) and § 25-7-102 is resolved in favor of the statutory section. Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd., 191 Colo. 463, 553 P.2d 800 (1976).

25-7-122. Civil penalties. (1) Upon application of the division, penalties as determined under this article may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(a) (Deleted by amendment, L. 92, p. 1220, § 23, effective July 1, 1992.)

(b) Any person who violates any requirement or prohibition of an applicable emission control regulation of the commission, the state implementation plan, a construction permit, any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, 25-7-106.9, 25-7-108, 25-7-109, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414, C.R.S., shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each day of such violation; except that there shall be no civil penalties assessed or collected against persons who violate emission regulations promulgated by the commission for the control of odor until a compliance order issued pursuant to section 25-7-115 and ordering compliance with the odor regulation has been violated.

(c) Any person failing to comply with the provisions of section 25-7-114.1 shall be subject to a civil penalty of not more than five hundred dollars.

(d) Any person who violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit or to operate in compliance with any term or condition thereof or to pay the permit fee required under section 25-7-114.7 (2) or commits a violation of section 25-7-109.6 shall be subject to a civil penalty of not more than fifteen thousand dollars per day for each violation.

(e) Any person who violates any provision of section 25-7-139 shall be subject to a civil penalty of not more than one thousand dollars.

(2) (a) In determining the amount of any civil penalty, the following factors shall be considered:

(I) The violator's compliance history;

(II) Good faith efforts on behalf of the violator to comply;

- (III) Payment by the violator of penalties previously assessed for the same violation;
- (IV) Duration of the violation;
- (V) Economic benefit of noncompliance to the violator;
- (VI) Impact on, or threat to, the public health or welfare or the environment as a result of the violation;
- (VII) Malfeasance; and
- (VIII) Whether legal and factual theories were advanced for purposes of delay.

(b) In addition to the factors set forth in paragraph (a) of this subsection (2), the following circumstances shall be considered as grounds for reducing or eliminating civil penalties:

- (I) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;
- (II) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts;
- (III) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program;
- (IV) Substantial economic impact of a penalty on the violator;
- (V) Nonfeasance; and
- (VI) Other mitigating factors.

(c) The imposition of civil penalties may be deferred or suspended where appropriate based on consideration of the factors set forth in this subsection (2).

(3) Notwithstanding any other provision in this section, no action for civil enforcement of this article may be taken where the source has obtained a renewable operating permit and conducts its operations in compliance with the permit terms, as provided in section 25-7-114.4 (3).

Source: **L. 79:** Entire article R&RE, p. 1044, § 1, effective June 20. **L. 84:** (1)(a) and (1)(b) amended, p. 775, § 13, effective July 1. **L. 92:** Entire section amended, p. 1220, § 23, effective July 1. **L. 94:** (1)(b) amended, p. 1640, § 61, effective May 31; (1)(b) amended, p. 2561, § 67, effective January 1, 1995. **L. 2000:** (1)(e) added, p. 763, § 2, effective September 1. **L. 2003:** (1)(b) amended, p. 724, § 4, effective July 1; (1)(b) amended, p. 1026, § 7, effective August 6.

Editor's note: (1) Amendments to subsection (1)(b) by Senate Bill 94-001 and Senate Bill 94-206 were harmonized.

(2) Amendments to subsection (1)(b) by Senate Bill 03-066 and House Bill 03-1053 were harmonized.

ANNOTATION

Legislative intent to impose civil rather than criminal penalties for violation of air pollution control standards is clear from the history of the 1970 air pollution control act. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 191 Colo. 463, 553 P.2d 800 (1976).

The express language of the enforcement provisions belies any contention that the general assembly intended this section to effect criminal rather than civil penalties. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 191 Colo. 463, 553 P.2d 800 (1976).

Civil penalty cannot be imposed until one violates a final cease-and-desist order, not subject to a stay pending review, which has been

issued pursuant to the air pollution control act. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 179 Colo. 223, 499 P.2d 1176 (1972).

Nor until notice of violation given. A civil penalty cannot be imposed until after notice is given of the alleged violation. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 179 Colo. 223, 499 P.2d 1176 (1972).

No provision for jury determination. The air pollution control act contains no provision for trial by a jury or for penalty assessment by a jury. *Lloyd A. Fry Roofing Co. v. Air Pollution Variance Bd.*, 191 Colo. 463, 553 P.2d 800 (1976).

25-7-122.1. Criminal penalties. (1) General provisions. (a) Whenever the division has reason to believe that a person has knowingly, as defined in section 18-1-501 (6), C.R.S., violated any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, 25-7-106.9, 25-7-108, 25-7-109, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, or 42-4-410, C.R.S., the division may request either the attorney general or the district attorney for the district in which the alleged violation occurs to pursue criminal penalties under this section.

(b) Except for those violations identified in paragraph (c) of this subsection (1) and subsections (2) and (3) of this section, any person who knowingly, as defined in section 18-1-501 (6), C.R.S., violates any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, any provision related to attainment under part 3 of this article, or any provision of section 25-7-105, 25-7-106, 25-7-106.3, 25-7-106.8, 25-7-106.9, 25-7-108, 25-7-109, 25-7-109.6, 25-7-111, 25-7-112, 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, or 42-4-410, C.R.S., is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twenty-five thousand dollars per day for each day of violation. Upon a second conviction for a violation of this paragraph (b) within two years, the maximum punishment shall be doubled.

(c) Except for those violations identified in paragraph (b) of this subsection (1) and subsections (2) and (3) of this section, any person who knowingly, as defined in section 18-1-501 (6), C.R.S., violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit or to operate in compliance with any term or condition thereof or to pay the permit fee required under section 25-7-114.7 (2) is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twenty-five thousand dollars per violation per day. Upon a second conviction for a violation of this paragraph (c) within two years, the maximum punishment shall be doubled.

(2) **False statements.** Any person who knowingly, as defined in section 18-1-501 (6), C.R.S., makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters or conceals any notice, application, record, report, plan, or other document required pursuant to this article to be either filed or maintained or falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained or followed under this article is guilty of a misdemeanor, and upon conviction thereof, may be punished by a fine of not more than twelve thousand five hundred dollars for each instance of violation. Upon a second conviction for a violation of this subsection (2) within two years, the maximum punishment shall be doubled.

(3) (a) **Knowing endangerment.** Any person who knowingly, as defined in section 18-1-501 (6), C.R.S., releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal act, or any other hazardous air pollutant as defined by this article, and who knows at the time that such action thereby places another person in imminent danger of death or serious bodily injury is guilty of a felony, and upon conviction thereof, may be punished by a fine of not more than fifty thousand dollars per day for each day of violation, or by imprisonment for not more than four years, or by both such fine and imprisonment. Any person committing such violation which is an organization shall, upon conviction under this subsection (3), be subject to a fine of not more than one million dollars for each such violation. Upon a second conviction for a violation of this subsection (3), the maximum punishment shall be doubled. For any air pollutant for which an emissions standard has been set, or for any source for which an operating permit has been issued under this article, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this subsection (3).

(b) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury:

(I) The defendant is responsible only for actual awareness or actual belief possessed; and

(II) Knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant.

(c) (I) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) An occupation, a business, or a profession; or

(B) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

(II) The defendant may establish an affirmative defense under this paragraph (c) by a preponderance of the evidence.

(d) Any person who negligently, as defined in section 18-1-501 (3), C.R.S., violates any requirement or prohibition of an applicable emission control regulation of the commission, state implementation plan, permit required under this article, or any provision for the prevention of significant deterioration under part 2 of this article, is guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine of not more than twelve thousand five hundred dollars per day for each day of violation.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this section and shall be determined by the courts of this state according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint-stock company, foundation, institution, trust, society, union, or any other association of persons.

(b) "Person" includes, in addition to the entities referred to in section 25-7-103 (19), any responsible corporate officer.

(c) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Source: **L. 92:** Entire section added, p. 1223, § 25, effective July 1. **L. 94:** (1)(a) and (1)(b) amended, p. 2561, § 68, effective January 1, 1995. **L. 96:** (1)(a) and (1)(b) amended, p. 1472, § 21, effective June 1. **L. 2003:** (1)(a) and (1)(b) amended, p. 725, § 5, effective July 1.

25-7-122.5. Enforcement of chlorofluorocarbon regulations. (1) Whenever the division has reason to believe that any person has violated the rules and regulations promulgated pursuant to section 25-7-105 (11), the division may issue a notice of violation or a cease-and-desist order. Such notice or order shall set forth the rule or regulation alleged to have been violated, the facts constituting such violation, and any measures which the person is required to take. In addition, if the division finds that a person is in violation of any rule or regulation promulgated pursuant to section 25-7-105 (11), it may assess a fine of up to one thousand dollars for each violation.

(2) Any person who has been issued a notice of violation or a cease-and-desist order or who has been ordered to pay a fine may request a hearing before the commission to contest the notice, order, or fine. Such request shall be filed within thirty days after the notice or order has been issued or the fine has been assessed. Upon such request, a hearing shall be held before the commission within a reasonable time.

(3) After a hearing pursuant to subsection (2) of this section, any person aggrieved by the determination of the commission may seek judicial review of the commission's order

within thirty days after entry thereof in the district court for the judicial district in which the violation occurred.

(4) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 89: Entire section added, p. 1158, § 4, effective May 26.

25-7-122.6. Administrative and judicial stays. (1) Except with respect to emergency orders issued pursuant to sections 25-7-112 and 25-7-113, and delayed compliance orders issued pursuant to section 25-7-118, any person to whom an order has been issued by the division or the commission, or against whom an adverse determination has been made, may petition the commission or the district court for the district in which is located the air pollution source affected, as appropriate, for a stay of the effectiveness of such order or determination.

(2) Such petitions may be filed prior to any such order or determination becoming final or during any period in which such order or determination is under judicial review.

(3) Such stay shall be granted if there is probable cause to believe:

(a) That the movant will suffer irreparable harm if the motion is denied;

(b) That there will be no irreparable harm to human health, welfare, or the environment if the motion is granted; and

(c) That the movant will succeed on the merits of its case.

(4) Such order shall be stayed pending a final determination of the petition.

Source: L. 92: Entire section added, p. 1223, § 25, effective July 1.

25-7-123. Open burning - penalties. (1) (a) The commission shall adopt a program to control open burning in each portion of the state in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. Such program shall include emission control regulations and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning. For purposes of this section, "agricultural operations" does not include grassland, forest, or habitat management activities of significant users of prescribed fire conducted on lands the primary purpose of which is nonagricultural, unless a person asserts and the commission finds that the absence of regulation would substantially impede the objectives of this article. Such activities shall be deemed "commercial purposes" within the meaning of paragraph (b) of subsection (3) of this section.

(c) No permit shall be issued by the division pursuant to paragraph (a) of subsection (2) of this section after July 1, 2002, unless such permit is consistent with the comments and recommendations of the commission concerning the planning document, as defined in section 25-7-106 (8) (b) (II), applicable to the area to be burned; except that permit conditions may be excluded from a permit if a significant user of prescribed fire demonstrates and the state finds that such conditions are inconsistent with applicable law. The division shall report all such exclusions, within thirty days after they are granted, to the governor and to the director of the legislative council. In no event shall a permit be issued unless a planning document for the area to be burned has been submitted to the commission for review, public hearing, and comment in accordance with section 25-7-106 (8). The commission shall adopt rules to provide for exceptions from the requirements of section 25-7-106 (8) when immediate issuance of a permit is necessary to protect the public health and safety.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned on any open premises owned or controlled by such person, or on any public

street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic conditions on the day of such burning, and compliance by the applicant for the permit with applicable fire protection and safety requirements of the local authority or area.

(b) In all or any part of any portion of the state designated pursuant to subsection (1) of this section, the prohibition contained in this subsection (2) may be suspended by the commission with respect to any particular type or category of open burning upon a finding that enforcement of the prohibition would neither significantly assist in the prevention, abatement, and control of air pollution nor significantly enhance the quality of the ambient air in such designated area.

(3) (a) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for noncommercial purposes without first having obtained a permit as required shall be subject to a civil penalty of up to five hundred dollars per day for each day during which such a violation occurs. For a second violation, the civil penalty shall be up to one thousand dollars per day for each day during which such a violation occurs. For a third or subsequent violation, the civil penalty shall be up to one thousand five hundred dollars per day for each day during which such a violation occurs.

(b) Any person who violates paragraph (a) of subsection (2) of this section by burning or permitting any burning for commercial purposes without first having obtained a permit as required shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such a violation occurs.

Source: L. 79: Entire article R&RE, p. 1045, § 1, effective June 20. L. 92: Entire section amended, p. 1223, § 24, effective July 1. L. 99: (1)(b) amended and (1)(c) added, p. 790, § 3, effective May 24. L. 2001: (1)(b) and (1)(c) amended, p. 1185, § 3, effective July 1. L. 2010: (3)(a) amended, (HB 10-1042), ch. 209, p. 910, § 4, effective September 1.

25-7-123.1. Statute of limitations - penalty assessment - criteria. (1) (a) Any action pursuant to this section not commenced within five years of occurrence of the alleged violation is time barred.

(b) Without expanding the statute of limitations contained in paragraph (a) of this subsection (1), any action pursuant to this article, except those commenced pursuant to section 25-7-122 (1) (d) or 25-7-122.1 (1) (c), which is not commenced within eighteen months of the date upon which the division discovers the alleged violation is time barred. For purposes of this section, the division discovers the alleged violation when it learns of the alleged violation or should have learned of the alleged violation by the exercise of reasonable diligence, including by receipt of actual or constructive notice.

(c) The five-year period of limitation contained in this section does not apply where information regarding the alleged violation is knowingly or willfully concealed by the alleged violator.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under sections 25-7-122 and 25-7-122.1 (1), or an assessment may be made under section 25-7-115 (5), where the division has notified the source of the violation, and the division makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(3) The division may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request the attorney general to bring, and if so requested, it is the duty of such official to bring a suit for recovery

or any penalty or nonpayment penalty, with interest, imposed pursuant to section 25-7-122 (civil penalties) or 25-7-122.1 (criminal penalties), if the penalty is not paid when due. The division may not revoke a permit issued pursuant to parts 1 to 4 of this article or certification issued pursuant to part 5 of this article solely for failure to pay penalties when due, unless an order is first issued and all administrative and judicial remedies are pursued unsuccessfully.

Source: L. 92: Entire section added, p. 1223, § 25, effective July 1.

25-7-124. Relationship with federal government, regional agencies, and other states. (1) The commission shall serve as the state agency for all purposes of the federal act and regulations promulgated under said act; except that the department of public health and environment shall accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which are received by the state for air pollution control purposes.

(2) Repealed.

(3) The department of public health and environment may enter into agreements with any air pollution control agencies of the federal government or other states and with regional air pollution control agencies, but any such agreement involving, authorizing, or requiring compliance in this state with any ambient air quality standard or emission control regulation shall not be effective unless or until the commission has held a hearing with respect to such standard or regulation and has adopted the same in compliance with section 25-7-110.

Source: L. 79: Entire article R&RE, p. 1046, § 1, effective June 20. **L. 94:** (1) and (3) amended, p. 2784, § 502, effective July 1. **L. 2005:** (2) repealed, p. 282, § 19, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-125. Organization within department of public health and environment. The air quality control commission, together with the technical secretary under said commission, shall exercise its powers and perform its duties and functions specified in this article in the department of public health and environment as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

Source: L. 79: Entire article R&RE, p. 1046, § 1, effective June 20. **L. 84:** Entire section amended, p. 776, § 14, effective July 1. **L. 94:** Entire section amended, p. 2784, § 503, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, “Synthetic Fuels — Policy and Regulation”, see 51 U. Colo. L. Rev. 465 (1980).

25-7-126. Application of article. (1) The factual or legal basis for proceedings or other actions that shall result from a violation of any emission control regulation inure solely to and shall be for the benefit of the people of the state generally, and it is not intended to create by this article, in any way, new or enlarged private rights, or to enlarge existing private rights, or to diminish private rights. A determination that air pollution exists

or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state.

(2) Other than section 25-7-112 or 25-7-113, the provisions of this article and regulations adopted under this article shall not apply to air pollution insofar as such pollution exists within the confines of a particular commercial or industrial plant, works, or shop which is the source of air pollution and shall not apply or affect the relations between employers and employees with respect to or arising out of any condition of air pollution.

(3) It is the purpose of this article to provide additional and cumulative remedies to prevent and abate air pollution. Nothing in this article shall abridge or alter rights of action or remedies existing on June 20, 1979, or after said date, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

Source: L. 79: Entire article R&RE, p. 1046, § 1, effective June 20.

25-7-127. Continuance of existing rules and orders. (1) All rules or amendments to existing rules adopted by the commission on or after June 20, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-4-108, C.R.S.

(2) All actions, orders, and determinations by the division and the state board of health pursuant to article 29 of chapter 66, C.R.S. 1963, as that article existed on January 1, 1970, shall remain in full force and effect until countermanded or modified by the division.

(3) All actions, orders, and determinations of the air pollution variance board created by article 29 of chapter 66, C.R.S. 1963, as that article existed on January 1, 1970, shall remain in full force and effect unless countermanded or modified by said board prior to July 1, 1984, or until countermanded or modified by the commission created by this article.

(4) All actions, orders, and determinations of the air pollution variance board created by this article as it existed prior to June 20, 1979, shall remain in full force and effect unless countermanded or modified by said board prior to July 1, 1984, or until countermanded or modified by the commission created by this article.

(5) All actions, orders, and determinations of the air quality hearings board created by this article as this article existed prior to July 1, 1984, shall remain in full force and effect until countermanded or modified by the commission created by this article.

Source: L. 79: Entire article R&RE, p. 1047, § 1, effective June 20. **L. 80:** (1) amended, p. 788, § 25, effective June 5. **L. 84:** (3) and (4) amended and (5) added, p. 776, § 15, effective July 1.

ANNOTATION

Section held not to constitute "ex post facto" law. *Lloyd A. Fry Roofing Co. v. State*, 179 Colo. 223, 499 P.2d 1176 (1972).

25-7-128. Local government - authority - penalty. (1) Home rule cities, cities, towns, counties, and cities and counties are hereby authorized to enact local air pollution resolutions or ordinances. Every such resolution or ordinance shall provide for hearings, judicial review, and injunctions consistent with sections 25-7-118 to 25-7-121 and shall include emission control regulations which are at least the same as, or may be more restrictive than, the emission control regulations adopted pursuant to this article; except that nothing in this article shall prohibit any such local law from controlling any air pollution or air pollution source which is not subject to control under the provisions of this article and except that no permit issued under any local air pollution law with respect to any facility, activity, or process shall ever be construed to relieve any holder thereof from the duty to maintain such facility, activity, or process in compliance with the emission standards and emission control regulations adopted pursuant to this article nor to relieve the division from

its duty to enforce such emission standards and emission control regulations with respect to such facility, activity, or process. Any local air pollution standards or regulations submitted and approved as revisions to the state implementation plan shall be enforced as such by the division. In order to assure coordination of efforts to control and abate air pollution, local governmental entities are encouraged to submit their adopted plans and regulations as revisions to the state implementation plan for Colorado.

(2) All local air pollution resolutions and ordinances and orders issued pursuant thereto in existence on March 1, 1979, are validated as though adopted pursuant to the authority of subsection (1) of this section; except that, if any such local resolution, ordinance, or order fails to meet the requirements of this article, the governing body under whose authority such resolution, ordinance, or order was promulgated shall have until July 1, 1979, to amend, modify, or repeal the same so that it will meet the requirements of this article, but, if not so amended, modified, or repealed, the same shall be superseded by this article.

(3) To the extent that a local air pollution resolution adopted by a county is more restrictive than an ordinance adopted by any city or town within such county, the county resolution shall apply in lieu of the city or town ordinance to the extent of the inconsistency.

(4) Any local governmental authority enforcing air pollution control regulations which shall issue any enforcement order or grant any permit shall, at the time of such issuance or granting, transmit to the commission a copy of such order or permit.

(5) Application, operation, and enforcement of valid local air pollution laws shall be completely independent of, but may be concurrent with, the application, operation, and enforcement of this article. The appointment of an air pollution control authority by the division shall in no way affect the duties and responsibilities given the same person or agency under a local air pollution law, and the appointment of an air pollution control authority by a local governmental unit shall in no way affect the duties and responsibilities given the same person or agency by the division.

(6) In order to assure coordination of efforts to control and abate air pollution, at least semiannually the commission and each air pollution control authority created by a local air pollution law shall confer and review each other's records concerning the area subject to such local law and coordinate their respective plans and programs for such area.

(7) No local air pollution control authority shall institute any system or program that:

(a) Conflicts with, or is in any way inconsistent with, air pollution emergency plans promulgated by the governor pursuant to section 25-7-112 (2);

(b) Is more stringent than a corresponding state provision with respect to measures to preserve the stratospheric ozone layer;

(c) Is more stringent than a corresponding state provision with respect to hazardous air pollutants; except that this paragraph (c) shall not limit local zoning powers and ordinances enacted pursuant to other authorities under state law;

(d) Does not contain provisions to ensure adequate reimbursement of state compliance and administrative expenses as required by section 25-7-114.7 (2) (a) (I) (C);

(e) Is more stringent than a corresponding state provision with respect to asphalt and concrete plants and crushing equipment;

(f) Imposes less restrictive requirements on its own stationary sources than those imposed on similar nongovernmental sources.

(8) Any person who violates any emission standard or emission control regulation adopted by a local governmental entity, where such local government has not submitted its standards or regulations as revisions to the state implementation plan, shall be subject to a civil penalty of not more than three hundred dollars. Each day during which such a violation occurs shall be deemed a separate offense.

Source: L. 79: Entire article R&RE, p. 1047, § 1, effective June 20. L. 92: (7) amended, p. 1228, § 26, effective July 1; (7) amended, p. 1293, § 4, effective July 1.

Editor's note: Amendments to subsection (7) by Senate Bill 92-105 and House Bill 92-1178 were harmonized.

25-7-129. Disposition of fines and penalties. All receipts from penalties or fines collected under the provisions of sections 25-7-115, 25-7-122, and 25-7-123 shall be credited to the general fund of the state.

Source: L. 79: Entire article R&RE, p. 1049, § 1, effective June 20.

25-7-130. Motor vehicle emission control studies. (1) The department of public health and environment, motor vehicle emission control section of the air pollution control division, and the department of revenue shall develop a continuing joint program for the study of the control of motor vehicle exhaust emissions, including emissions from model year 1975 and later models. Such emission control studies shall include such investigations and evaluations of existing and available motor vehicle emission control equipment and technology and the social problems, economic impacts, effectiveness, and costs involved in the use of such technology in motor vehicle emissions inspections and maintenance programs as they may jointly recommend.

(2) (a) The department of public health and environment, motor vehicle emission control section of the air pollution control division, shall develop a pilot program for the purpose of testing a representative sample of motor vehicles with various vehicle emission control alternatives which may include emission testing and maintenance, air pollution control tune-up, and vehicle modification alternatives as determined by the commission.

(b) Based upon the results of the pilot program and emission control studies, the commission shall develop recommendations for implementing programs of emission testing or mandatory maintenance, or both; air pollution control tune-ups; and vehicle modifications, including altitude modifications and retrofit control systems, for the control of motor vehicle emissions. Such recommendations shall include information on the costs and air pollution control effectiveness of alternate control measures and legislative and regulatory measures necessary to implement an effective program. Any program recommended shall be based upon establishing statewide minimum standards and shall include more stringent standards for motor vehicles registered in air quality control basins defined by the commission.

(3) (Deleted by amendment, L. 96, p. 1259, § 156, effective August 7, 1996.)

(4) and (5) Repealed.

Source: L. 79: Entire article R&RE, p. 1049, § 1, effective June 20. L. 84: (4) and (5) added, p. 1085, § 2, effective July 1. L. 86: (4)(c) amended, p. 1185, § 17, effective May 12. L. 94: (1), (2)(a), and IP(4)(a) amended, p. 2784, § 504, effective July 1. L. 96: (1) and (3) amended, p. 1259, § 156, effective August 7.

Editor's note: Although subsection (4)(c) provided for the repeal of subsection (4), effective December 31, 1993, subsection (4) was inadvertently left in and not shown as being repealed until 1996. (See L. 86, p. 1185.) Subsection (5)(b) provided for the repeal of subsection (5), effective June 30, 1986. (See L. 84, p. 1085.)

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (2)(a) and the introductory portion to subsection (4)(a), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending subsections (1) and (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-131. Training programs - emission controls. (1) (a) State-employed investigators shall complete a training course and pass qualification tests as developed and approved by the commission, after conferring with the department of revenue, as related to the orientation and basic maintenance procedures on air pollution control systems installed by manufacturers. The commission may waive the requirement for completion of such a training course under such circumstances as the commission deems appropriate. Only inspectors passing said qualification tests shall perform emissions inspections. The commission may require that inspection stations have on hand any equipment necessary to complete emissions inspections as provided for in this section.

(b) Repealed.

(1.1) Repealed.

(2) The training programs provided for by this section shall be oriented toward basic motor vehicle air pollution control systems installed in motor vehicles by the manufacturers and shall be made available to motor vehicle mechanics on a voluntary basis in such air quality control areas as the commission may designate in coordination with educational facilities throughout the state in which it may certify to conduct such training.

(3) and (4) Repealed.

Source: **L. 79:** Entire article R&RE, p. 1049, § 1, effective June 20. **L. 81:** (1) amended and (1.1) added, p. 1944, 1951, §§ 6, 20, effective July 1. **L. 84:** (1)(b) and (1.1) repealed, p. 1080, § 1, effective July 1. **L. 96:** (3) and (4) repealed, p. 1243, § 107, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsections (3) and (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-132. Emission data - public availability. Notwithstanding any other provisions of this article or any other law to the contrary, all emission data received or obtained by the commission or the division shall be available to the public to the extent required by the federal act.

Source: **L. 79:** Entire article R&RE, p. 1050, § 1, effective June 20. **L. 84:** Entire section amended, p. 776, § 16, effective June 20.

25-7-133. Legislative review and approval of state implementation plans and rules - legislative declaration. (1) Notwithstanding any other provision of law but subject to subsection (7) of this section, by January 15 of each year the commission shall certify in a report to the chairperson of the legislative council in summary form any additions or changes to elements of the state implementation plan adopted during the prior year that are to be submitted to the administrator for purposes of federal enforceability. Such report shall be written in plain, nontechnical language using words with common and everyday meaning that are understandable to the average reader. Copies of such report shall be available to the public and shall be made available to each member of the general assembly. The provisions of this section shall not apply to control measures and strategies that have been adopted and implemented by the enacting jurisdiction of a local unit of government if such measures and strategies do not result in mandatory direct costs upon any entity other than the enacting jurisdiction.

(2) (a) By the February 15 following submission of the certified report under subsection (1) of this section, any member of the general assembly may make a request in writing to the chairperson of the legislative council that the legislative council hold a hearing or hearings to review any addition or change to elements of the SIP contained in the report submitted pursuant to subsection (1) of this section. Upon receipt of such request, the chairperson of the legislative council shall forthwith schedule a hearing to conduct such review. Any review by the legislative council shall determine whether the addition or change to the SIP element accomplishes the results intended by enactment of the statutory provisions under which the addition or change to the SIP element was adopted. The legislative council, after allowing a public hearing preceded by adequate notice to the public and the commission, may recommend the introduction of a bill or bills based on the results of such review. If the legislative council does not recommend introduction of a bill under this subsection (2), the addition or change to the SIP element may be submitted under paragraph (b) of this subsection (2). Any bill recommended for consideration under this subsection (2) shall not be counted against the number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. If the legislative council does not recommend the introduction of a bill under this paragraph (a), and the member or members of the general assembly that requested such

review will be introducing a bill under the provisions of paragraph (c) of this subsection (2), any such member shall provide written notice to the chairperson of the legislative council within three days after the action by the legislative council not to recommend introduction of a bill. If such member or members provide such written notice, the addition or change to the SIP or any element thereof that is the subject of any such bill may not be submitted to the administrator of the federal environmental protection agency until the expiration of the addition or change to the SIP has been postponed by the general assembly acting by bill or the member or members provide written notice to the chairperson of the executive committee of the legislative council that no bill will be introduced.

(b) Unless a written request for legislative council review of an addition or change to a SIP element is submitted by the February 15 following submission of the report under subsection (1) of this section, or a notice is provided by a member or members that they are introducing a bill under paragraph (c) of this subsection (2) within three days after legislative council action not to introduce a bill under paragraph (a) of this subsection (2), all other additions or changes to a SIP element described in such report shall be submitted to the administrator for final approval and incorporation into the SIP.

(c) Until such February 15 as provided in paragraph (b) of this subsection (2), the commission may only submit an addition or change to the SIP or any element thereof, as defined in section 110 of the federal act, any rule which is a part thereof, or any revision thereto as specified in subsection (1) of this section to the administrator for conditional approval or temporary approval. If legislative council review is requested as to any addition or change to a SIP element under paragraph (a) of this subsection (2), then no such SIP, revision, rule required by the SIP or revision, or rule related to the implementation of the SIP or revision so submitted to the administrator may take effect for purposes of federal enforceability, or enforcement of any kind at the state level against any person or entity based only on the commission's general authority to adopt a SIP under section 25-7-105 (1), unless expiration of the SIP, rule required for the SIP, or addition or change to a SIP element has been postponed by the general assembly acting by bill in the same manner as provided in section 24-4-103 (8) (c) and (8) (d), C.R.S. Any member of the general assembly may introduce a bill to modify or delete all or a portion of the SIP or any rule or additions or changes to SIP elements which are a component thereof. Any bill introduced under this paragraph (c) shall not be counted against the number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. Any committee of reference of the senate or the house of representatives to which a bill introduced under this paragraph (c) is referred shall conduct as part of consideration of any such bill on the merits the review provided for under paragraph (a) of this subsection (2). If any bill is introduced under paragraph (a) of this subsection (2) or under this paragraph (c) to postpone the expiration of any addition or change to a SIP element described in a report submitted under subsection (1) of this section or paragraph (d) of this subsection (2), and any such bill does not become law, the addition or change to a SIP element addressed in such bill may be submitted to the administrator of the federal environmental protection agency for final approval and incorporation into the SIP under paragraph (b) of this subsection (2).

(d) Repealed.

(3) In order to further the goals of section 25-7-105.1 in assuring that nonfederally required rules or policies are not submitted to the administrator for inclusion in a SIP, the commission shall, effective July 1, 1995, with respect to any rule or any portion thereof not required by the federal act or which is otherwise more stringent in whole or in part than requirements of the federal act, ensure that the public notice and the general statement of such rule's basis, specific statutory authority, and purpose required by section 24-4-103, C.R.S., in connection with the commission's proposal and promulgation of such rule shall also specifically identify what portion of such rule is not required by provisions of the federal act or is otherwise more stringent than requirements of the federal act.

(4) (a) The general assembly recognizes that the commission must exercise discretion in selecting from available options in developing a cost effective SIP which attains or maintains national ambient air quality standards.

(b) On or before November 15 of each year, the commission, in coordination with designated organizations for air quality planning in local areas, shall provide the legislative council:

(I) A comprehensive listing of additions or changes to elements of the SIP that the commission and local areas will consider during the following calendar year;

(II) The projected schedule for local action and commission consideration of such measures;

(III) (Deleted by amendment, L. 2000, p. 187, § 1, effective March 22, 2000.)

(IV) The statutory deadline, if any, for submittal to the administrator of the change or addition to elements of the SIP and the corresponding federal sanctions or consequences for failure to submit the change or addition to elements of the SIP by the deadline under the federal act; and

(V) A brief description of the principal technical and policy issues and available options presented for decision in each addition or change to elements of the SIP.

(c) The commission, in coordination with designated organizations for air quality planning in local areas, shall communicate regularly with the legislative council regarding each of the SIP elements or revisions thereto scheduled for adoption and submission to the administrator of the United States environmental protection agency.

(5) The information required by paragraph (b) of subsection (4) of this section shall be submitted to the legislative council in the form and manner and accompanied by supporting materials prescribed by the legislative council.

(6) This section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the periodic reporting requirement of this section shall remain in effect until changed by the general assembly acting by bill.

(7) (a) (Deleted by amendment, L. 2003, p. 1973, § 1, effective May 22, 2003.)

(b) Any revisions to the automobile inspection and readjustment program area pursuant to section 42-4-304 (20) (d), C.R.S., that delete specific regions within that portion of the AIR program area that is approved for incorporation into the state implementation plan shall be submitted to the federal environmental protection agency as expeditiously as possible and shall not be subject to further review and approval pursuant to this section; except that the commission shall submit a report pursuant to subsection (1) of this section.

(c) Repealed.

(d) (I) The commission shall request the governor to submit the plan adopted by the commission on March 12, 2004, to reduce the amount of pollutants emitted that create ozone pollution to the federal environmental protection agency for approval and incorporation into the state implementation plan. Passage of this paragraph (d) is in lieu of, and said plan shall be deemed to have satisfied, all review requirements under this section.

(II) A regulated entity that is required to comply with the amendments to regulation number 7 adopted by the air quality control commission on March 12, 2004, to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks shall:

(A) Provide advance notice of the location where it intends to install an emission control unit; and

(B) Indicate whether such unit exceeds the height of the existing equipment at the facility.

(III) The regulated entity shall deliver the notice required pursuant to subparagraph (II) of this paragraph (d) to the local government designee, if any, registered with the Colorado oil and gas conservation commission for receipt of information relating to oil and gas operations within a local jurisdiction, and shall include a phone number for a contact person. If the local jurisdiction does not have a local government designee, the notice shall be provided to the municipal clerk.

(IV) The local government shall, within ten business days after receipt of the notice, notify the regulated entity whether the local government objects to the intended installation of the emission control unit. The objection shall be based on site-specific land use issues and may not be made on a blanket basis to every proposed emission control unit installation within a local jurisdiction. If the local government fails to object within ten business days after submission of the notice, the local jurisdiction is presumed to have approved the

installation of the specified emission control unit, and the regulated entity may commence such installation.

(V) If a local government designee notifies a regulated entity of its objection within ten business days after receipt of the notice of installation of an emission control unit, the regulated entity and the local jurisdiction shall endeavor to informally resolve the matter within an additional ten business days. If such attempt fails, the local jurisdiction shall have ten business days to petition the air quality control commission for an adjudicatory hearing pursuant to section 24-4-105, C.R.S., which petition shall be granted by the commission. The hearing shall be held and the matter decided by the commission or a hearing officer designated by the commission within forty-five calendar days after receipt of the petition by the commission. In ruling on the objection, the commission shall have the authority only to uphold or deny the objection.

(VI) The commission shall determine the procedures and criteria that govern its review of local government objections to the installation of emission control units at atmospheric condensate storage tank facilities, and the process provided thereby shall be the exclusive procedure for such disputes. No other local permit or land use approval shall be required for the installation of such emission control units.

Source: **L. 79:** Entire section added, p. 1552, § 15, effective June 20. **L. 95:** Entire section R&RE, p. 1150, §2, effective May 31. **L. 2000:** (1), (2), (4)(b)(I), (4)(b)(III), (4)(b)(IV), (4)(b)(V), (4)(c), and (6) amended, p. 187, § 1, effective March 22. **L. 2002:** (1) amended and (7) added, p. 1263, § 1, effective June 4. **L. 2003:** (7) amended, p. 1973, § 1, effective May 22; (7) amended, p. 1358, § 2, effective August 6. **L. 2004:** (7)(d) added, p. 772, § 1, effective May 20.

Editor's note: (1) Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective July 1, 2001. (See L. 2000, p. 187.) Subsection (7)(c)(IV) provided for the repeal of subsection (7)(c), effective December 31, 2003. (See L. 2003, p. 1973.)

(2) Amendments to subsection (7) by House Bill 03-1313 and House Bill 03-1340 were harmonized.

25-7-133.5. Approval or rescission of specific revisions to state implementation plan (SIP) after 1996. (1) Consistent with the provisions of section 25-7-105.1, to the extent senate bill 96-129 and senate bill 96-236, enacted at the second regular session of the sixtieth general assembly, approved submitting portions of air quality control commission regulation 1, section VI, to the federal environmental protection agency for inclusion in the state implementation plan, such approval is hereby rescinded. The inclusion of said regulation 1 in the Denver metropolitan nonattainment area state implementation plan for particulate matter (PM-10) is not affected by this rescission.

(2) Pursuant to section 25-7-133, the following revisions to the state implementation plan (SIP), which were adopted by the air quality control commission on the dates indicated and received by the legislative council for review, are approved for incorporation into the state implementation plan:

(a) The 1993 periodic emissions inventory update to the Denver metropolitan, Colorado Springs, Longmont, and Fort Collins carbon monoxide nonattainment area elements of the SIP, adopted by the air quality control commission on December 21, 1995;

(b) The emergency episode plan revisions as a part of the Denver PM-10 nonattainment area element of the SIP, adopted by the air quality control commission on January 18, 1996;

(c) Amendments adopted by the air quality control commission on September 19, 1996, to the Greeley carbon monoxide nonattainment area element of the SIP;

(d) Amendments adopted by the air quality control commission on October 17, 1996, to the Canon City PM-10 nonattainment area element of the SIP;

(e) Amendments adopted by the air quality control commission on October 17, 1996, to the Steamboat Springs PM-10 nonattainment area element of the SIP;

(f) Amendments adopted by the air quality control commission on March 21, 1996, and June 20, 1996, to regulation number 3, concerning air pollution emission notice deferral, insignificant activities, and fugitive emissions;

(g) Amendments adopted by the air quality control commission on June 20, 1996, to regulation number 3, concerning prevention of significant deterioration permits, total suspended particulates, and hydrogen sulfide;

(h) Amendments adopted by the air quality control commission on October 14, 1996, to regulation number 10, concerning general conformity;

(i) Amendments adopted by the air quality control commission on March 21, 1996, to regulation number 11, concerning the inspection and maintenance program;

(j) Repealed.

(k) Amendments adopted by the air quality control commission on October 24, 1996, to regulation number 5, concerning the generic banking emissions/trading rules and conforming revisions to regulation number 3, part 4, section V;

(l) Amendments adopted by the air quality control commission on December 21, 1995, to regulations number 1 and 7, and the common provisions concerning negligibly reactive volatile organic compounds and delisting of acetone;

(m) Amendments adopted by the air quality control commission on December 23, 1996, to regulation number 1, concerning opacity limitations and sulfur dioxide averaging provisions for coal-fired electric utility boilers during periods of startup, shutdown, and upset;

(n) Repealed.

(o) Amendments adopted by the air quality control commission on April 17, 1997, to the motor vehicle emissions inspection program in all carbon monoxide nonattainment areas in the state (Boulder, Colorado Springs, Denver, and Greeley) under the carbon monoxide nonattainment area element of the SIP;

(p) Amendments adopted by the air quality control commission on January 15, 1998, redesignating Colorado Springs as an attainment area for carbon monoxide and adopting a corresponding maintenance plan;

(q) Amendments adopted by the air quality control commission on December 18, 1997, to the Longmont carbon monoxide maintenance plan;

(r) Amendments adopted by the air quality control commission on April 17, 1997, concerning long-term strategy for the element of the SIP relating to visibility in class I areas;

(s) Amendments adopted by the air quality control commission on November 21, 1996, to regulations number 3, 7, and 8 and common provisions, concerning negligibly reactive volatile organic compounds and regulated hazardous air pollutants;

(t) Amendments adopted by the air quality control commission on September 17, 1998, to regulation number 1, section II. D., concerning military smokes and obscurants training exercises;

(u) Amendments adopted by the air quality control commission on October 15, 1998, to regulation number 7, concerning emissions of volatile organic compounds;

(v) Amendments adopted by the air quality control commission on October 15, 1998, to regulation number 10, concerning conformity of federally funded or approved transportation plans with air quality implementation plans;

(w) Amendments adopted by the air quality control commission on November 19, 1998, to regulation number 11, part F (III), concerning the motor vehicle emissions inspection program for the Denver-Boulder area;

(x) Amendments adopted by the air quality control commission on January 16, 1998, to regulation number 12, concerning reduction of diesel vehicle emissions;

(y) Repealed.

(z) Amendments adopted by the air quality control commission on January 16, 1998, to section 1.11.0 of the procedural rules of the air pollution control division;

(aa) Amendments adopted by the air quality control commission on September 17, 1998, concerning ambient air quality standards for suspended particulate matter; and

(bb) (I) The "Colorado Visibility and Regional Haze State Implementation Plan for the Twelve Mandatory Class I Federal Areas in Colorado", adopted by the air quality control commission on January 7, 2011.

(II) The automatic expiration of the rules contained in the plan specified in subparagraph (I) of this paragraph (bb) that were adopted on January 7, 2011, and that are therefore scheduled for expiration on May 15, 2012, is postponed, effective May 15, 2011.

(3) Revisions to the SIP that are adopted solely to conform the SIP to prior actions of the general assembly under section 25-7-133 and this section may be submitted to the federal environmental protection agency for final approval under section 25-7-133 (2) without further approval by the general assembly under section 25-7-133 or this section.

(4) If the division and the designated organization for air quality planning in the Colorado Springs area request removal of mandatory control measures that have been adequately demonstrated to be unnecessary to achieve and maintain compliance with the federal ambient air quality standards and request corresponding modifications to the mobile source emission budget, the commission shall adopt such revisions to the carbon monoxide maintenance plan for the Colorado Springs area approved pursuant to paragraph (p) of subsection (2) of this section. Notwithstanding section 25-7-133, such revisions shall be submitted to the federal environmental protection agency for incorporation into the state implementation plan as expeditiously as possible and shall not be subject to further review and approval pursuant to section 25-7-133.

(5) Revisions to the visibility component of the SIP that implement and enforce a control strategy that meets the following requirements may be submitted to the United States environmental protection agency for incorporation into the SIP as expeditiously as possible without further review and approval pursuant to section 25-7-133:

(a) On or before November 1, 2001, one or more sources have entered into a consent decree in which such sources make a judicially enforceable commitment to adopt such control strategy; and

(b) The division determines that such control strategy provides for reasonable progress:

(I) Toward the national visibility goal stated in federal rules set forth at 40 CFR part 51, subpart P, and in rules of the division set forth at 5 CCR 1001-5, as said rules provided on January 1, 2001; and

(II) In reducing any present or future impairment of an air-quality-related value.

(6) Notwithstanding the provisions of section 25-7-133, revisions to the Denver metropolitan area element of the PM-10 state implementation plan adopted by the commission on April 19, 2001, are approved for incorporation into the state implementation plan, shall be submitted to the federal environmental protection agency as expeditiously as possible, and shall not be subject to further review and approval pursuant to section 25-7-133.

Source: **L. 97:** Entire section added, p. 381, § 1, effective April 19; (2)(n) and (3) added, pp. 1528, 1530, §§ 1, 2, effective June 3. **L. 98:** (2)(o), (2)(p), (2)(q), (2)(r), (2)(s), and (4) added, pp. 1009, 1010, §§ 1, 2, effective May 27. **L. 99:** (2)(j) and (2)(y) repealed, (2)(r) amended, and (2)(t) through (2)(aa) added, pp. 1244, 1243, §§ 2, 3, 1, effective July 1. **L. 2001:** (5) added, p. 208, § 1, effective March 28; (6) added, p. 900, § 1, effective June 1. **L. 2011:** (2)(bb) added, (HB 11-1291), ch. 144, p. 501, § 2, effective May 4; (2)(n) repealed, (HB 11-1303), ch. 264, p. 1166, § 62, effective August 10.

Cross references: For the legislative declaration in the 2011 act adding subsection (2)(bb), see section 1 of chapter 144, Session Laws of Colorado 2011.

25-7-134. Study of air quality control programs. (Repealed)

Source: **L. 89:** Entire section added, p. 1159, § 4, effective May 26. **L. 93:** (1) and (2) amended, p. 1924, § 5, effective July 1. **L. 94:** (1), (2), and (4) amended, p. 2562, § 69, effective January 1, 1995. **L. 96:** Entire section repealed, p. 1259, § 158, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-135. Ozone protection fund created. (1) There is hereby created in the state treasury an ozone protection fund, which shall consist of fees collected pursuant to section 25-7-105 (11). In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund. Any moneys not appropriated by the general assembly shall remain in the ozone protection fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(2) (Deleted by amendment, L. 2003, p. 723, § 2, effective July 1, 2003.)

Source: L. 92: Entire section added, p. 1294, § 5, effective July 1. L. 94: (1) amended, p. 2785, § 505, effective July 1. L. 98: (2) amended, p. 1335, § 50, effective June 1. L. 2003: Entire section amended, p. 723, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-136. Air pollution data collection and technical evaluation - repeal. (Repealed)

Source: L. 95: Entire section added, p. 1118, § 1, effective May 31. L. 96: IP(3)(a), (3)(a)(I), (3)(b)(I)(A), (3)(b)(II), and (4) amended and (3)(a.5) and (3.5) added, pp. 800, 802, §§1, 2, effective May 23.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1999. (See L. 96, p. 802.)

25-7-137. Requirements for legislative approval of Grand Canyon visibility transport commission or successor body advisory recommendations, reports, and interpretations. (1) The general assembly hereby finds, determines, and declares:

(a) That the Grand Canyon visibility transport commission (GCVTC) was created pursuant to section 169B of the federal act to issue a report directed toward protecting visibility in the Grand Canyon national park;

(b) That the GCVTC's tasks assigned under the federal act have been completed, and a successor body is being proposed;

(c) That protecting visibility is important to the people of Colorado, is an interstate issue, and is highly technical, complex, and subject to varying interpretations; and

(d) That the provisions of this section are enacted to preserve Colorado sovereignty and to enhance public notice and awareness of the GCVTC or its successor bodies' advisory recommendations, reports, or interpretations, and to ensure public confidence in the fairness of the implementation of any Colorado requirements.

(2) The governor or the governor's designee is encouraged to attend and participate in the successor body to the GCVTC. A stakeholder process shall be implemented to include representatives of the general assembly. The governor shall provide an annual report of the activities of the GCVTC or its successor bodies to the general assembly until such time as the governor has forwarded to the federal environmental protection agency notification that the state shall comply with the provisions of Title 40, code of federal regulations, part 51.308, adopted in accordance with the federal act. The goal of this process is to protect the interest of Colorado over air quality issues.

(3) No final recommendation or report or other action of the GCVTC or its successor bodies may impose any new or different requirements upon the regulated community or citizens of the state of Colorado unless approved or enacted by the general assembly acting by bill.

Source: L. 97: Entire section added, p. 1625, § 1, effective August 6. L. 2000: (2) amended, p. 1552, § 29, effective August 2.

25-7-138. Housed commercial swine feeding operations - waste impoundments - odor emissions - fund created. (1) All new or expanded anaerobic process wastewater vessels and impoundments, including, but not limited to, treatment or storage lagoons, constructed or under construction for use in connection with a housed commercial swine feeding operation as defined in section 25-8-501.1 (2) (b) shall be covered, or operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the department of public health and environment information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at any off-site receptor after the odorous air has been diluted with two volumes of odor-free air. For purposes of this section, “receptor” means any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business. As used in this section, “anaerobic” means a waste treatment method that, in whole or in part, does not utilize air or oxygen. All new aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable. As used in this section, “aerobic” means a waste treatment method that utilizes air or oxygen.

(2) All existing anaerobic process wastewater vessels and impoundments, including, but not limited to, aeration tanks and treatment or storage lagoons, owned or operated for use in connection with a housed commercial swine feeding operation as defined in section 25-8-501.1 (2) (b) shall be covered, or operated with technologies or practices that are as effective as covers at minimizing odor from the operation, to capture, recover, incinerate, or otherwise manage odorous gases to minimize, to the greatest extent practicable, the emission of such gases into the atmosphere. The housed commercial swine feeding operation shall submit to the department of public health and environment information sufficient to demonstrate that the technologies and practices used are as effective as covers at minimizing odor from the operation. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at or beyond the property boundary after the odorous air has been diluted with seven volumes of odor-free air. The housed commercial swine feeding operation shall manage odor emissions such that odor emissions from the operation shall not be detected at any off-site receptor after the odorous air has been diluted with two volumes of odor-free air. For purposes of this section, “receptor” means any occupied dwelling used as a primary dwelling or its curtilage, a public or private school, or a place of business. All existing aerobic impoundments shall employ technologies to ensure maintenance of aerobic conditions or otherwise to minimize the emission of odorous gases to the greatest extent practicable.

(3) The commission shall, by rules promulgated on or before March 1, 1999, require that all housed commercial swine feeding operations employ technology to minimize to the greatest extent practicable off-site odor emissions from all aspects of its operations, including odor from its swine confinement structures, manure and composting storage sites, and odor and aerosol drift from land application equipment and sites.

(4) No new land waste application site or new waste impoundment used in connection with a housed commercial swine feeding operation, shall be located less than:

(a) One mile from an occupied dwelling without the written consent of the owner of the dwelling;

(b) One mile from a public or private school without the written consent of the school’s board of trustees or board of directors; and

(c) One mile from the boundaries of any incorporated municipality without the consent of the governing body of the municipality by resolution. As used in this subsection (4), a

new land waste application site and new waste impoundment are those that were not in use as of June 1, 1998.

(5) The division shall enforce the provisions of this section. The division may delegate enforcement of the provisions of this section to any county or district public health agency. If the division delegates enforcement of this section, the division shall monitor the actions of any county or district public health agency as such actions pertain to enforcement of this section. The division shall assess a housed commercial swine feeding operation an annual fee, not to exceed seven cents per animal, based on the operation's working capacity, to offset the division's direct and indirect costs of enforcement, compliance, and regulation pursuant to this section. This fee shall be designated to fund an inspection and complaint response and enforcement program. By mutual agreement, any county or district public health agency that assists in enforcement of this section shall receive funding to conduct inspections and respond to complaints. As used in this subsection (5), "working capacity" means the number of swine the housed commercial swine feeding operation is capable of housing at any one time. In addition, any person who may be adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(6) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the housed commercial swine feeding operation fund, which fund is hereby created in the state treasury. The moneys in such fund shall be subject to annual appropriation by the general assembly for the purposes of this section, including the reimbursement of county or district public health agencies for assistance in the enforcement of this section. Any interest earned on moneys in the fund shall remain in the fund and shall not revert to the general fund at the end of any fiscal year.

Source: Initiated 98: Entire section added, effective upon proclamation of the Governor, December 30, 1998. **L. 2005:** (2) and (3) amended, p. 282, § 20, effective August 8. **L. 2006:** (1), (2), and (5) amended and (6) added, p. 1105, § 1, effective May 25. **L. 2010:** (5) and (6) amended, (HB 10-1422), ch. 419, p. 2103, § 118, effective August 11.

Editor's note: (1) This section was contained in an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure enacting this section was effective upon proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR:	790,852
AGAINST:	438,873

ANNOTATION

Law reviews. For article, "Colorado's Not-So-Little Pig Farms Meet the Big Bad Wolf", see 28 Colo. Law. 85 (June 1999).

25-7-139. Methyl tertiary butyl ether - prohibition - phase-out - civil penalty.

(1) The general assembly finds and declares that methyl tertiary butyl ether ("MTBE") is an oxygenate used in gasoline and other fuel products in this state and in the United States. The general assembly also finds that MTBE may leak into and contaminate groundwater supplies, and that MTBE is water soluble and therefore is difficult and costly to remove from water. MTBE is colorless, tastes and smells like turpentine, and can be tasted and detected by smell at extremely low concentrations. MTBE may be a human carcinogen and poses other potential health risks, including but not limited to memory loss, asthma, and skin irritation.

(2) The general assembly further finds and declares that water is precious and vital to this state's growing population, agricultural industry, and unique environment. Therefore it is the intent of the general assembly in enacting this section to halt further contamination and pollution of this state's groundwater supplies by MTBE.

(3) (a) (I) Except as otherwise provided in this paragraph (a), a person may not sell, offer for sale, or store any fuel product containing or treated with MTBE.

(II) The provisions of this paragraph (a) shall not apply if the presence of MTBE in a fuel product is caused solely by incidental commingling of MTBE with the fuel product during storage or transfer of the fuel product. In no event shall the provisions of this subsection (3) be construed to permit the knowing or willful addition of MTBE to any fuel product.

(b) (Deleted by amendment, L. 2005, p. 283, § 21, effective August 8, 2005.)

(c) For purposes of this section, "fuel product" means gasoline, reformulated gasoline, benzene, benzene, naphtha, benzol, and kerosene and any other volatile and inflammable liquid that is produced, compounded, and offered for sale or used for the purpose of generating power in internal combustion engines or generating heat or light or used for cleaning or for any other similar usage.

(4) Any person who violates the provisions of this section shall be subject to a civil penalty as provided in section 25-7-122 (1) (e).

Source: L. 2000: Entire section added, p. 762, § 1, effective September 1. L. 2005: (3)(a)(I) and (3)(b) amended, p. 283, § 21, effective August 8.

PART 2

PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM

25-7-201. Prevention of significant deterioration program. (1) It is the policy of this state to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards by means including, but not limited to, the following:

(a) Except as provided in section 25-7-209, in areas designated as Class I, II, or III, pursuant to this article and in accordance with the federal act, increases allowed in air pollutant concentrations over the baseline concentration from the construction of major stationary sources or from major modifications shall, in the case of particulate matter and sulfur dioxide, be the same as those increases established by section 163(b) of the federal act and shall, in the case of any other air pollutants, be the same as those increases established pursuant to section 166(a) of the federal act. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(b) No concentration of an air pollutant shall exceed a national ambient air quality standard.

(c) No major stationary source or major modification shall be constructed unless the requirements of this part 2, as applicable, have been met.

Source: L. 79: Entire article R&RE, p. 1050, § 1, effective June 20. L. 81: (1)(c) amended, p. 1306, § 1, effective May 29.

ANNOTATION

Law reviews. For article, "Pollution or Resources Out-of-Place: Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982). For article, "The

Colorado Prevention of Significant Deterioration of Air Quality Program", see 12 Colo. Law. 1983 (1983).

25-7-202. Definitions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1051, § 1, effective June 20. L. 81: (4)(a), (4)(b), IP(4)(c), (4)(c)(VII), (4)(d), and (5) to (7) amended and (4)(c) and (6.5) added, pp. 1306, 1308, §§ 2, 3, effective May 29. L. 84: (2) amended, p. 776, § 17, effective July 1. L. 92: Entire section repealed, p. 1233, § 41, effective July 1.

25-7-203. State implementation plan - contents. In accordance with Part C (Prevention of Significant Deterioration) of the federal act and this part 2, the commission shall incorporate in the state implementation plan emission limitations, requirements for employment of best available control technology, and such other measures as may be necessary to prevent significant deterioration of ambient air quality in each region, or portion thereof, of the state identified pursuant to section 107(d)(1)(D) or (E) of the federal act.

Source: L. 79: Entire article R&RE, p. 1053, § 1, effective June 20.

25-7-204. Exclusions. (1) The requirements of the state implementation plan for prevention of significant deterioration of ambient air quality shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that:

(a) As to the pollutant, the source or modification is subject to part 3 of this article, and the source or modification would impact no area attaining the national ambient air quality standards (either internal or external to areas designated as nonattainment under section 107 of the federal act); or

(b) (Deleted by amendment, L. 92, p. 1229, § 27, effective July 1, 1992.)

(c) Such emissions would be from a temporary activity which will not have an adverse impact on air quality in any class I area or an area where an allowable increase over the baseline concentration is known to be violated; except that such temporary activities shall be subject to requirements related to the employment of best available control technology; or

(d) Such emissions would not be significant.

(2) The following pollutant concentrations shall be excluded in determining compliance with maximum allowable increases:

(a) Concentrations attributable to the increase in emissions from sources which have converted from the use of petroleum products, natural gas, or both, by reason of an order in effect under sections (2) (a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" (or any superseding legislation) over the emissions from such sources before the effective date of such an order, but not more than five years after the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal "Power Act" over the emissions from such sources before the effective date of such plan but not more than five years after the effective date of the plan; and

(c) (Deleted by amendment, L. 92, p. 1229, § 27, effective July 1, 1992.)

(d) Concentrations of particulate matter attributable to an increase in emissions from temporary activity.

Source: L. 79: Entire article R&RE, p. 1053, § 1, effective June 20. **L. 81:** (1)(c) amended and (1)(d) and (2) added, p. 1308, §§ 4, 5, effective May 29. **L. 92:** (1)(b), (2)(b), and (2)(c) amended, p. 1229, § 27, effective July 1.

Cross references: For the "Energy Supply and Environmental Coordination Act of 1974", see Pub.L. 93-319, codified at 15 U.S.C. sec. 791 et seq.

25-7-205. Innovative technology - waivers. The division or the commission may grant a waiver from the best available control technology requirements of this part 2 for proposed new or modified sources in order to encourage the use of an innovative technological system or systems of continuous emission reduction if the administrator of the United States environmental protection agency has delegated such authority and if the division or the commission determines, after notice and opportunity for public hearing, and after securing the consent of the governor of an affected state, to the extent that such consent may be lawfully required by the federal act, that such innovative technological system or systems

of continuous emission reduction have a substantial likelihood of achieving greater continuous emission reduction than the means of emission limitation which, but for such waiver, would be required, or of achieving continuous emission reduction equivalent to that which, but for such waiver, would be required, at a lower cost in terms of energy or economic or nonair quality environmental impact. If a public hearing is requested by an interested person, the request shall, within twenty days after its receipt, be transmitted to the commission. The commission shall, within sixty days after its receipt of the request, hold a public hearing with respect thereto and shall, within thirty days after such hearing, issue its decision.

Source: L. 79: Entire article R&RE, p. 1053, § 1, effective June 20. L. 84: Entire section amended, p. 777, § 18, effective July 1. L. 92: Entire section amended, p. 1229, § 28, effective July 1.

25-7-206. Procedure - permits. (1) Applications for a proposed new or modified source subject to the requirements of this part 2, or any additions to such applications, shall be processed by the division and the commission as provided in sections 25-7-114 to 25-7-114.7.

(2) The owner or operator of a proposed source or modification shall submit all information determined by the division to be reasonably necessary to perform any analysis or make any determination required under this part 2.

(3) The division shall transmit to the administrator of the United States environmental protection agency a copy of each permit application relating to a major stationary source or major modification. Thereafter, the division and the commission shall provide notice to the administrator of the United States environmental protection agency of every action related to the consideration of such permit.

Source: L. 79: Entire article R&RE, p. 1053, § 1, effective June 20. L. 84: (1) and (3) amended, p. 777, § 19, effective July 1. L. 92: (1) amended, p. 1230, § 29, effective July 1.

25-7-207. Exemptions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1054, § 1, effective June 20. L. 92: Entire section repealed, p. 1230, § 30, effective July 1.

25-7-208. Area designations. (1) Except as provided in section 25-7-209, all areas of the state shall initially be designated as provided in section 162 of the federal act.

(2) To the extent permitted by section 164 of the federal act, the commission may redesignate any area in the state as a Class I, Class II, or Class III area. The commission shall promulgate rules and regulations in conformity with article 4 of title 24, C.R.S., establishing the procedures for such redesignations; except that:

- (a) Such procedures shall be uniform for all redesignations;
- (b) Any redesignation may be adopted by the commission only after reasonable notice and public hearing;
- (c) All redesignations, except any established by an Indian governing body, shall be specifically approved by the governor, after consultation with the appropriate committees of the general assembly if it is in session or with the leadership of the general assembly if it is not in session, and by resolutions or ordinances enacted by the general purpose unit of local government representing a majority of the residents of the area to be redesignated;
- (d) Any redesignation shall constitute a revision to the state implementation plan and shall be submitted to the administrator of the United States environmental protection agency.

(3) Any redesignations or any denial of an application for redesignation made pursuant to subsection (2) of this section shall be subject to judicial review in accord with section 25-7-120.

Source: L. 79: Entire article R&RE, p. 1054, § 1, effective June 20.

25-7-209. Colorado designated pristine areas for sulfur dioxide. (1) In the following areas which were designated Colorado category I for sulfur dioxide by the commission on October 27, 1977, the increase allowed in sulfur dioxide concentrations over the baseline concentration shall be the same as the increase established by section 163(b) of the federal act for Class I areas:

- (a) National parks:
 - (I) Rocky mountain;
 - (II) Mesa Verde;
 - (III) Great sand dunes;
 - (IV) Black canyon of the Gunnison;
- (b) National monuments:
 - (I) Florissant fossil beds;
 - (II) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1971, § 87, effective August 5, 2009.)
 - (III) Colorado;
 - (IV) Dinosaur;
 - (V) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1971, § 87, effective August 5, 2009.)
- (c) Forest service wilderness areas:
 - (I) Eagles nest;
 - (II) Flattops;
 - (III) La Garita;
 - (IV) Maroon bells - Snowmass;
 - (V) Mount Zirkel;
 - (VI) Rawah;
 - (VII) Weminuche;
 - (VIII) West elk;
- (d) Forest service primitive areas:
 - (I) Uncompahgre mountain;
 - (II) Wilson mountain;
- (e) Lands administered by the federal bureau of land management in the Gunnison gorge recreation area as of October 27, 1977.

Source: L. 79: Entire article R&RE, p. 1054, § 1, effective June 20. **L. 2009:** (1)(a) and (1)(b) amended, (SB 09-292), ch. 369, p. 1971, § 87, effective August 5.

ANNOTATION

This section's designation of 18 category 1 areas for sulfur dioxide increments which matched Class I increments under federal clean air act clearly intended for variance procedure allowed in § 25-7-207 to be part of a program to

prevent significant deterioration of air quality and to extend class I protection to Colorado's previously designated category I areas. *Environ. Def. Fund v. State Dept. of Health*, 731 P.2d 773 (Colo. App. 1986).

25-7-210. Applicability. Sections 25-7-201 and 25-7-203 to 25-7-206 shall apply only to applications for proposed new major stationary sources and major modifications which are submitted on or after the date of approval by the United States environmental protection agency of the program for prevention of significant deterioration embodied in the state implementation plan.

Source: L. 79: Entire article R&RE, p. 1055, § 1, effective June 20. **L. 92:** Entire section amended, p. 1230, § 31, effective July 1.

25-7-211. Visibility impairment attribution studies. (1) Any visibility impairment reasonable attribution study pertaining to class I areas shall be subject to balanced peer

review by a panel including scientists with appropriate expertise who do not have any substantive involvement with any party, shall be site-specific with respect to any suspected source of impairment and to any impacted area, shall be conducted under the oversight of the division, including, but not limited to, determination of deadlines for such study, and shall utilize study design and data collection and analytical techniques, including, but not limited to, contemporaneous ambient air quality, visibility, and meteorological sampling that allows correlation of the data relevant to any such study. With the exception of emissions from agricultural, horticultural, or floricultural activities that are exempted under section 25-7-109 (8), relevant data shall include a reasonable assessment of the contributions of emissions from reasonably identifiable sources, including natural sources, within the state and region. Any remedy selection must include relevant economic impact data. In order to minimize delay in the process, the study shall proceed as expeditiously as sound science will allow. The cost of any such study shall not be required to be paid by the department of public health and environment.

(2) Nothing in subsection (1) of this section, as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

Source: L. 94: Entire section added, p. 1615, § 1, effective May 31; entire section amended, p. 2619, § 32, effective July 1. L. 2005: Entire section amended, p. 349, § 6, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-212. Actions of federal government affecting visibility - evaluation report.

(1) As a part of the state's ongoing development and implementation of a long-term strategy in connection with visibility and air quality related values within class I areas, the division shall evaluate the extent to which the activities of the federal government are directly adversely impacting visibility and air quality related values within a class I area and make a determination whether such entities have taken or are taking all reasonable steps necessary to remedy that impact. At any time, the division may make, and a federal land manager shall respond to, reasonable requests for information necessary for the division to perform such regulation.

(2) The joint public hearing required under section 25-7-105 (4) (a) shall report on the results of the evaluation required under subsection (1) of this section.

(3) (a) The general assembly hereby finds, determines, and declares, after reviewing the factors that contribute to regional haze and visibility impairment in Colorado, that significant contributions to regional haze and visibility impairment emanate from federal lands within the state of Colorado and from federal lands in other parts of the west. For the purpose of addressing regional haze visibility impairment in Colorado's mandatory class I federal areas, the federal land manager of each such area shall develop a plan for evaluating visibility in that area by visual observation or other appropriate monitoring technique approved by the federal environmental protection agency and shall submit such plan for approval to the division for incorporation by the commission as part of the state implementation plan. Such submittal and compliance by the federal land managers shall be done in a manner and at a time so as to meet all present or future federal requirements for the protection of visibility in any mandatory class I federal area. Such plan shall only be approved by the commission if the expense of implementing such a plan is borne by the federal government.

(b) (I) In addition to the plan submitted by each federal land manager pursuant to paragraph (a) of this subsection (3), the responsible federal land management agency shall provide an emission inventory to the commission of all federal land management activities in Colorado or other states that result in the emission of criteria pollutants, including surrogates or precursors for such pollutants, that affect any mandatory class I federal area in Colorado by reducing visibility in such an area. Such emission inventory shall be

submitted to the commission no later than December 31, 2001, and no less frequently than every five years thereafter.

(II) Each emission inventory submitted to the commission shall be subject to approval by the commission pursuant to section 25-7-105 (17). The commission shall exempt from the inventory requirement any sources or categories of sources that it determines to be of minor significance.

(III) The commission shall adopt rules to fully implement the general assembly's intention to exercise state powers to the maximum extent allowed under section 118 of the federal act in requiring each federal land management agency with any presence in the state of Colorado to develop and submit to the division an inventory of emissions from lands, wherever situated, which could have any effect on visibility within mandatory class I federal areas located in Colorado. The commission and the division shall use the information from these emission inventories:

(A) To develop control strategies for reducing emissions within the state of Colorado as a primary component of the visibility long-term strategies for inclusion in the state implementation plan;

(B) In any environmental impact statement or environmental assessment required to be performed under the federal "National Environmental Policy Act of 1969", 42 U.S.C. secs. 4321 to 4347; and

(C) To exercise all powers and processes that exist to seek reductions in emissions outside the state of Colorado that reduce visibility in Colorado mandatory class I federal areas.

(IV) The cost of preparing and submitting inventories pursuant to subparagraph (I) of this paragraph (b) shall be borne by the federal government.

Source: L. 94: Entire section added, p. 1392, § 4, effective May 25. L. 96: (2) amended, p. 1258, § 151, effective August 7. L. 98: (3) added, p. 115, § 1, effective August 5. L. 99: (3) amended, p. 1248, § 2, effective June 2.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 246, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-7-213. Visibility and air quality related values policy task force. (Repealed)

Source: L. 94: Entire section added, p. 1392, § 4, effective May 25.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1995. (See L. 94, p. 1392.)

25-7-214. Visibility impairment subcommittee. (Repealed)

Source: L. 97: Entire section added, p. 933, § 1, effective May 21.

Editor's note: (1) Subsection (2) provided for the repeal of this section, effective January 1, 1998. (See L. 97, p. 933.)

(2) This section was enacted as § 25-7-215 but was renumbered on revision for ease of location.

PART 3

ATTAINMENT PROGRAM

25-7-301. Attainment program. (1) The commission shall develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state, in conformity with and as provided in Part D (Nonattainment Program) of the federal act.

(2) Subject to the requirement of subsection (1) of this section:

(a) The attainment program shall be designed to account for and regulate all significant sources of air pollution, including stationary, mobile, and indirect sources, and shall assure that air quality benefits of the control measures utilized bear a reasonable relationship to economic, environmental, and energy impacts and other costs of such measures; and

(b) Control measures required pursuant to the attainment program shall take into consideration the respective contributions of different categories of sources to air pollution, existing control measures, and the availability and feasibility of additional control measures.

Source: L. 79: Entire article R&RE, p. 1055, § 1, effective June 20.

25-7-302. State implementation plan - contents. The attainment program embodied in the state implementation plan may, with respect to proposed new or modified major stationary sources within nonattainment areas which would cause or contribute to a violation of a national ambient air quality standard, provide an allowance for growth while providing reasonable further progress toward attainment, and new sources may be allowed that do not result, individually or in the aggregate, in emissions that exceed the allowance. Particulate matter not of a size or substance to adversely affect public health or welfare shall not be considered in determining whether any applicable growth allowance has been consumed. Modifications to an existing facility within a source may be allowed which are accompanied by emission reduction offsets within the same source sufficient to provide no net increase in emissions of an air pollutant from the source. If an applicable growth allowance has been consumed, the attainment program shall permit sources to be constructed only if emission reduction offsets providing a greater than one-for-one emission reduction are obtained from existing sources sufficient to provide reasonable further progress toward attaining the applicable national ambient air quality standards by the attainment date prescribed under Part D (Nonattainment Program) of the federal act. Any emission offsets required for sulfur dioxide, particulates, and carbon monoxide shall provide a positive net air quality benefit in the area affected by the proposed source.

Source: L. 79: Entire article R&RE, p. 1056, § 1, effective June 20.

25-7-303. Exemptions. (Repealed)

Source: L. 79: Entire article R&RE, p. 1056, § 1, effective June 20. **L. 92:** Entire section repealed, p. 1230, § 32, effective July 1.

25-7-304. Emission reduction offsets. The attainment program shall provide that emission reduction offsets which exceed those otherwise necessary to the granting of a permit under this part 3 may be preserved for sale or use in the future. Any emission reduction offset so preserved for future use and credit shall be specifically identified either in the state implementation plan or in the permit for the source as to which such offset was originally obtained. Any offsets so preserved and identified shall not in any way be condemned or taken under the provisions of articles 1 to 7 of title 38, C.R.S.

Source: L. 79: Entire article R&RE, p. 1056, § 1, effective June 20.

25-7-305. Alternative emission reduction. The attainment program shall provide that upon application of the owner or operator of a stationary source, the commission may approve as a revision to the state implementation plan a proposal to meet the applicable requirements of the state implementation plan for a given air pollutant for two or more facilities or operations within such source through a combination of different requirements which separately may be more or less stringent than the applicable requirements of the state implementation plan; except that the total emissions from such facilities or operations shall not exceed the total emissions allowed by the applicable requirements of the state implementation plan.

Source: **L. 79:** Entire article R&RE, p. 1057, § 1, effective June 20. **L. 84:** Entire section amended, p. 777, § 20, effective July 1.

PART 4

CONTROL OF POLLUTION CAUSED BY WOOD SMOKE

25-7-401. Legislative declaration. The general assembly hereby declares that it is in the interest of the state to control, reduce, and prevent air pollution caused by wood smoke. It is therefore the intent of this part 4 to significantly reduce particulate and carbon monoxide emissions caused by burning wood by developing an evaluation and certification program, in the department of public health and environment, for the sale of wood stoves in Colorado and by encouraging the air quality control commission to continue efforts to educate the public about the effects of wood smoke and the desirability of achieving reduced wood smoke emissions. The general assembly hereby finds that it is beneficial to the state to implement a program of voluntary no-burn days whenever the air quality control division determines that the anticipated level of wood smoke will or is likely to have an adverse impact on the air quality in any nonattainment area in the state.

Source: **L. 84:** Entire part added, p. 779, § 1, effective April 12. **L. 94:** Entire section amended, p. 2785, § 506, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Evaluate" means to review wood-burning appliances' emission levels, as determined by an independent testing laboratory, and compare the emission levels to the emission performance standards established by the commission under section 25-7-403.

(2) and (3) Repealed.

Source: **L. 84:** Entire part added, p. 779, § 1, effective April 12. **L. 87:** (2) repealed, p. 1144, § 10, effective June 16; (3) repealed, p. 1144, § 10, effective July 1.

25-7-403. Commission - rule-making for wood-burning stoves. (1) The commission shall promulgate rules and regulations to carry out the provisions of this part 4 relating to wood-burning stoves in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., and which shall become effective only as provided in said article.

(2) (a) In promulgating such rules and regulations, the commission shall:

(I) Set emission performance standards for new wood stoves;

(II) Establish criteria and procedures for testing new wood stoves for compliance with the emission performance standards;

(III) Prescribe the form and content of the emission performance label to be attached to a new wood stove meeting the emission performance standards;

(IV) Establish procedures for administering the program and for collecting fees for the certification of new wood stoves;

(V) Establish fees for certifying new wood stoves at a level such that said fees reflect the direct and indirect costs of administering the program less any general fund or federal grant moneys appropriated to cover the start-up costs of the program;

(VI) Repealed.

(VII) Establish a definition for new wood stoves; and

(VIII) Establish exemptions from the provisions of this subsection (2) of the extent that such exemptions are appropriate.

(b) The moneys collected under this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund established in

section 25-7-114.7 (2) (b). Any moneys not appropriated by the general assembly shall be retained in the stationary sources control fund and shall not revert to the general fund at the end of any fiscal year.

Source: L. 84: Entire part added, p. 780, § 1, effective April 12. L. 87: (1) and (2)(a)(V) amended, (2)(a)(VI) repealed, and (2)(a)(VII) and (2)(a)(VIII) added, pp. 1140, 1141, 1144, §§ 2, 3, 10, effective June 16. L. 92: (2)(b) amended, p. 1231, § 33, effective July 1.

25-7-404. Wood stove testing program established. (1) There is hereby established, in the department of health, an evaluation and certification program for the control of air pollution caused by wood stove emissions, which is designed to significantly reduce particulate and carbon monoxide emissions, referred to in this part 4 as the "program".

(2) The program as implemented by rules and regulations as set forth in section 25-7-403 shall be administered by the air quality control division. The said division shall establish a program that:

(a) Determines whether or not any new wood stove complies with the emission performance standards set by the commission when tested by an independent testing laboratory;

(b) If such new wood stove complies with the emission performance standards, certifies such compliance.

(3) On or after July 1, 1985, a wood stove manufacturer or dealer may request the air quality control division to evaluate the emissions performance of any new wood stove.

(4) Repealed.

Source: L. 84: Entire part added, p. 780, § 1, effective April 12. L. 2005: (4) repealed, p. 283, § 22, effective August 8.

25-7-405. Certification required for sale. (1) On or after January 1, 1987, a person shall not advertise to sell, offer to sell, or sell a new wood stove in Colorado unless:

(a) The particular model of wood stove or the particular configuration of wood stove appliance has been evaluated to determine its emission performance and has been certified by the air quality control division under the program established under this part 4; and

(b) An emission performance label is attached to the wood stove.

Source: L. 84: Entire part added, p. 781, § 1, effective April 12.

25-7-405.5. Resale of used noncertified wood-burning devices - prohibited. On and after January 1, 1993, no used wood-burning device shall be sold or installed in the program area unless such device meets the most stringent standards adopted by the commission pursuant to section 25-7-106.3 (1).

Source: L. 92: Entire section added, p. 1282, § 2, effective May 27; entire section added, p. 1324, § 3, effective May 27.

Editor's note: Amendments to this section by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

25-7-406. Fireplace design program. The air pollution control division shall establish a program to study the ways that differences in the structural design of fireplaces affect emissions. The objective of this program will be to determine those structural designs of fireplaces which effectively minimize emissions. The division shall conduct performance tests of different fireplace designs to identify those designs that minimize emissions.

Source: L. 84: Entire part added, p. 781, § 1, effective April 12.

25-7-407. Commission - rule-making for fireplaces.

(1) to (7) Repealed.

(8) On and after January 1, 1993, any new or remodeled fireplace to be installed in any dwelling in an area subject to wood-burning limitations provided for in section 25-7-106.3 shall be one of the following:

(a) A gas appliance;

(b) An electric device; or

(c) A fireplace or fireplace insert that meets the most stringent emissions standards for wood stoves established by the commission, or any other clean burning device that is approved by the commission.

(9) No regulation promulgated by the commission in accordance with subsection (8) of this section shall apply to any municipality or a county in the AIR program that has in effect, on and after January 1, 1993, an ordinance or building code provision substantially equivalent to the requirement set forth in subsection (8) of this section, as determined by the commission.

(10) Repealed.

Source: **L. 84:** Entire part added, p. 781, § 1, effective April 12. **L. 87:** Entire section R&RE, p. 1141, § 4, effective June 15. **L. 92:** (8), (9), and (10) added, p. 1281, § 1, effective May 27; (8), (9), and (10) added, p. 1323, § 2, effective May 27; (6) amended, p. 1231, § 34, effective July 1. **L. 93:** (10) repealed, p. 1787, § 69, effective June 6.

Editor's note: (1) Amendments to subsection (9) by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

(2) Subsection (10) provided for the repeal of subsections (1) to (7), effective January 1, 1993. (See L. 92, pp. 1281, 1323.)

25-7-407.5. Certification required for sale. (Repealed)

Source: **L. 87:** Entire section added, p. 1142, § 5, effective June 16. **L. 92:** Entire section amended, p. 1283, § 4, effective May 27; entire section amended, p. 1325, § 5, effective May 27.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 1993. (See L. 92, pp. 1283, 1325.)

25-7-408. Required compliance in building codes.

(1) (a) Repealed.

(b) On and after January 1, 1993, every board of county commissioners of a county in the AIR program area which has enacted a building code, and thereafter every board of county commissioners of a county in the AIR program area which enacts a building code, shall, pursuant to section 30-28-201 (2), C.R.S., adopt a building code provision requiring any person who installs or constructs any fireplace to comply with section 25-7-407 (8).

(2) (a) Repealed.

(b) On and after January 1, 1993, every governing body of a municipality in the AIR program area which has enacted a building code, and thereafter every governing body of a municipality in the AIR program area which enacts a building code, shall, pursuant to section 31-15-601 (2), C.R.S., adopt a building code provision requiring any person who installs or constructs any fireplace to comply with section 25-7-407 (8).

(3) Nothing in this article shall prevent a board of county commissioners or a governing body of a municipality from enacting a building code which requires more stringent standards for wood stoves and for fireplaces, if such standards are necessary and reflect technology suitable for commercial application within the meaning of section 25-7-407 (1).

Source: **L. 84:** Entire part added, p. 781, § 1, effective April 12. **L. 87:** Entire section amended, p. 1143, § 6, effective June 16. **L. 92:** (1) and (2) amended, p. 1282, § 3, effective May 27; (1) and (2) amended, p. 1324, § 4, effective May 27.

Editor's note: (1) Amendments to subsections (1) and (2) by Senate Bill 92-137 and House Bill 92-1321 were harmonized.

(2) Subsections (1)(a)(II) and (2)(a)(II) provided for the repeal of subsections (1)(a) and (2)(a), respectively, effective January 1, 1993. (See L. 92, pp. 1282, 1324.)

25-7-409. Voluntary no-burn days. Whenever the air quality control division determines, after investigation, that the level of wood stove emissions anticipated will contribute adversely or is likely to have an adverse impact on the air quality in any nonattainment area in the state, the commission should implement and announce a program of voluntary no-burn days.

Source: L. 84: Entire part added, p. 782, § 1, effective April 12.

25-7-410. Applicability. The provisions of this part 4 do not apply to a used wood stove and shall not apply to any fireplace constructed prior to the date established in section 25-7-407.

Source: L. 84: Entire part added, p. 782, § 1, effective April 12. L. 87: Entire section amended, p. 1143, § 7, effective June 16. L. 2005: Entire section amended, p. 772, § 49, effective June 1.

25-7-411. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that air pollution in the state of Colorado is a threat to the health and welfare of its citizens and that a major contributor to said pollution is wood smoke, which accounts for twenty-five to forty percent of the brown cloud, fifteen to thirty percent of small particulate matter, hereafter referred to as PM 10, up to ten percent of carbon monoxide, and a portion of toxic, cancer-causing chemicals.

(2) The general assembly further finds, determines, and declares that PM 10 particulates created by wood burning threaten the public health in that said particulates are so small that they lodge in persons' lungs and inhibit the body's pulmonary function. Such pollutant is particularly damaging to persons with lung disease, cardiovascular disease, and chronic upper respiratory conditions, to the very young and elderly, and to pregnant women. The brown cloud is a threat to the economic health of the state because it discourages businesses and tourists from coming to Colorado. Wood burning is one of the most easily controllable sources of air pollution. New technologies can dramatically reduce pollution caused by wood burning. In addition, the reduction of wood burning can reduce the amount of fine particulate emissions into the air.

(3) Therefore, the general assembly finds that it is necessary to implement a plan to further reduce wood smoke emissions in the AIR program area and, therefore, enacts sections 25-7-411 to 25-7-413 to encourage and promote the reduction of wood-burning devices and the use of less polluting devices by taking advantage of new technology.

Source: L. 92: Entire section added, p. 1319, § 1, effective May 27.

25-7-412. Definitions. As used in sections 25-7-411 to 25-7-413, unless the context otherwise requires:

(1) "Fireplace insert" means any wood-burning device designed to be installed in an existing fireplace which meets the Phase III standard, as such term is defined in subsection (2) of this section.

(2) "Phase III wood stove" means any wood-burning device that meets the most stringent standards adopted by the commission pursuant to section 25-7-106.3 (1) or any nonaffected wood-burning device that is approved by the commission.

(3) "Program area" means the portions of the six counties in the AIR program area, including Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson counties.

Source: L. 92: Entire section added, p. 1320, § 1, effective May 27.

25-7-413. Methods for reducing wood smoke in program area. (1) Methods for reducing wood smoke in the program area may be implemented, as follows:

(a) **Voluntary financial incentives.** The lead air quality planning agency for the Denver metropolitan area shall work with other organizations to establish a program of financial incentives to encourage and defray the costs associated with conversions to Phase III wood stoves or to gas or electric devices. The program shall include incentives to use energy efficient devices.

(b) **Educational program.** The lead air quality planning agency for the Denver metropolitan area shall work with public and private organizations to promote the following: The voluntary upgrade of conventional wood-burning stoves to Phase III stoves and the conversion of existing conventional fireplaces to fireplace inserts or to gas or electric devices;

(c) **Voluntary conversions.** (I) The commission shall establish goals for voluntary conversion of wood-burning units to cleaner burning technology to be met by December 31, 1994, and by December 31, 1997. The primary objective of the goals shall be to attain and maintain standards for particulate matter established pursuant to the federal "Clean Air Act", taking into account other strategies adopted in the state implementation plan. The goals established by the commission may not exceed the following maximum levels:

(A) The conversion or nonuse of one hundred thousand conventional wood-burning fireplaces to clean technology by December 31, 1994, and one hundred fifty thousand by December 31, 1997;

(B) The conversion or nonuse of twenty thousand conventional wood stoves to Phase III wood stoves by December 31, 1994, and thirty thousand conversions by December 31, 1997.

(II) The goals established pursuant to subparagraph (I) of this paragraph (c) may be less than the maximum levels if the commission determines that such nonuse or conversions are not necessary to attain and maintain federal particulate matter standards.

(d) **Contingency plan.** (I) In the event that goals established in paragraph (c) of this subsection (1) are not met, or the commission determines that wood-burning controls are necessary to either attain or maintain the standards for particulate matter established pursuant to the 1990 amendments to the federal "Clean Air Act", taking into account other strategies, the commission shall develop and implement a contingency plan.

(II) Prior to the development of the contingency plan, the commission shall contract with an independent contractor to conduct a random survey of the program area to determine public preferences for various wood smoke reduction strategies and shall hold a public hearing before adopting any recommendations concerning wood smoke reduction strategies, which recommendations shall be submitted to the general assembly for action.

(III) Strategies surveyed for public preference and considered by the commission for inclusion in the contingency plan shall include, but need not be limited to, the following:

(A) Charging a fee for residents of dwellings who wish to burn wood in a conventional stove or fireplace and using the fee for conversion incentives, enforcement of rules against burning wood without having paid a fee, and monitoring for compliance with rules;

(B) Conversion to clean burning devices upon the sale of a dwelling unit containing a conventional fireplace or non-Phase III wood stove;

(C) Removal of the exemption for primary heat sources on no-burn days;

(D) A permit-to-burn program with a maximum number of permits determined by the commission and issued in a random but proportional manner throughout the program area.

(2) **Verifying voluntary conversions.** To measure and verify progress in regard to the provisions of subsection (1) of this section, the commission shall do the following:

(a) The commission shall develop measures for obtaining from consumers in the program area pledges not to use any device other than a Phase III wood stove, fireplace insert, or a gas or electric fireplace; and

(b) The department of revenue shall adopt a procedure for tracking conversions of non-Phase III wood stoves and fireplaces and, if applicable, the number of non-Phase III wood stoves permanently destroyed, which procedure shall include a requirement that retailers regularly submit to the commission the number of consumer purchases of Phase III wood stoves or inserts or gas or electric fireplaces.

(3) **Wood smoke reduction fee - termination.** (a) On and after July 1, 1992, any retailer who sells a new wood stove or insert or a gas or electric fireplace or fireplace that uses a gas or electric device in the program area shall obtain from the purchaser a signed conversion form, which form shall be provided by the department of revenue, or an entity with which the department is hereby authorized to contract, affirming the purchase of such device and indicating whether the purchase is in connection with a conversion to a cleaner burning device. In addition to obtaining the signed conversion form, the retailer shall submit to the department of revenue in accordance with paragraph (b) of this subsection (3) a fee in the amount of one dollar.

(b) On and after July 1, 1992, and in accordance with paragraph (c) of this subsection (3), the retailer shall submit to the department of revenue the conversion form along with the fee described in paragraph (a) of this subsection (3). The department of revenue shall transmit the fee to the state treasurer who shall credit the same to the wood smoke reduction fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue to cover the direct and indirect costs of developing a conversion form in accordance with paragraph (a) of this subsection (3), tracking conversion in accordance with paragraph (a) of this subsection (3) and paragraph (b) of subsection (2) of this section, and for the department of public health and environment to conduct a survey in connection with the implementation of a contingency plan in accordance with paragraph (d) of subsection (1) of this section; except that no moneys shall be used for conducting a survey in connection with the implementation of a contingency plan in accordance with paragraph (d) of subsection (1) of this section without specific approval by the joint budget committee. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of this fund shall be credited to the general fund. The department of revenue, or the entity with which the department has contracted pursuant to paragraph (a) of this subsection (3), shall submit a report to the commission on the number of conversions no later than thirty days after receiving reports from retailers in accordance with paragraph (c) of this subsection (3).

(c) The retailer shall submit semi-annual reports to the department of revenue no later than on the twentieth day of the month after the close of the preceding six-month period together with the conversion forms and the remittance for all fees collected for the preceding six-month period. If no fees are submitted by the retailer, no report is necessary.

(d) Effective July 1, 1997, the wood smoke reduction fund and the wood smoke reduction fee are eliminated, and the following provisions shall apply:

(I) A retailer within the program area that sells a new wood stove or insert, or a gas or electric fireplace that uses a gas or electric device, between January 1, 1997, and June 30, 1997, shall submit a final semi-annual report to the department of revenue no later than July 20, 1997, together with:

(A) Signed conversion forms indicating whether such purchases were made in connection with a conversion to a cleaner burning device; and

(B) A remittance of the wood smoke reduction fees collected during such period.

(II) A retailer who does not have fees to remit pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (d) need not file a final semi-annual report.

(III) Moneys held by the state treasurer in the wood smoke reduction fund on July 1, 1997, and any moneys credited to the fund on or after such date shall be transferred to the general fund.

(4) **Commission - rule-making.** The commission may promulgate rules necessary for the effectuation of this section.

(5) Repealed.

Source: **L. 92:** Entire section added, p. 1320, § 1, effective May 27. **L. 94:** (3)(b) and (5) amended, p. 2786, § 507, effective July 1. **L. 97:** (3) amended, p. 1609, § 1, effective June 4. **L. 2008:** (5) repealed, p. 1907, § 102, effective August 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (3)(b) and (5), see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 5

ASBESTOS CONTROL

Editor's note: This part 5 was added in 1985 and was not amended prior to 1987. The substantive provisions of this part 5 were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this part 5 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "Recovering Asbestos Abatement Costs in Tort Actions", see 19 Colo. Law. 659 (1990).

25-7-501. Legislative declaration. (1) The general assembly hereby declares that it is in the interest of the general public to control the exposure of the general public to friable asbestos. It is the intent of the general assembly to ensure the health, safety, and welfare of the public by regulating the practice of asbestos abatement in locations to which the general public has access for the purpose of ensuring that such abatement is performed in a manner which will minimize the risk of release of asbestos. However, it is not the intent of the general assembly to regulate occupational health practices which are regulated pursuant to federal laws or to grant any authority to the department of public health and environment to enter and regulate work areas where general public access is limited. It is the intent of the general assembly that the commission may adopt regulations to permit the enforcement of the national emission standards for hazardous air pollutants as set forth in 42 U.S.C. sec. 7412.

(2) Therefore, the general assembly determines and declares that the enactment of this part 5 is a matter of statewide concern to achieve statewide uniformity in the regulation of such asbestos abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement.

Source: L. 87: Entire part R&RE, p. 1145, § 1, effective July 1. L. 88: (1) amended, p. 1016, § 1, effective June 11; (1) amended, p. 1440, § 47, effective June 11. L. 94: (1) amended, p. 2786, § 508, effective July 1.

Editor's note: This section is similar to former § 25-7-501 as it existed prior to 1987.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

25-7-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) (a) "Area of public access" means any building, facility, or property, or only that portion thereof, that any member of the general public can enter without limitation or restriction by the owner or lessee under normal business conditions; except that "area of public access" includes a single-family residential dwelling and any facility that charges the general public a fee for admission, such as any theater or arena. For purposes of this subsection (1), "general public" does not include employees of the entity that owns, leases, or operates such building, facility, or property, or such portion thereof, or any service personnel or vendors connected therewith.

(b) Repealed.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), a single family residential dwelling shall not be considered an area of public access for purposes of

this part 5 if the homeowner who resides in the single family dwelling that is the homeowner's primary residence requests, on a form provided by the division, that the single family dwelling not be considered an area of public access.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(3) "Asbestos abatement" means any of the following:

(a) The wrecking or removal of structural members that contain friable asbestos-containing material;

(b) The following practices intended to prevent the escape of asbestos fibers into the atmosphere:

(I) Coating, binding, or resurfacing of walls, ceilings, pipes, or other structures for the purpose of minimizing friable asbestos-containing material from becoming airborne;

(II) Enclosing friable asbestos-containing material to make it inaccessible;

(III) Removal of friable asbestos-containing material from any pipe, duct, boiler, tank, reactor, furnace, or other structural member.

(4) "Commission" means the air quality control commission created by section 25-7-104.

(5) "Division" means the division of administration in the department of public health and environment.

(6) "Friable asbestos-containing material" means any material that contains asbestos and when dry can be crumbled, pulverized, or reduced to powder by hand pressure and that contains more than one percent asbestos by weight, area, or volume. The term includes nonfriable forms of asbestos after such previously nonfriable material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(7) "Person" means any individual, any public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity which is recognized by law as the subject of rights and duties.

(7.5) "Project manager" means a person who has satisfied the experience and academic training requirements set forth by the commission.

(8) (a) "School" means any institution that provides elementary or secondary education.

(b) and (c) Repealed.

(9) "State-owned or state-leased buildings" means structures occupied by any person which are either owned by the state or utilized by the state through leases of one year's duration or longer.

(10) "Structural member" means any beam, ceiling, floor, or wall.

(11) "Trained supervisor" means an individual certified by the division to supervise asbestos abatement pursuant to section 25-7-506.

Source: L. 87: Entire part R&RE, p. 1145, § 1, effective July 1. L. 88: (1) amended, p. 1016, § 2, effective June 11. L. 89: (8) amended, p. 1169, § 2, effective May 9. L. 94: (5), (8)(b), and (8)(c) amended, pp. 2787, 2702, §§ 509, 258, effective July 1. L. 95: (7.5) added, p. 20, § 1, effective July 1. L. 2001: (1) and (6) amended, p. 772, § 4, effective June 1. L. 2005: (8)(c) repealed, p. 283, § 23, effective August 8. L. 2006: (1)(b) and (8)(b) repealed, p. 125, § 10, effective March 27.

Editor's note: This section is similar to former § 25-7-502 as it existed prior to 1987.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (5), (8)(b), and (8)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-503. Powers and duties of commission - rules - delegation of authority to division. (1) The commission has the following powers and duties:

(a) To promulgate rules pursuant to section 24-4-103, C.R.S., regarding the following, as are necessary to implement the provisions of this part 5 only for areas of public access:

(I) Performance standards and practices for asbestos abatement which are not more stringent than 29 CFR 1910.1001 and 1926.58;

(II) (A) Determination of a maximum allowable asbestos level, which shall be the highest level of airborne asbestos under normal conditions that allows for protection of the general public; except that, until the commission adopts by rule a level, the maximum allowable asbestos level for the protection of the general public shall be 0.01 fibers per cubic centimeter of air, measured during normal occupancy and calculated as an eight-hour time-weighted average, in accord with 29 CFR 1910.1000 (d) (1) (i).

(B) If airborne asbestos fiber levels exceed such a level, a second test of samples may be collected during normal occupancy, analyzed by transmission electron microscopy (TEM) analysis, and calculated as an eight-hour time-weighted average in accord with 29 CFR 1910.1000 (d) (1) (i), before any order of abatement is issued.

(C) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the asbestos level in the outside ambient air which is adjacent to an asbestos project site or area of public access exceeds 0.01 fibers per cubic centimeter of air, the existing asbestos level in such air shall be the maximum allowable asbestos level.

(III) Exemptions in emergency situations from the requirements of section 25-7-505 regarding the certificate to perform asbestos abatement;

(IV) Requirements for air pollution permits. Permits shall be required for asbestos abatement projects in any building, facility, or structure, or any portion thereof, having public access; except that the requirements of this subparagraph (IV) shall not apply to asbestos abatement projects performed by an individual on a single-family residential dwelling.

(V) Fees for air pollution permits, site inspections, and any necessary monitoring for compliance with this part 5;

(VI) Fees for certification as a trained supervisor;

(VII) Fees for certification which is required under federal law to engage in the inspection of schools, the preparation of asbestos management plans for schools, and the performance of asbestos abatement services for schools;

(VIII) Fees for a certificate to perform asbestos abatement;

(IX) Assessment procedures which determine the need for response actions for friable asbestos-containing materials. Such procedures shall include, but not be limited to, visual inspection and air monitoring which shows an airborne concentration of asbestos during normal occupancy conditions in excess of the maximum allowable level established by the commission in state-owned or state-leased buildings. Nothing in this subparagraph (IX) shall be construed to require that such assessments be made in state-owned or state-leased buildings; however, such procedures shall be followed in the event any such assessment is made.

(X) Requirements for asbestos management plans to be submitted and implemented by schools;

(XI) Fees to be collected from schools for review and evaluation of asbestos management plans;

(b) To promulgate rules pursuant to section 24-4-103, C.R.S., regarding the following, as are necessary to implement the provisions of this part 5, as required by the federal "Clean Air Act", 42 U.S.C. sec. 7412 et seq., as amended:

(I) Determination of the minimum scope of asbestos abatement to which the provisions of this part 5 shall apply, but not less than:

(A) With regard to asbestos abatement projects on a single-family residential dwelling, fifty linear feet on pipes or thirty-two square feet on other materials or the equivalent of a fifty-five-gallon drum;

(B) With regard to asbestos abatement projects not subject to sub-subparagraph (A) of this subparagraph (I), two hundred sixty linear feet on pipes or one hundred sixty square feet on other materials or the equivalent of a fifty-five-gallon drum;

(II) Requirements of notification, as consistent with the federal act, to demolish, renovate, or perform asbestos abatement in any building, structure, facility, or installation, or any portion thereof, which contains asbestos, except within such minimum scope of asbestos abatement or when otherwise exempt;

(III) (A) Procedures for the inspection and monitoring of sites where demolition, renovation, or the performance of asbestos abatement is taking place, including rules assuring that aggressive air monitoring shall be utilized only in the context of conducting final clearance of an abatement project as outlined in the federal "Asbestos Hazardous Emergency Response Act of 1986", 42 U.S.C. sec. 2641 et seq., and pursuant to the regulations found at 40 CFR 763. Specifications as listed in "measuring airborne asbestos following an abatement action", published by the environmental protection agency in 1985, shall be adopted by the commission as criteria for aggressive sampling.

(B) The division shall provide information to local governments to be used in connection with the issuance of a building permit regarding the need for an inspection for the presence of asbestos-containing materials prior to renovation or demolition of any building, structure, facility, or installation that may contain asbestos.

(IV) (A) Fees for notifications to demolish, renovate, or perform asbestos abatement and for any associated site inspections or necessary monitoring for compliance with this part 5.

(B) Fees pursuant to this subparagraph (IV) shall be paid on an annual basis for large contiguous facility complexes and on an individual notification basis for small noncontiguous facilities.

(V) Requirements to prevent any real or potential conflict of interest between the identification of asbestos-containing materials and the abatement of such materials, including requirements that project managers be used on projects of a certain size, that project managers be independent of the abatement contractor and work strictly on behalf of the building owner to the extent feasible, and that building owners may seek waivers from the project manager requirements.

(c) To approve the examination administered to applicants for certification as a trained supervisor pursuant to section 25-7-506;

(d) To authorize the division to:

(I) Establish procedures regarding applications, examinations, and certifications required under this part 5;

(II) Enforce compliance with the provisions of this part 5, the rules and regulations promulgated thereunder, and any order issued pursuant thereto.

(e) To promulgate rules setting minimum standards for sampling the asbestos in the air and standards for persons engaging in such sampling and to seek injunctive relief under section 25-7-511.5, including relief against any asbestos air sampler who acts beyond his or her level of competency. In promulgating rules setting such standards, the commission shall not use the term "air sampling professional" in such standards.

(f) (I) To adopt rules pursuant to section 24-4-103, C.R.S., setting out required training for persons applying for certification, recertification, or renewal of certificates as required by regulations promulgated by the federal environmental protection agency or the occupational safety and health administration.

(II) Training required pursuant to this paragraph (f) shall not be unduly duplicative or excessive.

(III) Refresher courses shall be required annually.

(2) Notwithstanding any other provisions of this section to the contrary, neither the commission nor the division shall have the authority to enforce standards more restrictive than the federal standards set forth in the "Occupational Safety and Health Act", on asbestos abatement projects which are subject to such federal standards; except that, nothing in this subsection (2) shall be construed to prevent the application and enforcement of the maximum allowable asbestos level prescribed in subparagraph (II) of paragraph (a) of subsection (1) of this section as a clearance level and a condition of reentry by the general public upon completion of the project.

Source: L. 87: Entire part R&RE, p. 1147, § 1, effective July 1. L. 88: (1)(a)(II) and (1)(b)(III) amended, (1)(a)(IX) R&RE, and (2) added, p. 1017, §§ 4, 3, effective June 11. L. 90: (1)(e) added, p. 1320, § 2, effective May 24. L. 92: (1)(b)(I) amended, p. 1231, § 35, effective July 1. L. 95: (1)(b) amended and (1)(f) added, p. 20, § 2, effective July 1.

L. 2001: (1)(a)(IV), (1)(b)(I), and (1)(b)(III) amended, p. 772, § 5, effective June 1.
L. 2006: IP(1)(a), (1)(a)(II)(A), (1)(a)(II)(B), IP(1)(b), (1)(b)(V), and (1)(e) amended, p. 123, § 6, effective March 27.

Editor's note: This section is similar to former § 25-7-504 as it existed prior to 1987.

ANNOTATION

Law reviews. For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

25-7-504. Asbestos abatement project requirements - certification required for schools - certificate to perform asbestos abatement - certified trained persons. (1) (a) Any person who inspects schools for the presence of friable asbestos, prepares asbestos management plans for schools, or conducts asbestos abatement services in schools shall obtain certification pursuant to section 25-7-507.

(b) Any person who inspects public or commercial buildings for the presence of asbestos, prepares management plans for public and commercial buildings, designs abatement actions in public and commercial buildings, or conducts abatement actions in public and commercial buildings shall obtain certification pursuant to section 25-7-507.

(2) (a) Any person who conducts asbestos abatement in any building, other than a school, shall obtain a certificate to perform asbestos abatement pursuant to section 25-7-505 unless such abatement project is exempt from the requirement for certification pursuant to rules and regulations promulgated by the commission.

(b) Unless otherwise exempt, asbestos abatement shall be performed under the supervision of an individual certified by the division as a trained supervisor pursuant to section 25-7-506, who shall be at the project site at all times that work is in progress.

(3) The requirements of this section shall apply to asbestos abatement on a single-family residential dwelling; except that the requirements of this section shall not apply to any individual who performs asbestos abatement on a single-family residential dwelling that is the individual's primary residence.

Source: **L. 87:** Entire part R&RE, p. 1148, § 1, effective July 1. **L. 92:** (1) amended, p. 1231, § 36, effective July 1. **L. 2001:** (3) amended, p. 773, § 6, effective June 1.

25-7-505. Certificate to perform asbestos abatement - application - approval by division - suspension or revocation of certificate. (1) Any person may apply to the division for a certificate to perform asbestos abatement by submitting an application in the form specified by the division and by paying a fee set by the commission. Such application shall include, but shall not be limited to:

(a) A description of the applicant's employee training program for asbestos abatement;

(b) A statement identifying all individuals employed by the applicant who are certified as trained supervisors pursuant to section 25-7-506.

(2) No applicant shall be certified to perform asbestos abatement unless the applicant, or at least one of the applicant's employees, is certified as a trained supervisor pursuant to section 25-7-506.

(3) Within fifteen days after receiving an application pursuant to this section, the division shall acknowledge its receipt and notify the applicant as to whether the application is complete. Within thirty days after receiving a completed application, the division shall issue a certificate to the applicant if the division finds that, in addition to all other requirements, the employee training program for asbestos abatement described in the application is acceptable. A certificate issued by the division pursuant to this section shall be valid for three years from the date of issuance.

(4) A certificate issued pursuant to this section may be suspended or revoked for the failure to implement the employee training program for asbestos abatement described in the application submitted pursuant to this section.

Source: L. 87: Entire part R&RE, p. 1148, § 1, effective July 1.

25-7-505.5. Testing for certification under part 5. (1) The division shall develop or purchase the examinations administered pursuant to this part 5 for certification under sections 25-7-506, 25-7-506.5, and 25-7-507 and shall set the passing scores on all such examinations based on a minimum level of competency in the procedures to be followed in asbestos abatement. The division shall administer such examinations at least twice each year or more frequently if demand so warrants and shall administer such examinations at various locations in the state if demand so warrants. The purpose of the examinations required pursuant to this section is to ensure minimum competency in asbestos abatement procedures. If a person fails to achieve a passing score on any such examination, retesting of such person shall be with a different examination and after such person has completed remedial training as determined to be satisfactory to the division for minimum competency in asbestos abatement procedures. Prior to such reexamination, an applicant shall file a new application and pay a fee set by the division. Such fee shall be no greater than the amount paid for the original examination.

(2) Notwithstanding the provisions of sections 25-7-506, 25-7-506.5, and 25-7-507, the division may certify an individual under this part 5 by endorsement if such individual possesses in good standing a valid license, certificate, or other registration from any other state or territory of the United States or from the District of Columbia, if the applicant presents proof satisfactory to the division that at the time of application for a Colorado certificate by endorsement the applicant possesses qualifications substantially equivalent to those of this part 5 as determined by the division.

Source: L. 90: Entire section added, p. 1320, § 3, effective May 24. **L. 2006:** Entire section amended, p. 123, § 4, effective March 27.

25-7-506. Certificate of trained supervisors - application - approval by division - rules - responsibilities of trained supervisors - renewal of certificate. (1) Any individual may apply to the division to be certified as a trained supervisor by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(2) Within thirty days after receiving a completed application and the results of the examination administered pursuant to paragraph (b) of this subsection (2), the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding:

(a) That the applicant has, within twelve months prior to the date of the application, completed a training course on safe asbestos abatement procedures which has been approved by the division; and

(b) That the applicant has passed an examination administered by the division pursuant to section 25-7-505.5 on the procedures to be followed in asbestos abatement.

(3) An individual acting as a trained supervisor pursuant to this section shall be responsible for supervising a specific asbestos abatement project in such a manner as to assure that asbestos abatement is performed in compliance with the provisions of this part 5 and the rules and regulations promulgated thereunder.

(4) (Deleted by amendment, L. 92, p. 1232, § 37, effective July 1, 1992.)

(5) (Deleted by amendment, L. 95, p. 22, § 3, effective July 1, 1995.)

Source: L. 87: Entire R&RE, p. 1149, § 1, effective July 1. **L. 90:** (2)(b) amended and (5) added, p. 1321, § 4, effective May 24. **L. 92:** (2) and (4) amended, p. 1232, § 37, effective July 1. **L. 95:** IP(2) and (5) amended, p. 22, § 3, effective July 1. **L. 2006:** IP(2) amended, p. 125, § 8, effective March 27.

25-7-506.5. Certification of air monitoring specialist - rules. (1) No person may perform air monitoring or air monitoring specialist activities for asbestos, as set forth in

rules promulgated by the commission, including visual clearance inspections of an asbestos abatement project, without first obtaining a certificate pursuant to this section.

(2) Any individual may apply to the division to be certified as an air monitoring specialist by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(3) Within thirty days after receiving a completed application, the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding that the applicant has successfully met the experience, education, examination, and training requirements and has paid a fee, as set forth in rules promulgated by the commission.

Source: L. 2001: Entire section added, p. 773, § 7, effective June 1. L. 2006: (3) amended, p. 123, § 5, effective March 27.

25-7-507. Certification required under federal law for asbestos projects in schools and public and commercial buildings. Pursuant to the federal “Asbestos Hazard Emergency Response Act of 1986” (Public Law 99-519) and the federal “Asbestos School Hazard Abatement Reauthorization Act of 1990” (Public Law 101-637), the division shall certify, in the manner required under the federal law, all persons engaged in the inspection of schools or public or commercial buildings, the preparation of management plans for schools or public or commercial buildings, the design of abatement actions in schools or public or commercial buildings, or the conduct of abatement actions in schools or public or commercial buildings.

Source: L. 87: Entire part R&RE, p. 1149, § 1, effective July 1. L. 92: Entire section amended, p. 1232, § 38, effective July 1.

25-7-507.5. Renewal of certificates - rules - recertification. (1) Any certificate issued pursuant to this part 5 that has lapsed shall be deemed to have expired.

(2) (a) A certificate issued pursuant to this part 5 may be renewed prior to expiration upon payment of a renewal fee set by the commission.

(b) Renewal of a certificate may be made for a period not to exceed five years as established in rules promulgated by the commission.

(3) An individual may reinstate an expired certificate within one year after such expiration upon payment of a reinstatement fee in an amount set by the commission.

(4) An individual whose certificate has lapsed for a period longer than one year after expiration shall apply to the division for certification as required by this part 5 and shall not be recertified until the division determines that such individual has fully complied with the requirements of this part 5 and any rules promulgated pursuant thereto.

(5) (a) Any individual whose certificate has lapsed because such individual has not completed the refresher course required pursuant to section 25-7-503 (1) (f) may complete such refresher course within one year after the date the certificate lapses.

(b) Completion of the refresher course shall be a requirement for recertification.

(c) (I) The commission shall promulgate rules governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal “Asbestos Hazard Emergency Response Act of 1986” (Public Law 99-519) and any rules promulgated pursuant to such federal law.

(II) In adopting rules the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures.

(III) The division shall implement a system of testing to measure the knowledge obtained by certified persons attending the refresher training programs. Such testing shall not exceed the requirements of refresher training mandated pursuant to federal law.

Source: L. 95: Entire section added, p. 22, § 4, effective July 1. L. 2006: (2)(b) amended, p. 125, § 9, effective March 27.

25-7-508. Grounds for disciplinary action - letters of admonition - denial of certification - suspension, revocation, or refusal to renew - requirement for corrective education - administrative fines. (1) When an application for certification pursuant to section 25-7-505, 25-7-506, 25-7-506.5, 25-7-507, or 25-7-507.5 is denied by the division, the applicant may contest the decision of the division by requesting a hearing before the office of administrative courts. A request for a hearing must be made within thirty calendar days after the division has issued a denial of the application in writing to the applicant. The hearing shall be held pursuant to section 25-7-119.

(2) (a) The division may take disciplinary action in the form of the issuance of a letter of admonition or, in conformity with the provisions of article 4 of title 24, C.R.S., the suspension, revocation, or refusal to renew certification pursuant to section 25-7-505, 25-7-506, 25-7-506.5, 25-7-507, or 25-7-507.5, should the division find that a person certified under this part 5:

(I) Has violated or has aided and abetted in the violation of any provision of this part 5 or any rule or regulation or order of the division or commission promulgated or issued under this part 5;

(II) (A) Has been subject to a disciplinary action relating to a certification or other form of registration or license to practice asbestos abatement under this part 5 or any related occupation in any other state, territory, or country for disciplinary reasons, which action shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of certification by the division.

(B) This subparagraph (II) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those set out as grounds for disciplinary action pursuant to this part 5.

(C) A plea of nolo contendere or its equivalent to a charge of violating a law or regulation governing the practice of asbestos removal in another state, territory, or country that is accepted by the disciplining body of such other state, territory, or country may be considered to be the same as a finding of guilt for purposes of a hearing conducted by the division pursuant to this subsection (2).

(III) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to engage in activities regulated pursuant to this part 5. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the division shall be governed by the provisions of section 24-5-101, C.R.S.

(IV) Has failed to report to the division a disciplinary action specified in subparagraph (II) of this paragraph (a) or a felony conviction for an act specified in subparagraph (III) of this paragraph (a);

(V) Has failed to meet any permit and notification requirement or failed to correct any violations cited by the division during any inspection within a reasonable period of time;

(VI) Has used misrepresentation or fraud in obtaining or attempting to obtain a certificate under this part 5;

(VII) Has failed to adequately supervise an asbestos abatement project as a certified trained supervisor;

(VIII) Has committed any act or omission which does not meet generally accepted standards of the practice of asbestos abatement;

(IX) Has engaged in any false or misleading advertising.

(b) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the division, does not warrant suspension or revocation by the division but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the certified person against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the division to a certified person complained against, such certified person shall be advised that such person has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against such person to adjudicate the propriety of the conduct upon which the letter of admonition is

based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(3) A person aggrieved by an action taken by the division pursuant to subsection (2) of this section may contest the action by requesting a hearing before the office of administrative courts within thirty days after the applicant is notified in writing of the division's action. The hearing shall be held pursuant to section 25-7-119. Any person aggrieved by an action taken by the office of administrative courts pursuant to subsection (2) of this section may appeal the action to the court of appeals in accordance with section 24-4-106 (11), C.R.S.

(4) In addition to or in lieu of the forms of disciplinary action authorized in subsection (2) of this section, the division, in its discretion, may require corrective education in the area of asbestos abatement as a disciplinary action against a certified person when the situation so warrants, such corrective education to be directed toward weak or problematic areas of a certified person's practice.

(5) Any certified person who violates any provision of this section, in addition to any other enforcement action available under this article, may be disciplined upon a finding of misconduct by the division as follows:

(a) In any first administrative proceeding against a certified person, a fine of not less than one hundred dollars nor more than one thousand dollars;

(b) In a second or subsequent administrative proceeding against a certified person for transactions occurring after a final agency action determining that a violation of this part 5 has occurred, a fine of not less than one thousand dollars nor more than ten thousand dollars.

(6) If a certification is revoked by the division, the person against whom such action was taken shall not apply for recertification for a period of one year after such revocation and shall be required to demonstrate compliance with any disciplinary action imposed by the division and to demonstrate competency in asbestos abatement procedures prior to receiving a new certificate.

Source: L. 87: Entire part R&RE, p. 1149, § 1, effective July 1. L. 90: (2) R&RE, (3) amended, and (4) to (6) added, pp. 1321, 1323, §§ 5, 6, effective May 24. L. 92: (1), (3), and (5) amended, p. 1232, § 39, effective July 1. L. 95: (2)(a)(II), (2)(b), and (6) amended, p. 23, § 5, effective July 1. L. 2001: IP(2)(a) amended, p. 774, § 8, effective June 1. L. 2005: (1) and (3) amended, p. 858, § 23, effective June 1. L. 2006: (1) and IP(2)(a) amended, p. 124, § 7, effective March 27.

25-7-509. Prohibition against local certification regarding asbestos abatement. Inasmuch as uniformity in the regulation of asbestos abatement practices and uniformity in the qualifications and certification of persons performing asbestos abatement is a matter of statewide concern, no certification or licensing of asbestos abatement projects nor any examination or certification of persons certified under this part 5 shall be required by any city, town, county, or city and county; however, any such local governmental authority may impose reasonable registration requirements on any person performing asbestos abatement as a condition of performing such activity within the jurisdiction of such authority. Registration fees charged by any such local governmental authority to any such person shall not exceed those costs associated with such registration requirements and functions.

Source: L. 87: Entire part R&RE, p. 1150, § 1, effective July 1.

25-7-510. Fees. (1) (a) The fees required pursuant to this part 5 shall be established pursuant to rules and regulations promulgated by the commission.

(b) The commission shall adjust the fees so that the revenue generated from such fees is sufficient to cover the division's direct and indirect costs in implementing the provisions of this part 5.

(2) All fees collected by the division pursuant to this part 5 shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund established

pursuant to section 25-7-114.7 (2) (b). The general assembly shall appropriate to the department of public health and environment, at least annually, from the fund, an amount sufficient to implement the provisions of this part 5.

Source: **L. 87:** Entire part R&RE, p. 1150, § 1, effective July 1. **L. 92:** (2) amended, p. 1233, § 40, effective July 1. **L. 94:** (2) amended, p. 2787, § 510, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-7-511. Enforcement. (1) Whenever the division has reason to believe that any person has violated any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may issue a notice of violation and cease-and-desist order. The notice of violation shall set forth the provision, rule, or regulation alleged to have been violated and the facts constituting such violation. The cease-and-desist order shall set forth the measures which the person shall take to eliminate the violation and the time within which these measures shall be performed. The order may require that the person stop work at the asbestos abatement project until the violation has been eliminated or may require a school to submit and implement an asbestos management plan by a date specified by the division.

(2) If the recipient of a cease-and-desist order issued pursuant to subsection (1) of this section fails to comply with the terms of the order within the time specified, the division may file an action in the district court of the county where the violation is alleged to have occurred requesting that the court order the person to comply with the cease-and-desist order. When the division alleges that the violation poses a significant danger to the health of any person, the court shall grant such action priority.

(3) Unless the division has filed an action in the district court pursuant to subsection (2) of this section, a recipient of a cease-and-desist order may request a hearing before the commission to contest the cease-and-desist order. Such request shall be filed within thirty days after the cease-and-desist order has been issued. A hearing on the cease-and-desist order shall be held pursuant to section 25-7-119.

(4) Upon a finding by the division that a person is in violation of any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may assess a penalty of up to twenty-five thousand dollars per day of violation or such lesser amount as may be required by applicable federal law or regulation. In determining the amount of the penalty to be assessed, the division shall consider the seriousness of the danger to the public's health caused by the violation, whether or not the violation was willful, the duration of the violation, and the record of the person committing such violation.

(5) A person subject to a penalty assessed pursuant to subsection (4) of this section may appeal the penalty to the commission by requesting a hearing before the commission. Such request shall be filed within thirty days after the penalty assessment is issued. A hearing pursuant to this subsection (5) shall be conducted pursuant to section 25-7-119.

(6) All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: **L. 87:** Entire part R&RE, p. 1150, § 1, effective July 1.

25-7-511.5. Injunctive proceedings. (1) The division may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction:

(a) To enjoin any person from committing any act prohibited by the provisions of this part 5;

(b) To enjoin a certified person from practicing the profession for which he is certified under this part 5.

(2) If it is established that the defendant has been or is committing any act prohibited by this part 5, the court shall enter a decree perpetually enjoining said defendant from further committing said act or from practicing asbestos abatement.

(3) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 5.

(4) When seeking an injunction under this section, the division shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 90: Entire section added, p. 1323, § 7, effective May 24.

25-7-511.6. Refresher training - authorization. The commission shall promulgate rules and regulations governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal “Asbestos Hazard Emergency Response Act of 1986” (Public Law 99-519), as amended, and any rules and regulations promulgated under such federal law. In adopting such rules and regulations, the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures. The division shall implement a system of testing to measure the knowledge obtained by certified persons attending such programs.

Source: L. 90: Entire section added, p. 1323, § 7, effective May 24.

25-7-512. Repeal of part. This part 5 is repealed, effective July 1, 2013. Prior to such repeal, the functions of the division under this part 5 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 87: Entire part R&RE, p. 1151, § 1, effective July 1. L. 88: Entire section amended, p. 931, § 16, effective April 28. L. 90: Entire section amended, p. 1324, § 8, effective May 24. L. 91: Entire section amended, p. 688, § 57, effective April 20. L. 94: Entire section amended, p. 1457, § 9, effective May 25. L. 95: Entire section amended, p. 24, § 6, effective July 1. L. 2001: Entire section amended, p. 771, § 3, effective June 1. L. 2006: Entire section amended, p. 122, § 1, effective March 27.

PART 6

DIESEL INSPECTION PROGRAM

25-7-601 to 25-7-610. (Repealed)

Editor’s note: (1) This part 6 was added in 1988, effective January 1, 1990. For amendments to this part 6 prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 6 were relocated to part 4 of article 4 of title 42. For the location of specific provisions, see the editor’s notes following each section in said part 4 and the comparative tables located in the back of the index.

(2) Section 25-7-610 provided for the repeal of this part 6, effective January 1, 1995. (See L. 94, p. 2541.)

Cross references: For current provisions concerning the diesel emissions program, see part 4 of article 4 of title 42.

PART 7

TRAVEL REDUCTION TASK FORCE

25-7-701 to 25-7-706. (Repealed)

Editor’s note: (1) This part 7 was added in 1990 and was not amended prior to its repeal in 1991. For the text of this part 7 prior to 1991, consult the Colorado statutory research explanatory note and

the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-7-706 provided for the repeal of this part 7, effective July 1, 1991. (See L. 90, p. 1328.)

PART 8

TRAVEL REDUCTION PROGRAM

25-7-801 to 25-7-806. (Repealed)

Editor's note: (1) This part 8 was added in 1991. For amendments to this part 8 prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-7-806 provided for the repeal of this part 8, effective July 1, 1994. (See L. 91, p. 981.)

PART 9

CLEAN AIR TRANSIT OPTIONS

25-7-901. Legislative declaration. The general assembly hereby declares that the state's effort to mitigate traffic congestion and promote clean air will be served by providing clean air transit options to state employees.

Source: L. 96: Entire part added, p. 853, § 1, effective May 23.

25-7-902. Definitions. (1) "State agency" means any department, board, bureau, commission, institution, or other agency of the state, including institutions of higher education.

(2) "State employees" means the employees of any state agency.

Source: L. 96: Entire part added, p. 853, §1, effective May 23.

25-7-903. Clean air transit options for state employees. Any state agency may provide clean air transit options to state employees of that agency, including, but not limited to, the use of available mass transit. The financing of any transit option offered by a state agency to state employees shall be from existing appropriations to that state agency. A transit option shall be considered a perquisite that is subject to the state controller's fiscal rules controlling perquisites under section 24-30-202 (22), C.R.S.

Source: L. 96: Entire part added, p. 853, § 1, effective May 23.

PART 10

AIR QUALITY RELATED VALUES - CLASS I FEDERAL AREAS

25-7-1001. Legislative declaration. In order to establish a fair, practical, and cost-effective process for evaluating and, where appropriate, responding to assertions that air quality related values within Colorado's class I federal areas are being significantly and adversely affected by air pollution, such as air pollution that is causing biological harm, the general assembly hereby institutes the procedures set forth in this part 10.

Source: L. 96: Entire part added, p. 1443, § 1, effective June 1.

25-7-1002. Air quality related values program. (1) In addition to maintaining a program that complies with the requirements of the federal act for prevention and remediation of significant deterioration of visibility in class I federal areas, the commission, in consultation with the general assembly, the governor, and affected federal, state, and local governmental entities, shall maintain a state-retained authority program in conformance with section 25-7-105.1 for nonvisibility air quality related values, referred to in this part 10 as the "program".

(2) The commission shall develop a program under which, except for grant funds secured from other sources, the federal government undertakes the responsibility for the funding of air quality related value baseline data collection and the verification studies needed to substantiate an assertion of significant impairment, and the commission is encouraged to conduct the activities specified in this part 10 in coordination with interested state and local governmental entities and affected citizens and businesses.

Source: L. 96: Entire part added, p. 1443, § 1, effective June 1.

25-7-1003. Definitions. As used in this part 10:

(1) "Air quality related value (AQRV)" means a feature or property of a class I federal area other than visibility that the state of Colorado finds may be affected by air pollution. General categories of air quality related values include odor, flora, fauna, soil, water, geologic features, and cultural resources.

(2) "Air quality related value baseline data" means research data based on site-specific measurements and samplings of air quality related values within a class I federal area needed to substantiate a determination of whether or not a particular observation is within the range of naturally occurring changes or fluctuations.

(3) "Best available retrofit technology" means a control strategy for addressing emissions of a stationary source developed on a case-by-case basis after taking into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in the air quality related value that may reasonably be anticipated to result from the use of such technology.

(4) "Peer review" means a review of scientific or technical information by a balanced objective panel of experienced scientists qualified to review the subject matter involved in verifying the existence of or attributing the cause of an AQRV impairment.

(5) "Reasonably available control measure" means a control strategy for addressing emissions of a nonstationary source developed on a case-by-case basis after taking into consideration the options available to achieve emission reductions that a particular source or source category is capable of meeting as appropriate to an air quality related value if such steps may be feasibly and practicably taken considering technical and economic constraints.

(6) "Significant impairment of an air quality related value" means a measurable change in an air quality related value that is outside the probability of natural variability, that is caused by human activities, and that is causing a significant adverse effect to flora, fauna, soil, geologic features, cultural resources, or a beneficial use of water recognized under Colorado law.

Source: L. 96: Entire part added, p. 1444, § 1, effective June 1.

25-7-1004. Administration of program by division. (1) In administering the program, the division shall:

(a) Conduct or oversee program activities and scientific studies and determine an appropriate scope, sequence, and timetable for such studies and activities;

(b) Subject assertions by a federal land manager of air quality related value impairment in a class I federal area and studies concerning source attribution and source apportionment to peer review;

(c) Utilize the study design and data collection and analytical techniques set forth in section 25-7-211 that are relevant and appropriate to the activity or study;

(d) Assure that studies proceed as expeditiously as sound science will allow in order to minimize any delay in the process.

(2) As necessary or appropriate, the division may:

(a) Enter into memoranda of understanding for participation in the studies and activities required by this part 10;

(b) Create cooperative public-private partnerships with various entities; and

(c) Perform any other appropriate activity to carry out the intent of the program.

(3) The division shall not be required to pay the cost of any studies that are discretionary as set forth in this part 10 other than as set forth in this section. If the division determines that an air quality related value of a class I federal area has the potential to be significantly threatened by air pollution, or is being impacted by air pollution, then the division shall apply for grants or act as a catalyst to secure financial support from available funding sources in federal, state, or local governments and private entities, to identify the threat by funding the necessary air quality related value baseline data collection, or to assist in remedying the threat by funding necessary attribution or apportionment studies. The division is also authorized to act as a catalyst to secure financial support from other sources for such studies. The results of such studies and data collection shall be made available to the appropriate federal land manager and interested members of the public to assist in the management of these scenic resources and to cooperate in any needed air quality related values assessments.

Source: L. 96: Entire part added, p. 1445, § 1, effective June 1.

25-7-1005. Verification of federal land manager's assertion of air quality related value impairment. (1) The federal land manager of a class I federal area may initiate the procedures of this part 10 by submitting to the governor and division an assertion of significant impairment of an air quality related value, referred to in this part 10 as an "assertion". To be adequate to support a verification of impairment, the assertion shall be supported by sufficient air quality related value baseline data and site-specific evidence of impairment. The assertion may be supported in part by information that concerns other areas with a similar environment to the class I federal area asserted to be impaired, provided such information is relevant to the class I federal area asserted to be impaired and significant site-specific data is also available.

(2) Upon receipt of an assertion, the division shall initiate the following actions concurrently:

(a) Inform the commission at its next regularly scheduled monthly meeting of the receipt of an assertion, at which time the commission shall schedule the matter for a formal report from the division at the regular commission meeting that is scheduled to occur six months subsequent. All such informational briefings and formal reports on the subject shall be noticed on the published agenda of the commission.

(b) Within sixty days of receipt of the assertion, the division shall convene a peer review panel to review the assertion, its supporting documentation, including the adequacy of the baseline data and the adequacy of the site-specific and other evidence of impairment, and any other relevant information submitted to the division by the public. The requirement for peer review as specified in this paragraph (b) is waived with respect to any peer reviewer who has not submitted peer review comments within sixty days of the date on which the division certifies that the assertion, documentation, and other information has been transmitted to the individual peer reviewers.

(c) Convene a consultation process that is open to the public in order to apprise the public and potentially affected sources and source categories of all stages of the program and to solicit the scientific, technical, economic, and managerial views and assistance of the public and the potentially affected sources and source categories; and

(d) Initiate a review by division staff of the assertion and the supporting documentation submitted by the federal land manager to assess whether the federal land manager has demonstrated a significant impairment of an air quality related value in a class I federal area within Colorado.

(3) At the commission meeting required by paragraph (a) of subsection (2) of this section, the division shall report to the commission. The division's report shall include, but is not limited to, the conclusions of the peer review panel concerning verification of the assertion and the division's determination of whether the federal land manager has demonstrated a significant impairment of an air quality related value in a class I area within Colorado. If the division determines that the assertion has not been verified, it shall so notify the commission and the federal land manager of its findings and the fact that the proceedings authorized under this part 10 have been completed. If the division determines that the assertion has been verified, it shall proceed in accordance with the provisions of section 25-7-1006.

Source: L. 96: Entire part added, p. 1445, § 1, effective June 1.

25-7-1006. Source attribution and control strategy development. (1) If the division determines that the assertion has been verified, it shall:

(a) Compile a comprehensive inventory of the sources of the pollutants that are suspected to be causing the impairment;

(b) Subject the development, conduct, and results of the attribution and apportionment studies to appropriate peer review; and

(c) Perform attribution and apportionment studies to the extent feasible in order to develop for the division and the commission the identity and relative contribution of the significant contributors to air quality related value impairment, including, but not limited to, stationary sources, natural sources, wood smoke, agriculture, mining, roads, mobile source categories, and other area sources. The general assembly recognizes that the ability to attribute the cause of air pollution effects and apportion the air pollution effects among sources and source categories identified by attribution studies is an area of evolving science.

(2) (a) The funding of source attribution and apportionment studies shall be derived as provided in this subsection (2). Contributions to support the funding of such studies shall be requested from sources and source categories identified by the division as potentially contributing to the impairment.

(b) If a potential contribution to impairment is identified from federal lands or state lands, the division shall request a funding contribution for such studies from the appropriate federal or state land manager.

(c) If a potential contribution to impairment is identified from stationary sources or source categories, the division shall request a funding contribution for such studies from such sources or source categories.

(d) If a potential contribution to impairment is identified from mobile sources, the division shall seek an appropriation by the general assembly of excess funds in the AIR account in the highway users tax fund for funding contributions to such studies.

(e) The division shall annually report to the legislative council on the adequacy of funding derived pursuant to this subsection (2). If funding derived pursuant to this subsection (2) is inadequate, the legislative council may recommend that the general assembly appropriate funds from available sources for purposes of this section.

(3) Following its review and analysis of the reasonable attribution and source apportionment studies and the reports thereon from the members of the peer review panel, the division shall identify those sources and source categories within the state and region significantly contributing to air quality related value impairment.

(4) The division shall identify the sources and source categories significantly contributing to air quality related value impairment that are located outside the state and report this list to the commission, governor, and general assembly for their consideration in identifying options for remedying such impacts.

(5) The division shall issue an order to the sources and source categories significantly contributing to air quality related value impairment located within the state that have not made a voluntary enforceable commitment under section 25-7-1008.

(6) (a) An order issued pursuant to subsection (5) of this section shall require:

(I) Such sources and source categories to submit a report within a reasonable period of time;

- (II) A stationary source to identify the best available retrofit technology; and
- (III) Other sources and source categories to identify reasonably available control measures.

(b) After considering the responses to an order issued pursuant to subsection (5) of this section, the division shall issue a public report to the commission concerning its recommendations on air quality related value impairment, source attribution, source apportionment, and control strategy options.

Source: L. 96: Entire part added, p. 1447, § 1, effective June 1.

25-7-1007. Commission to consider control strategies in rule-making proceeding.

(1) Upon receipt of a report under section 25-7-1006 (6) (b) from the division, and after the division has made the report available to all significant source or source categories identified pursuant to section 25-7-1006, the commission shall give notice that it is to conduct a rule-making hearing concerning the implementation of control strategies recommended in the report.

(2) In addition to other applicable rule-making provisions, the rule-making hearing shall be conducted:

- (a) In reasonable proximity to the affected class I federal area;
- (b) To allow sufficient time for comment and testimony by all interested persons; and
- (c) To allow reasonable discovery pursuant to section 24-4-103 (13) and (14), C.R.S.

(3) (a) The commission shall order by rule implementation within a reasonable time of a practical and cost-effective control strategy or strategies that will provide reasonable progress toward remedying the impairment, if the commission finds that:

(I) The evidence in the record shows the existence of a significant impairment of an air quality related value in a class I federal area;

(II) An identifiable source or source category is responsible for significantly causing or contributing to the impairment;

(III) The best available retrofit technology exists for any such stationary source;

(IV) Reasonably available control measures exist for any such other sources or source categories;

(V) Implementation of the control strategies would make significant improvement in the impairment;

(VI) Taking into account that the ability to attribute the cause of air pollution effects and to apportion the air pollution effects among sources and source categories identified by attribution studies is an area of evolving science, a correlation of the extent of improvement in air quality related value impairment can reasonably be expected to result from imposition of a control strategy or strategies for each significant source or source category identified by the division.

(b) Within fourteen days after having received the division's report under section 25-7-1006 (6) (b), a source or source category may petition the commission, as part of its rule-making hearing conducted pursuant to this subsection (3), to make a determination that the benefits of phasing, segmenting, or excusing the control strategy or strategies outweigh the benefits of imposing the control strategy or strategies. In making such determination, the commission shall consider all economic and related costs associated with the implementation of the control strategy or strategies involving the source or source category. The burden of proof shall be on the petitioner.

Source: L. 96: Entire part added, p. 1448, § 1, effective June 1.

25-7-1008. Voluntary agreements. (1) The division may convene, at any appropriate time, an informal voluntary negotiation process, with appropriate public participation, to seek voluntary enforceable commitments from sources and source categories to achieve emissions reductions sufficient to make reasonable further progress in reducing any portion of the impairment.

(2) A voluntary enforceable commitment becomes enforceable through a commission rule, local ordinance or resolution, judicially enforceable consent decree, or division permit condition, as appropriate to the circumstances.

(3) If subsequent to January 15, 1996, a source or source category agrees to an enforceable commitment to adopt a control strategy that the division determines is as effective or is more effective than best available retrofit technology for stationary sources or reasonably available control measures for nonstationary sources, the division shall exempt that source or source category from the imposition of further controls pursuant to this part 10 for a period of ten years from the date established for achieving the emission reductions as specified in the voluntary enforceable agreement.

(4) If subsequent to January 15, 1996, and prior to January 15, 1998, a source or source category agrees to an enforceable commitment contained in a judicially enforceable consent decree to adopt a control strategy that the division determines provides both for reasonable progress toward the national visibility goal under 40 CFR Part 51, Subpart P and 5 CCR 1001-4 and for reasonable progress in reducing any present or future impairment of an air quality related value, the division shall exempt that source or source category from the imposition of further controls pursuant to this part 10 for a period of ten years from the date established for achieving the emission reductions as specified in the judicially enforceable consent decree. The provisions of section 25-7-133 shall not apply to that portion of an amendment to the visibility component of the state implementation plan that implements and enforces the control strategy covered by this subsection (4).

(5) If a source or source category agrees to an enforceable commitment to adopt a control strategy that the division determines is not as effective as best available retrofit technology for stationary sources or reasonably available control measures for nonstationary sources but that the division determines will assist in making reasonable further progress in reducing impairment of an air quality related value, the commission may, after public hearing, exempt that source or source category from the imposition of further controls pursuant to this part 10 with respect to those pollutants that the source or source category has agreed to control for a period of up to ten years from the date established for achieving the emission reductions as specified in the voluntary enforceable agreement.

(6) A source that, prior to June 1, 1996, has received a permit under the federal prevention of significant deterioration program, 42 U.S.C. secs. 7470 to 7479 or sections 25-7-201 to 25-7-210, and installed pollution control measures comparable to the best available control technology pursuant to that program shall not be required to install additional control measures pursuant to this part 10 for a period of ten years from June 1, 1996, but may be required to operate pollution control equipment to its maximum efficiency. This section shall not apply to any source that is not subject to compliance with the requirements of 42 U.S.C. sec. 7651 (f), which establishes schedules and emission limitations for the control of nitrogen oxide emissions from certain stationary sources. Nothing in this subsection (6) shall be construed to modify the terms of any permit applicable to such source or excuse compliance with respect to any other requirement under this article or the federal act. Except for the exemption for a period of ten years provided in this subsection (6), nothing in this subsection (6) shall excuse such sources from responding to reasonable requests by the division for information required to complete inventories and attribution and apportionment studies.

Source: L. 96: Entire part added, p. 1449, § 1, effective June 1.

PART 11

LEAD-BASED PAINT ABATEMENT

25-7-1101. Legislative declaration. (1) The general assembly hereby declares that:

(a) Exposure of children to lead represents a significant environmental health problem that is preventable;

(b) According to the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682 and 2684, et seq., as amended, home buyers and renters must

be properly informed of the risks of lead exposure to children, especially children under seven years of age;

(c) Trained and qualified individuals are needed in order to advise consumers about lead hazards in general and about specific measures that may be needed to control such hazards; and

(d) The state seeks to adopt the concept of "lead-safe" housing units and child-occupied facilities, rather than "lead-free" housing and facilities. The goal of the state should not be the removal of all lead-based paint, but the creation of housing and facilities where no significant lead-based paint hazard is present. This goal includes the removal, enclosure, or encapsulation of lead-based paint to remove lead hazards from target housing and child-occupied facilities.

(2) The general assembly declares that the enforcement of the lead-based paint abatement standards may be delegated to local health and building departments in Colorado.

(3) Therefore, the general assembly determines and declares that the enactment of this part 11 is a matter of statewide concern to achieve uniformity in the regulation of lead abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement.

Source: L. 97: Entire part added, p. 1086, § 2, effective July 1.

25-7-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Abatement" means any measure or set of measures that will contain or permanently eliminate lead-based paint hazards, including:

- (a) The removal of lead-based paint and lead-contaminated dust;
- (b) The permanent containment of lead-based paint;
- (c) The encapsulation of lead-based paint;
- (d) The replacement or enclosure of lead-painted surfaces or fixtures;
- (e) The removal or covering of lead-contaminated soil; and
- (f) All preparation, cleanup, disposal, monitoring, and clearance testing activities associated with the measures described in this subsection (1).

(2) (a) "Child-occupied facility" means a building or portion of a building that:

- (I) Was constructed prior to 1978;
- (II) Is visited regularly by the same child who is under seven years of age;
- (III) Is visited by such child on two or more days within any week, consisting of the period from Sunday through the following Saturday, with each such visit totaling six or more hours; and

(IV) Is visited by such child a total of at least sixty hours in one year.

(b) "Child-occupied facility" includes, but is not limited to, any day-care center, preschool, or kindergarten classroom constructed prior to 1978.

(3) "Commission" means the air quality control commission created by section 25-7-104.

(4) "Division" means the air pollution control division in the department of public health and environment.

(5) "Lead-based paint" means any paint containing more than six one-hundredths of one per cent by wet weight of lead metal, more than five-tenths of one percent by dry weight of lead metal, or more than one milligram per square centimeter of lead metal.

(6) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint.

(7) "Target housing" means housing constructed prior to 1978 other than any zero-bedroom dwelling or any housing for the elderly or a person with a disability; except that "target housing" includes housing for the elderly or a person with a disability if a child under seven years of age resides or is expected to reside in the housing.

Source: L. 97: Entire part added, p. 1086, § 2, effective July 1.

25-7-1103. Powers and duties of air quality control commission - rules. (1) The commission shall promulgate rules pursuant to section 24-4-103, C.R.S., as necessary to implement this part 11 under the requirements of the federal "Residential Lead-Based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682, 2684, and 2686, as amended, including the following:

(a) Procedures for a training and certification program for persons and companies involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint, as such actions are defined in the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", in target housing or child-occupied facilities;

(b) Performance standards and practices for lead abatement;

(c) Procedures for the approval of persons or companies who provide training or accreditation for workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in target housing or child-occupied facilities;

(d) Procedures for notification to appropriate persons regarding lead-based paint projects in target housing or child-occupied facilities; and

(e) Establishment of fees for certification of persons under paragraph (a) of this subsection (1), for any necessary monitoring of such persons to ensure compliance with this part 11, and for approval of persons or companies involved in the training or accreditation under paragraph (c) of this subsection (1).

(f) (I) Requirements for each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

(II) If the federal funding necessary to comply with this paragraph (f) is revoked, the division shall not be required to comply with this paragraph (f) until such funding is restored.

(2) (a) The requirements for the training and certification program established by the commission under paragraph (a) of subsection (1) of this section shall not be more stringent than:

(I) The training and certification requirements established by the federal "Residential Lead-based Paint Hazard Reduction Act of 1992" or federal rules promulgated pursuant to such act; or

(II) The training and certification requirements of any program that has been established under the federal "Residential Lead-based Paint Hazard Reduction Act of 1992" and that has been approved by the federal environmental protection agency.

(b) The commission shall consider prior experience in abatement of lead-based paint hazards when establishing training and certification requirements.

(3) The provisions of this part 11 apply only to lead-based paint hazards.

Source: L. 97: Entire part added, p. 1088, § 2, effective July 1. **L. 2006:** IP(1) amended and (1)(f) added, p. 131, § 1, effective August 7.

25-7-1104. Duties of air pollution control division - certification of trained individuals. (1) Pursuant to the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", 15 U.S.C. secs. 2682 and 2684, et seq., as amended, the division shall implement, coordinate, and oversee the implementation of the rules promulgated by the commission, including, but not limited to:

(a) Certifying any person or company involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint, as such actions are defined in the federal "Residential Lead-based Paint Hazard Reduction Act of 1992", in target housing or child-occupied facilities; and

(b) Taking actions necessary to enforce such rules of the commission.

(2) Other than training and certification requirements, which are deemed to be matters of statewide concern, the division may delegate the implementation or enforcement of standards under this part 11 to local health or building departments, as appropriate, if requested by such a local department. The air quality control commission shall establish standards regarding such delegations to local health and building departments.

Source: L. 97: Entire part added, p. 1089, § 2, effective July 1.

25-7-1105. Fees. (1) (a) The commission shall promulgate rules to establish the fees required under this part 11.

(b) The commission shall adjust the fees so that the revenue generated from such fees is sufficient to cover the direct and indirect costs to implement the lead hazard reduction program under this part 11 and part 11 of article 5 of this title.

(2) All fees collected by the division or its designee pursuant to this part 11 shall be transmitted to the state treasurer, who shall credit the same to the lead hazard reduction cash fund established pursuant to section 25-5-1106. The general assembly shall appropriate from such fund to the department of public health and environment sufficient moneys to implement the provisions of this part 11 and part 11 of article 5 of this title.

Source: L. 97: Entire part added, p. 1089, § 2, effective July 1.

25-7-1106. Enforcement. Whenever the division or its designee has reason to believe that any person has violated any of the provisions of this part 11 or the rules promulgated thereunder, the division or its designee may commence an enforcement action pursuant to section 25-7-115.

Source: L. 97: Entire part added, p. 1089, § 2, effective July 1.

25-7-1107. Applicability of article - child-occupied facilities and target housing. Nothing in this article shall be interpreted to affect any facility or location other than a child-occupied facility or target housing.

Source: L. 97: Entire part added, p. 1089, § 2, effective July 1.

PART 12

VOLUNTARY EMISSION LIMITATIONS

25-7-1201. Legislative declaration. The general assembly hereby finds, determines, and declares that voluntary emission limitations are an effective and efficient way to reduce emissions of air pollutants. However, the uncertainty of future control requirements impedes an owner or operator of a stationary source or group of stationary sources from making the investments necessary to voluntarily reduce emissions. The department of public health and environment should encourage all owners and operators of stationary sources or groups of stationary sources to voluntarily reduce emissions by providing, to the extent possible, certainty with respect to future control requirements.

Source: L. 98: Entire part added, p. 1044, § 1, effective July 1.

25-7-1202. Definitions. The definitions contained in section 25-7-103 shall apply to this part 12. In addition, the following definitions shall apply to this part 12:

(1) "Actual emissions" means the average amount of emissions, calculated in tons per year, that the stationary source or group of stationary sources emitted during the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division for review so long as the three-year time period is representative of normal unit operation. A different time period may be used to calculate actual emissions if such time period is more representative of normal unit operation than the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division.

(2) "Actual emission rate" means the average rate of emissions, calculated in pounds per million BTU or a comparable measure of the mass of emissions per unit of production, that the stationary source or group of stationary sources emitted during the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the

division for review so long as the three-year time period is representative of normal unit operation. A different time period may be used to calculate the actual emission rate if such time period is more representative of normal unit operation than the three-year period immediately prior to the date the proposed voluntary agreement was submitted to the division.

Source: L. 98: Entire part added, p. 1044, § 1, effective July 1.

25-7-1203. Voluntary agreements. (1) The owner or operator of any stationary source or group of stationary sources may obtain regulatory assurance, as described in section 25-7-1204, by entering into a voluntary agreement pursuant to this part 12. The parties to the proposed voluntary agreement shall negotiate in good faith to reach a voluntary agreement as expeditiously as possible. The owner or operator shall provide the division with any information necessary to evaluate the terms and conditions of the proposed voluntary agreement. The parties to the proposed voluntary agreement shall structure the emission limitations or emission reductions contained in a voluntary agreement so as to minimize costs and maximize the operational flexibility available to the owner or operator of the stationary source or group of stationary sources by using, among other things, numeric emission limits, annual emission limits, or emissions averaging across several emission points or sources, as appropriate.

(2) The division shall evaluate the emission limitations contained in a proposed voluntary agreement to determine whether they will result in reductions in actual emissions or actual emission rates, will result in emission reductions earlier than would be required by existing laws or regulations, will result in emission reductions significantly greater than required by existing laws or regulations, and will protect human health or the environment. The division shall also evaluate the assurance period proposed in the voluntary agreement based on the following factors:

- (a) The environmental benefits of the emission limitations and their significance;
- (b) The time necessary to achieve the emission limitations;
- (c) The capital, operating, and other costs associated with achieving the emission limitations; and
- (d) The energy impacts and environmental impacts not related to air quality of achieving the emission limitations.

(3) After conducting the evaluation required in subsection (2) of this section, the division may reject any proposed voluntary agreement that does not meet the requirements of this section. If the division rejects the proposed voluntary agreement, the owner or operator of the stationary source or group of stationary sources may petition the commission for review of the proposed voluntary agreement and the division's rejection thereof in accordance with the rules promulgated by the commission.

(4) If the division finds that the emission limitations and the assurance period proposed in a voluntary agreement meet the requirements of this section, the division shall submit the proposed voluntary agreement to the commission for approval. The commission shall provide the public with notice and an opportunity to comment on the proposed voluntary agreement. The commission shall act upon the voluntary agreement as expeditiously as possible. The commission shall approve the voluntary agreement unless it finds by substantial evidence that the proposed voluntary agreement is inconsistent with the requirements of this part 12. In no event shall the commission adopt emission limitations or an assurance period different than proposed in the voluntary agreement without the express written approval of the owner or operator of the stationary source or group of stationary sources subject to the agreement.

(5) If the commission approves the proposed voluntary agreement, the emission limitations and other provisions contained in the voluntary agreement shall be enforceable under this article against the stationary source or group of stationary sources in accordance with the terms and conditions contained in the voluntary agreement. Such enforcement may include any appropriate mechanism, including rule, permit condition, or consent order.

(6) No voluntary agreement or the underlying emission limitations under subsection (1) of this section shall be made federally enforceable without the written consent of the owner or operator of the stationary source or group of stationary sources.

(7) Except as provided in this part 12 or other applicable law, no voluntary agreement entered into under this part 12 shall alter any existing federal or state requirement otherwise applicable to the stationary source or group of stationary sources subject to such agreement.

(8) The commission may adopt any rules, procedures, or combination thereof necessary to implement this part 12. Notwithstanding this authority, the division may negotiate and evaluate proposed voluntary agreements, and the commission may approve proposed voluntary agreements and review the division's rejection of a proposed voluntary agreement as of July 1, 1998.

Source: L. 98: Entire part added, p. 1045, § 1, effective July 1.

25-7-1204. Regulatory assurances. (1) Except as provided in this section and in section 25-7-1205, the owner or operator of a stationary source or group of stationary sources who enters into a voluntary agreement pursuant to section 25-7-1203 shall be granted the regulatory assurances provided in this section. For the assurance period set forth in the voluntary agreement, not to exceed fifteen years, a stationary source or group of stationary sources subject to the voluntary agreement shall not be required to install additional pollution control equipment or implement additional pollution control strategies to reduce emissions of the air pollutant subject to the emission limitations contained in the voluntary agreement in order to comply with:

(a) State regulatory requirements that are based exclusively on state authority and that, either directly or indirectly, necessitate reductions in the air pollutant subject to the voluntary agreement; or

(b) Federal regulatory requirements that:

(I) Either directly or indirectly necessitate reductions in emissions of the air pollutant subject to the voluntary agreement;

(II) Establish generally applicable goals for the reductions of ambient concentrations of the air pollutant subject to the voluntary agreement or its chemical products; and

(III) Do not establish requirements that apply specifically to the stationary source or group of stationary sources.

(2) Notwithstanding subsection (1) of this section, the owner or operator of the stationary source or group of stationary sources may be required to comply with federal regulatory requirements if:

(a) The owner or operator has agreed in writing to abide by the requirements; or

(b) The commission promulgates the requirements in regulations that first require all other sources, including mobile sources, of the air pollutant within the affected region within Colorado to implement all available cost-effective measures to reduce emissions of the air pollutant. Such regulations, including the requirements contained therein applicable to the stationary source or group of stationary sources subject to the voluntary agreement, shall not apply to any stationary source or group of stationary sources unless and until the general assembly acts to postpone the expiration of the regulations in accordance with section 24-4-103, C.R.S.

Source: L. 98: Entire part added, p. 1047, § 1, effective July 1.

25-7-1205. Exceptions. (1) The regulatory assurances provided in section 25-7-1204 shall not apply to the following permit requirements, emission control requirements, or emission limitations:

(a) Additional requirements provided under section 111 of the federal act, as defined in section 25-7-103 (12), or parts 2 and 3 of this article by any modification or reconstruction of a stationary source after the date of the voluntary agreement;

(b) Emission limitations established for hazardous air pollutants identified in section 112 of the federal act;

- (c) Requirements established to implement Title VI and section 112 (r) of the federal act; and
- (d) Requirements applicable to mobile sources.

Source: L. 98: Entire part added, p. 1048, § 1, effective July 1.

25-7-1206. Coal-fired power plants. (1) (a) If the owner or operator of a coal-fired power plant or group of coal-fired power plants reduces the uncontrolled sulfur dioxide emission rate, measured in either pounds per million BTU or tons per year, by an average of at least seventy percent and the actual emission rate of sulfur dioxide by an average of at least fifty percent from one or more units located within the same airshed, regardless of whether the units are located on the same plant site, and such reductions are pursuant to a voluntary agreement entered into under section 25-7-1203, the assurance period for such units shall be a period ending fifteen years after the date established for achieving the voluntary emission limitations under the agreement.

(b) If the owner or operator of any coal-fired power plant that includes one or more units, each of which already has emission control technologies in place to reduce sulfur dioxide emissions by at least sixty-five percent from uncontrolled levels, significantly reduces the actual emission rate of sulfur dioxide and such reduction is pursuant to a voluntary agreement entered into under section 25-7-1203, the assurance period for such units shall be no more than fifteen years from the date the emissions reductions are achieved. Such a coal-fired power plant that is the subject of a certification of visibility impairment in a federally designated class 1 area as of July 1, 1998, may not enter into a voluntary agreement addressing the pollutants subject to the certification of visibility of impairment under section 25-7-1203 unless:

(I) The owner or operator of the plant has negotiated a settlement with the division that resolves all matters related to such certification of visibility impairment; and

(II) The voluntary agreement is fully consistent with the terms and conditions of the negotiated settlement.

(c) A coal-fired power plant or group of plants may achieve the emission reductions required by this section through a voluntary agreement that allows the plant or group of plants to control emissions by methods other than the installation and operation of pollution control equipment. Such methods may include but are not limited to burning low-sulfur coal, reducing the operation of units, retiring units, and changing fuels. If such methods are included in a voluntary agreement, the agreement shall include the procedure by which the division shall calculate the emission reductions to be obtained by such methods.

(2) It is the intent of the general assembly that the commission should consider any coal-fired power plant or power plants located within the same airshed that are achieving the emission limitations described in this section under a voluntary agreement to be in compliance with any emission limitation that is based on a technology requirement in the federal act. Such consideration should continue for a period of fifteen years after the date established in the voluntary agreement for achieving the emission limitations that are contained in the voluntary agreement. During the fifteen-year period, the commission, by rule, may require the coal-fired power plant to meet a different emission limitation based on a technology requirement in the federal act if:

(a) The commission finds that a different emission limitation is necessary to comply with the federal act; and

(b) The owner or operator of the coal-fired power plant is not required to begin installation of the required emission control technology unless and until the general assembly has acted to postpone the expiration of the commission's rule in accordance with section 24-4-103, C.R.S.

(3) The general assembly further intends that nothing in subsection (2) of this section shall be construed to create a precedent for the application or interpretation of either the "Colorado Air Pollution Prevention and Control Act", article 7 of title 25, C.R.S., or the federal act in any circumstance other than the execution of voluntary agreements between the state of Colorado and the owners and operators of coal-fired power plants in accordance with this part 12.

Source: L. 98: Entire part added, p. 1048, § 1, effective July 1.

25-7-1207. Allowances. Notwithstanding any other provision of this part 12, no owner or operator of a stationary source or group of stationary sources shall lose the benefits of regulatory assurances granted under this part 12 by transferring, selling, banking, or otherwise using allowances established under Title IV of the federal act or by any other federally required trading program of regional or national applicability as a result of entering into a voluntary agreement.

Source: L. 98: Entire part added, p. 1049, § 1, effective July 1.

25-7-1208. Economic or cost-effectiveness analyses not required. Notwithstanding section 25-7-110.5, the commission shall not conduct an economic impact analysis, cost-effectiveness analysis, or any other analyses required by section 25-7-110.5 in considering a voluntary agreement or the emission limitations contained therein.

Source: L. 98: Entire part added, p. 1050, § 1, effective July 1.

PART 13

THE SOUTHERN UTE INDIAN TRIBE/ STATE OF COLORADO ENVIRONMENTAL COMMISSION

25-7-1301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The Southern Ute Indian tribe and the state of Colorado have entered into an intergovernmental agreement, as set forth in House Bill 00-1324, enacted at the second regular session of the sixty-second general assembly and found at 24-62-101, C.R.S.;

(b) Pursuant to said intergovernmental agreement, the tribe and the state have agreed to create a tribal/state environmental commission with the authority to promulgate rules and regulations for one air quality program for all lands, all persons, and all air pollution sources within the exterior boundaries of the Southern Ute Indian reservation;

(c) As governments that share contiguous physical boundaries, it is in the interest of the environment and all residents of the reservation and the state of Colorado to work together to ensure consistent and comprehensive air quality regulation on the reservation;

(d) The establishment of a single collaborative authority for all lands within the exterior boundaries of the reservation best advances rational, sound, air quality management and will minimize duplicative efforts and expenditures of monetary and program resources by the tribe and the state;

(e) Pursuant to the intergovernmental agreement, the tribe will seek delegation from the United States environmental protection agency to administer certain programs under the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq. (1970), as the same is in effect on November 15, 1990, such delegation being contingent upon the existence of the tribal/state commission and the intergovernmental agreement.

(2) It is the intent of the general assembly in enacting this part 13 to establish state authority for the creation of a commission that will establish a separate reservation air program for all lands within the exterior boundaries of the Southern Ute Indian reservation, as provided in the intergovernmental agreement. Therefore, for the duration of the intergovernmental agreement, all lands within the exterior boundaries of the reservation shall be subject to the authority of the commission and the provisions of the reservation air program, as described in this part 13 and in the intergovernmental agreement, and shall not be subject to the authority of the Colorado air quality control commission or the provisions of parts 1 to 12 of this article, except as otherwise provided in the intergovernmental agreement and in this part 13.

(3) In article IV of the intergovernmental agreement, the tribe and the state agreed that neither party intended to alter the existing sovereignty or jurisdiction of any party, and by

approving the intergovernmental agreement, neither party conceded or agreed to any jurisdiction of the other party that would not otherwise exist. To the extent the state has jurisdiction over non-Indians on fee lands within the exterior boundaries of the reservation, it is the intent of the general assembly in enacting this part 13 that the commission shall exercise such authority for the purposes set forth in this part 13.

(4) The general assembly enacts this part 13 with the understanding that the tribe has also adopted tribal legislation that will carry out the terms of the intergovernmental agreement with respect to persons, air pollution sources, and lands within the reservation that are subject to the jurisdiction of the tribe.

(5) The general assembly hereby declares that its intent in enacting senate bill 02-235 is to ratify the continued existence of the Southern Ute Indian tribe/state of Colorado environmental commission after December 13, 2001.

Source: L. 2000: Entire part added, p. 107, § 1, effective March 15. **L. 2002:** (5) added, p. 1093, § 1, effective June 1.

25-7-1302. Definitions. (1) “Commission” means the Southern Ute Indian tribe/state of Colorado environmental commission established by this part 13.

(2) “Division” means the division in the department of public health and environment that pertains to air pollution control.

(3) “EPA” means the United States environmental protection agency.

(4) “Fee land” means real property located within the reservation that is owned in fee by non-Indians.

(5) “Intergovernmental agreement” means the agreement entered into by the Southern Ute Indian tribe and the state of Colorado, as set forth in House Bill 00-1324, enacted at the second regular session of the sixty-second general assembly.

(6) “Reservation” means the Southern Ute Indian reservation, the exterior boundaries of which were confirmed in the act of May 21, 1984, Pub.L. 98-290, 98 Stat. 201, 202 (found at “other provisions” note to 25 U.S.C. sec. 668).

(7) “Reservation air program” means the regulatory air quality program established by the commission for all persons, lands, and air pollution sources within the exterior boundaries of the reservation.

(8) “State” means the state of Colorado.

(9) “Tribe” means the Southern Ute Indian tribe.

(10) “Trust land” means land within the reservation held in trust by the United States of America for the benefit of the tribe or individual Indians.

Source: L. 2000: Entire part added, p. 108, § 1, effective March 15.

25-7-1303. Southern Ute Indian tribe/state of Colorado environmental commission created. (1) There is hereby created the Southern Ute Indian tribe/state of Colorado environmental commission. The commission is not an agency of the state, but is an authority created pursuant to the intergovernmental agreement. The commission’s actions are not subject to the provisions of the “State Administrative Procedure Act”, article 4 of title 24, C.R.S., but rather are subject to procedural rules adopted by the commission.

(2) The commission shall have authority to adopt air quality standards, promulgate rules and regulations, and review appealable administrative actions pertaining to the reservation air program.

(3) It is the intent of the general assembly that the commission’s rules, regulations, and orders shall be effective against all persons located within the reservation over whom the state would otherwise have jurisdiction as provided by state or federal law.

(4) The commission shall consist of three members appointed by the tribe and three members appointed by the governor. The initial members appointed by the governor shall serve terms as follows: One member shall serve until July 1, 2001, one member shall serve until July 1, 2002, and one member shall serve until July 1, 2003. All subsequent appointments by the governor shall be for terms of three years. The governor’s appointees

shall be residents of the state of Colorado. At least two of such appointees shall be residents of either Archuleta or La Plata county and at least one of such appointees shall reside on fee land.

(5) The governor may remove any member appointed by the governor at any time. The governor may not remove any member appointed by the tribe.

(6) Except as provided in section 25-7-1307, commission members shall not receive any compensation from the state of Colorado for their services in the conduct of commission business. Commission members may be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties out of funds collected or received by the tribe.

(7) Each member shall have one vote. The affirmative vote of a majority of all members of the commission on any matter within its powers and duties shall be required for any final determination made by the commission.

(8) The commission shall annually elect a member to preside as chair. The chair shall alternate annually between a tribal and a state member.

Source: **L. 2000:** Entire part added, p. 109, § 1, effective March 15. **L. 2002:** (4) amended, p. 1093, § 2, effective June 1. **L. 2010:** (4) amended, (SB 10-082), ch. 182, p. 655, § 1, effective April 29.

25-7-1304. Commission - powers and duties - rules. (1) The commission shall be the air quality policy-making and the administrative review entity for the reservation air program.

(2) The duties of the commission shall include the responsibility to:

(a) Determine the specific air quality programs under the federal "Clean Air Act", or other air quality programs, that should apply to the reservation, taking into account the specific environmental, economic, geographic, and cultural needs of the reservation;

(b) Promulgate rules and regulations that are necessary for the proper implementation and administration of those programs, including determining which administrative actions are appealable to the commission;

(c) Establish procedures the commission will follow in promulgating rules and regulations and for administrative review of actions taken by the tribe;

(d) Review and approve of a long-term plan, initially prepared by the tribe, to improve and maintain air quality within the reservation, which also takes into account regional planning in the La Plata and Archuleta county region;

(e) Monitor the relationships among the state and tribal environmental protection agencies to facilitate cooperation, information sharing, technical assistance, and training;

(f) Review enforcement actions according to the commission's adopted administrative procedures;

(g) Approve and adopt fees for permits and other regulatory services conducted by the tribe or the state, after considering a proposed fee schedule prepared by the tribe, and direct payment by air pollution sources to the tribe;

(h) Ensure consistency and adherence to applicable standards and resolving disputes involving third parties;

(i) Review emission inventories as developed by the tribe and state;

(j) Conduct public hearings pertaining to the adoption of rules and regulations, or relating to enforcement and permit appeals, and to issue orders resulting from those proceedings;

(k) Request tribal staff to perform any administrative or clerical functions necessary to issue orders and conduct commission business, or the commission, at its option, may appoint a technical secretary to perform such duties; except that no authority shall be delegated to adopt, promulgate, amend, or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the commission;

(l) Any other duties necessary to accomplish the purposes of the intergovernmental agreement and as authorized by the state and tribe enabling legislation.

Source: L. 2000: Entire part added, p. 110, § 1, effective March 15.

Cross references: For the federal “Clean Air Act”, see 42 U.S.C. sec. 7401 et seq.; for delegation of the right to administer programs, see § 25-7-1301 (1)(e).

25-7-1305. Administration of reservation air program. (1) After the commission has adopted rules and regulations for the reservation air program and after the EPA has delegated to the tribe administration of programs under the federal “Clean Air Act”, the tribe shall administer and enforce the standards, rules, and regulations adopted by the commission for the reservation air program. The actions of the tribe pursuant to this section and this part 13 shall apply to any non-Indian air pollution source within the reservation as if the state had taken the same action.

(2) Until the EPA delegates to the tribe the authority to administer federal “Clean Air Act” programs, the Colorado air quality control commission and the division shall have authority under this article to continue to enforce any state program or permits, laws, and regulations for any non-Indian owned air pollution sources on fee land within the reservation. The division shall afford the tribe the opportunity to participate in its regulatory activities involving such sources, including the review of permit applications, notices of violations, or other orders, inspections, and other enforcement actions.

Source: L. 2000: Entire part added, p. 111, § 1, effective March 15.

Cross references: For the federal “Clean Air Act”, see 42 U.S.C. sec. 7401 et seq.; for delegation of the right to administer programs, see § 25-7-1301(1)(e).

25-7-1306. Agencies of state to cooperate. (1) Agencies of the state, including but not limited to the division, may provide technical assistance, training, and consultation to the tribe to carry out the purposes of the intergovernmental agreement and this part 13.

(2) The general assembly authorizes state agencies to perform duties on behalf of the commission to administer the reservation air program. State agencies may contract with the tribe to receive payment for the reasonable cost of the services state employees perform for the tribe or the commission.

Source: L. 2000: Entire part added, p. 111, § 1, effective March 15.

25-7-1307. Funding for staff and program costs. (1) The commission shall establish fees for permits and other regulatory services provided by the division or the tribe under this part 13. The commission shall direct air pollution sources to pay said fees to the tribe. The tribe may also apply for and receive EPA grants for the administration of the reservation air program.

(2) From the fees and grants, the tribe shall fund the staff and program costs necessary to perform the tribe’s duties under the intergovernmental agreement and this part 13. The tribe shall pay the state for the personal services costs, at a rate of compensation determined by contract, of any state employee who participates in the administration of the reservation air program pursuant to the intergovernmental agreement or this part 13.

(3) It is the intent of the general assembly that fees and grants shall pay the necessary expenses of the commission. If the fees and grants are not sufficient to pay the commission’s expenses, then the state and the tribe shall be responsible for funding associated with the participation of their respective representatives on the commission. State funding for its expenses must come from either a separate appropriation to the division or from funds otherwise available that the state is authorized to use for such a purpose.

(4) Prior to the establishment and collection of fees from air pollution sources under the reservation air program, the tribe may have expenses associated with its administration of permits for non-Indian owned sources on fee land. If the state continues to collect fees under section 25-7-114.7 from air pollution sources on fee lands, and if the tribe has expenses associated with the administration of a state-issued permit, then the division is authorized

to use such permit and other fees to pay for the tribe's personal services costs. The state is authorized to contract with the tribe setting forth the reasonable cost for such services performed by the tribe.

Source: L. 2000: Entire part added, p. 112, § 1, effective March 15.

25-7-1308. Administrative and judicial review of commission actions. (1) Prior to the formation of the commission, the adoption of the federal legislation contemplated in the intergovernmental agreement, and actual EPA delegation of federal "Clean Air Act" programs:

(a) The state, through the Colorado air quality control commission and the division, shall exercise civil and criminal enforcement jurisdiction over non-Indians on fee lands within reservation boundaries for violations of applicable air quality permits, laws, and regulations.

(b) Appeals of state air enforcement action and other air quality-related decisions may be brought in state court consistent with state law and regulation.

(c) The tribe shall exercise jurisdiction over Indians, on all lands within the boundaries of the reservation, and over non-Indians on trust land, for violations of applicable tribal air quality regulations.

(d) Nothing in this part 13 is intended to restrict, diminish, or define the jurisdiction of the EPA.

(2) Following the adoption of the federal legislation and the EPA delegation of federal "Clean Air Act" programs:

(a) The tribe shall exercise civil enforcement jurisdiction over all persons and air pollution sources on all lands within reservation boundaries for violations of the reservation air program, subject to administrative review by the commission; and

(b) Consistent with the federal legislation provided in the intergovernmental agreement, the general assembly intends that final decisions of the commission shall be subject to review in federal district court in accordance with the provisions of the federal "Administrative Procedure Act".

(3) Following the formation of the commission and the adoption of the federal legislation provided in the intergovernmental agreement, it is the intent of the general assembly that the EPA will exercise criminal enforcement jurisdiction over any persons on all lands within reservation boundaries for criminal violations of the reservation air program.

Source: L. 2000: Entire part added, p. 112, § 1, effective March 15.

Cross references: For the federal "Administrative Procedure Act", see 5 U.S.C. secs. 551-559, 701-706, 1305, 3105, 3344, 4301, 5335, 5372, and 7521; for the federal "Clean Air Act", see 42 U.S.C. sec. 7401 et seq.; for delegation of the right to administer programs, see § 25-7-1301 (1)(e).

25-7-1309. Repeal of part. (1) This part 13 shall be repealed on the occurrence of any one of the following events:

(a) Termination of the intergovernmental agreement by either the tribe or the state; or

(b) Enactment of an explicit repeal by the general assembly, acting by separate bill.

(c) (Deleted by amendment, L. 2010, (SB 10-082), ch. 182, p. 655, § 2, effective April 29, 2010.)

Source: L. 2000: Entire part added, p. 113, § 1, effective March 15. **L. 2002:** (1)(c) amended, p. 1094, § 3, effective June 1. **L. 2010:** (1) amended, (SB 10-082), ch. 182, p. 655, § 2, effective April 29.

ARTICLE 8

Water Quality Control

Editor's note: This article was numbered as article 28 of chapter 66, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, "Plans and Studies: The Recent Quest for Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984); for article, "Assault on the Citadel, Part 1: Water Quality Laws and the Exercise of Water Rights", see 17 Colo. Law. 1305 (1988); for article, "Assault on the Citadel, Part 2: Dams, Diversions and Water Quality Regulations", see 17 Colo. Law. 2003 (1988).

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GENERAL PROVISIONS

Law reviews: For article, "The Water Quality Act of 1987", see 16 Colo. Law. 826 (1987); for article, "Water Law Requirements Affecting Environmental Compliance and Remediation Activities", see 22 Colo. Law. 299 (1993); for article, "Water Rights and Water Quality: Recent Developments", see 23 Colo. Law. 2343 (1994); for article, "Availability of the Colorado UST Fund to Property Owners and Mortgagees", see 23 Colo. Law. 873 (1994).

25-8-101. Short title. This article shall be known and may be cited as the "Colorado Water Quality Control Act".

Source: L. 81: Entire article R&RE, p. 1310, § 1, effective July 1.

ANNOTATION

Law reviews. For note, "A Survey of Colorado Water Law", see 47 Den. L.J. 226 (1970). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "Pollution or Resources Out-of-Place: Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982).

For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "The Burden of Maintaining Colorado's Water Quality", see 18 Colo. Law. 23 (1989).

Applied in In re A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978).

25-8-102. Legislative declaration. (1) In order to foster the health, welfare, and safety of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to prevent injury to beneficial uses made of state waters, to maximize the beneficial uses of water, and to develop waters to which Colorado and its citizens are entitled and, within this context, to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state. It is further declared that pollution of state waters may constitute a menace to public health and welfare, may create public nuisances, may be harmful to wildlife and aquatic life, and may impair beneficial uses of state waters and that the problem of water pollution in this state is closely related to the problem of water

pollution in adjoining states.

(2) It is further declared to be the public policy of this state to conserve state waters and to protect, maintain, and improve, where necessary and reasonable, the quality thereof for public water supplies, for protection and propagation of wildlife and aquatic life, for domestic, agricultural, industrial, and recreational uses, and for other beneficial uses, taking into consideration the requirements of such uses; to provide that no pollutant be released into any state waters without first receiving the treatment or other corrective action necessary to reasonably protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other states and the federal government in carrying out these objectives.

(3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(4) This article and the agencies authorized under this article shall be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

(5) It is further declared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, with the exception of any enforcement action, consideration be given to the economic reasonableness of the action. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and of the economic, environmental, public health, and energy impacts to the public and affected persons.

Source: L. 81: Entire article R&RE, p. 1310, § 1, effective July 1.

ANNOTATION

Law reviews. For article, “Liabilities of Non-operating Mineral Interest Owners”, see 51 U. Colo. L. Rev. 153 (1980). For article, “Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law”, see 58 Den. L.J. 715 (1981). For article, “The Emerging Relationship Between Environmental Regulations and Colorado Water Law”, see 53

U. Colo. L. Rev. 597 (1982). For article, “The Burden of Maintaining Colorado’s Water Quality”, see 18 Colo. Law. 23 (1989).

The water court is not required to consider environmental factors to determine whether to grant conditional water right decree. *Matter of Bd. of County Comm’rs*, 891 P.2d 952 (Colo. 1995).

25-8-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Agricultural chemical” means any of the following:

- (a) A pesticide as defined in section 35-10-103, C.R.S.; or
- (b) A commercial fertilizer as defined in section 35-12-103, C.R.S.

(1.1) “Agricultural management area” means a designated geographic area defined by the commissioner of agriculture that includes natural or man-made features where there is a significant risk of contamination or pollution of groundwater from agricultural activities conducted at or near the land surface.

(1.2) “Agricultural management plan” means any activity, procedure, or practice adopted as a rule by the commissioner of agriculture pursuant to article 4 of title 24, C.R.S., in consultation with the Colorado cooperative extension service and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into groundwater to the extent technically and economically practical.

(1.3) “Best management practices” means any voluntary activity, procedure, or practice established by the department of agriculture, in consultation with the Colorado cooperative extension service and the water quality control division, to prevent or remedy the introduction of agricultural chemicals into groundwater to the extent technically and economically practical.

(1.4) “Biosolids” means the accumulated residual product resulting from a domestic wastewater treatment works or other domestic sources. “Biosolids” does not include grit or screenings from a wastewater treatment works or commercial and industrial septage or on-site wastewater treatment systems regulated by article 10 of this title.

(1.5) “Commission” means the water quality control commission created by section 25-8-201.

(1.7) “Commissioner” means the commissioner of agriculture.

(2) “Control regulation” means any regulation promulgated by the commission pursuant to section 25-8-205.

(3) “Discharge of pollutants” means the introduction or addition of a pollutant into state waters.

(4) “Division” means the division of administration of the department of public health and environment.

(5) “Domestic wastewater treatment works” means a system or facility for treating, neutralizing, stabilizing, or disposing of domestic wastewater which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day. The term “domestic wastewater treatment works” also includes appurtenances to such system or facility, such as outfall sewers and pumping stations, and to equipment related to such appurtenances. The term “domestic wastewater treatment works” does not include industrial wastewater treatment plants or complexes whose primary function is the treatment of industrial wastes, notwithstanding the fact that human wastes generated incidentally to the industrial processes are treated therein.

(6) “Effluent limitation” means any restriction or prohibition established under this article or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards, and schedules of compliance.

(7) “Executive director” means the executive director of the department of public health and environment.

(8) “Federal act” means the “Federal Water Pollution Control Act”, commonly referred to as the “Clean Water Act”.

(8.5) “Industrial discharger” means any entity which introduces pollutants into a domestic wastewater treatment works from any nondomestic source subject to regulation under section 307 (b), (c), or (d) of the federal act.

(9) “Irrigation return flow” means tailwater, tile drainage, or surfaced groundwater flow from irrigated land.

(10) “Issue” or “issuance” means the mailing to all parties of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(11) “Municipality” means any regional commission, county, metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of them which are acting jointly in connection with a sewage treatment works.

(12) “Permit” means a permit issued pursuant to part 5 of this article.

(13) “Person” means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

(14) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include irrigation return flow.

(15) "Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

(16) "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(16.5) "Pretreatment requirement and standard" means any requirement, prohibition, standard, concentration, or effluent limitation described in enforceable pretreatment requirements by the commission pursuant to section 25-8-205 (1) (b), (1) (c), or (1) (d).

(17) "Promulgate" means and includes authority to adopt, and from time to time amend, repeal, modify, publish, and put into effect.

(17.5) "Reclaimed domestic wastewater" means wastewater that has received treatment that enables the wastewater to meet the requirements, prohibitions, standards, and concentration limitations adopted by the commission for subsequent reuses other than drinking.

(18) "Schedule of compliance" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any control regulation or effluent limitation.

(19) "State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(20) "Water quality standard" means any standard promulgated pursuant to section 25-8-204.

Source: **L. 81:** Entire article R&RE, p. 1311, § 1, effective July 1. **L. 90:** (1) R&RE and (1.1) to (1.3), (1.5), (1.7), (8.5), and (16.5) added, pp. 1329, 1337, §§ 1, 2, 1, effective July 1. **L. 93:** (1.4) added, p. 1578, § 1, effective July 1. **L. 94:** (4) and (7) amended, p. 2789, § 517, effective July 1. **L. 2000:** (17.5) added, p. 252, § 1, effective March 31. **L. 2012:** (1.4) amended, (HB 12-1126), ch. 137, p. 494, § 3, effective August 8.

Cross references: (1) For the "Federal Water Pollution Control Act", see Pub.L. 92-500, October 18, 1972, 86 Stat. 816, 33 U.S.C. 1251 et seq.

(2) For the legislative declaration contained in the 1994 act amending subsections (4) and (7), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-8-104. Interpretation and construction of water quality provisions. (1) No provision of this article shall be interpreted so as to supersede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the provisions of sections 5 and 6 of article XVI of the constitution of the state of Colorado, compacts entered into by the state of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S., or Colorado court determinations with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights. The general assembly recognizes that this article may lead to dischargers choosing consumptive types of treatment techniques in order to meet water quality requirements. Under such circumstances, the discharger must comply with all of the applicable provisions of articles 80 to 93 of title 37, C.R.S., and shall be obliged to remedy any material injury to water rights to the extent required under the provisions of articles 80 to 93 of title 37, C.R.S. The question of whether such material injury to water rights exists and the remedy therefor shall be determined by the water court. This section shall not be interpreted so as to prevent the issuance of a permit pursuant to sections 25-8-501 to 25-8-503 which is necessary to protect public health. Nothing in this article shall be

construed to allow the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

(2) The following criteria, in addition to those otherwise prescribed by law, shall apply to any policy, rule-making, adjudicatory, administrative, or executive decision of the water quality control commission or to any judicial decision related thereto:

(a) All state waters shall be presumed to be available for beneficial uses under and in accordance with the constitution and laws of the state; and a water right includes the right to divert as defined in section 37-92-103 (7), C.R.S., the waters of the state for application to beneficial use.

(b) The commission or division shall not require an instream flow for any purpose.

(c) Mixing zones in state waters shall be allowed in accordance with other provisions of this article in calculating the necessary degree of source pollutant control, so long as water rights are not materially injured.

(d) The commission and division shall consult with the state engineer and the water conservation board or their designees before making any decision or adopting any rule or policy which has the potential to cause material injury to water rights.

(e) Underground water may be extracted from state waters in order to treat or remove pollutants from the water extracted; except that any material injury to water rights resulting therefrom shall be remedied as required by law.

(3) The state engineer shall issue well permits pursuant to section 37-90-137 (2), C.R.S., necessary to accomplish the purposes of paragraph (e) of subsection (2) of this section. Well construction shall be in accordance with article 91 of title 37, C.R.S.

Source: L. 81: Entire article R&RE, p. 1313, § 1, effective July 1. **L. 89:** Entire section amended, p. 1171, § 1, effective June 8.

ANNOTATION

Law reviews. For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Quality Versus Quantity: The Continued Right to Appropriate — Part I", see 15 Colo. Law. 1035 (1986). For article, "The Burden of Maintaining Colorado's Water Quality", see 18 Colo. Law. 23 (1989). For article, "Water Rights Protection In Water Quality Law", see 60 U. Colo. L. Rev. 841 (1990). For article, "What is a 'Material Injury' to a Water Right?", see 19 Colo. Law. 1333 (1990).

The water court is not required to consider environmental factors to determine whether to grant conditional water right decree. Matter of Bd. of County Comm'rs, 891 P.2d 952 (Colo. 1995).

Water quality regulation that affects water rights without causing material injury or impairment is not necessarily prohibited. City of

Thornton v. Bijou Irrigation Co., 926 P.2d 1 (Colo. 1996).

The legislative water quality scheme is not designed to protect against quality impacts unrelated to discharges or substitute water and specifically prohibits the water court from imposing the protective measures necessary to remedy depletive impacts of upstream appropriations on a downstream appropriator who is concerned that decreased water quantity caused by city's upstream appropriation will result in water quality problem. City of Thornton v. Bijou Irrigation Co., 926 P.2d 1 (Colo. 1996).

The legislature prohibited the Colorado water quality control commission and the water quality division from imposing minimum instream flows in the course of their water quality protection activities. City of Thornton v. Bijou Irrigation Co., 926 P.2d 1 (Colo. 1996).

Under Colorado law, water quality standards apply to discharges of pollution and not to withdrawals or appropriations of water. Colo. Wild, Inc. v. U.S. Forest Serv., 122 F. Supp. 2d 1190 (D. Colo. 2000).

25-8-105. Regional wastewater management plans - amendments. (1) (a) Regional wastewater management plans which include plans known for purposes of the federal act as "208 plans" may be developed by designated planning agencies or by the state for nondesignated areas or for statewide purposes.

(b) Before submitting a proposed plan or amendment to the division, the designated planning agency shall hold a hearing on the proposed plan or amendment.

(c) The division shall consider any proposed plan or amendment developed by the state.

(d) Notice of a hearing to be held pursuant to this subsection (1) shall be given by at least one publication in a newspaper of general distribution in the area of the proposed plan, and actual notice shall be given to anyone requesting such notice. Such notice shall advise of the opportunity for interested persons to appear and submit written or oral comments on the proposed plan or amendment. The agency holding the hearing shall receive and consider all comments submitted on the proposed plan or amendment.

(2) Each regional wastewater management plan and each amendment to such a plan must be either developed or reviewed by the division.

(3) (a) The commission, after notice and hearing, shall approve or reject proposed regional wastewater management plans and amendments thereto. The commission shall approve, conditionally approve, or reject a plan or an amendment developed by a management or planning agency within one hundred eighty days after submittal of the plan or amendment by the management or planning agency to the division. Only those portions of a regional wastewater management plan which are adopted as a regulation by the commission pursuant to section 24-4-103, C.R.S., shall be binding on regulatory decisions, including, but not limited to, site approvals, construction grants, or point or nonpoint source control decisions. Only those plans or portions thereof which are adopted by the commission as regulations shall be binding for purposes of any federal law, regulation, or action.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the commission may delegate to the division the authority to approve, conditionally approve, or reject nonrule-making amendments to regional wastewater management plans. If the commission delegates such authority, the division shall give notice of its decision on an amendment to the commission and to anyone who has requested notice of amendments to the affected plan. Notice of such decision shall also be included on the next commission agenda. Upon a request by any affected person, the commission shall review the division's decision. The decision of the division shall be final within forty-five days after agenda notice of the decision has been given unless review is requested by an affected person.

(4) The governor may certify to the federal environmental protection agency a regional wastewater management plan or an amendment thereto which has been approved by the commission or an amendment thereto which has become final after approval by the division. The governor may designate planning agencies for the purposes of the federal act.

Source: **L. 81:** Entire article R&RE, p. 1313, § 1, effective July 1. **L. 88:** (3)(a) amended, p. 1019, § 1, effective July 1.

25-8-106. Study - organizational placement of water quality control programs. (Repealed)

Source: **L. 92:** Entire section added, p. 1298, § 2, effective July 1. **L. 94:** IP(1), (1)(d), and (2) amended, p. 2789, § 518, effective July 1. **L. 96:** Entire section repealed, p. 1260, § 160, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

PART 2

WATER QUALITY CONTROL COMMISSION

25-8-201. Water quality control commission created. (1) (a) There is hereby created in the department of public health and environment a water quality control commission which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a **type 1** transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of

three years each; except that, of the members appointed to take office in 1984, one shall be appointed for a one-year term, one shall be appointed for a two-year term, and three shall be appointed for three-year terms. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in water in the state. At least two members shall reside in that portion of the state which is west of the continental divide.

(b) Repealed.

(c) Whenever a vacancy exists, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy, subject to confirmation by the senate.

(2) (a) The governor may remove any appointed member of the commission for malfeasance in office, failure to regularly attend meetings, or for any cause that renders such a member incapable or unfit to discharge the duties of his office.

(b) If any member of the commission is absent from two consecutive meetings, the chairman of the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor who may remove such member and appoint a qualified person for the unexpired portion of the regular term, subject to confirmation by the senate.

(3) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem which shall be the same amount paid to the general assembly for attendance at interim committees for each day actually and necessarily spent in the discharge of official duties, not to exceed twelve hundred dollars in any one year; and each member shall receive traveling and other necessary expenses actually incurred in the performance of his official duties as a member of the commission.

(4) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The commission shall keep a record of its proceedings.

(5) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least five days in advance.

(6) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence of a majority of the quorum in any matter within its powers and duties shall be required for any determination made by the commission.

Source: L. 81: Entire article R&RE, p. 1314, § 1, effective July 1. L. 84: (1)(a) amended, p. 784, § 1, effective March 16. L. 96: (1)(a) amended, p. 1473, § 22, effective June 1. L. 2005: (1)(b) repealed, p. 283, § 24, effective August 8.

Cross references: For types of administrative transfers, see § 24-1-105.

ANNOTATION

Law reviews. For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "Pollution or Resources Out-of-Place: Reclaiming Municipal

Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

25-8-202. Duties of commission - rules. (1) The commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, to ensure provision of continuously safe drinking water by public water systems, and, in connection therewith, shall:

- (a) Classify state waters in accordance with section 25-8-203;
- (b) Promulgate water quality standards in accordance with section 25-8-204;
- (c) Promulgate control regulations in accordance with section 25-8-205;
- (d) Promulgate permit regulations in accordance with sections 25-8-501 to 25-8-504;
- (e) Perform duties assigned to the commission in part 7 of this article with respect to

the location, design, construction, financing, and operation of domestic wastewater treatment plants;

(f) Review from time to time, at intervals of not more than three years, classification of waters, water quality standards, and control regulations which it has promulgated;

(g) Promulgate rules and adopt priority ranking for the administration of federal and other public source construction loans or grants, and grants from the water quality improvement fund, which the commission or the division administers and which shall not be expended for any purpose other than that for which they were provided;

(h) Advise and consult and cooperate with other agencies of the state, the federal government, and other states, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies or regulations of the commission;

(i) Exercise all incidental powers necessary or proper for carrying out the purposes of this article including the powers to issue and enforce rules and orders;

(i.5) Promulgate rules and regulations to govern the division's certification activities pursuant to section 401 of the federal act;

(j) Perform such other duties as may lawfully be assigned to it by Colorado statutes;

(k) Act as an appellate body to review all determinations by the division except those determinations dealing with surface water discharge permits or portions thereof;

(l) Coordinate with the United States secretary of the interior and the United States secretary of agriculture to develop water quality management plans for federal lands pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec. 1712;

(m) Adopt rules providing minimum standards for the location, construction, performance, installation, alteration, and use of on-site wastewater treatment systems within the state of Colorado, in accordance with section 25-10-104;

(n) Adopt minimum general sanitary standards for drinking water systems in accordance with section 25-1.5-202;

(o) Develop additions or modifications to the drinking water project eligibility list in accordance with section 37-95-107.8, C.R.S.;

(p) Establish, and revise as necessary, a schedule of nonrefundable fees to cover the reasonable costs of implementing a program for the beneficial use of biosolids, in accordance with section 30-20-110.5, C.R.S.; and

(q) Hear appeals of penalties imposed pursuant to section 25-1-114.1 (2.5) for a violation of minimum general sanitary standards and regulations for drinking water.

(2) The commission shall have authority to implement the legislative declaration as prescribed in section 25-8-102.

(3) The commission shall hold a public hearing during the month of October of each year in order to hear public comment on water pollution problems within the state, alleged sources of water pollution within this state, and the availability of practical remedies therefor; and at such hearing the commission, administrator, and division personnel shall answer reasonable questions from the public concerning administration and enforcement of the various provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(4) The commission shall employ an administrator and shall delegate to such administrator such duties and responsibilities as it may deem necessary, including acting as a hearing officer for the commission; but no authority shall be delegated to such administrator to promulgate standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such administrator shall have appropriate practical, educational, and administrative experience related to water quality control and shall be employed pursuant to section 13 of article XII of the state constitution.

(5) Repealed.

(6) The commission is hereby designated as the state water pollution control agency for this state for all purposes of the federal act. The commission shall maintain a program which does not conflict with the provisions of the federal act and is hereby authorized to take all action necessary and appropriate to secure to this state, its municipalities, or intermunicipal or interstate agencies the benefits of said act.

(7) The commission and the division shall recognize water quality responsibilities of the following state agencies, referred to in this subsection (7) as the "implementing

agencies”: The office of mined land reclamation; the state engineer; the oil and gas conservation commission; and the state agency responsible for activities related to the federal “Resource Conservation and Recovery Act of 1976”, as amended, and related state programs. Activities subject to the jurisdiction of the implementing agencies that result in discharge to state waters shall be regulated as follows:

(a) The commission shall be solely responsible for the adoption of water quality standards and classifications for state waters affected by such discharges. Except as set forth in paragraph (b) of this subsection (7), such classifications and standards shall be implemented by the implementing agencies, after consultation with the division and the commission, through their own programs. For the purpose of subsection (7), water quality standards and classifications under this section for state waters other than surface waters shall not specify applicable points of compliance, but such points of compliance shall be adopted, in accordance with criteria established through rule-making after public hearing and consultation with the commission and division, by the appropriate agency with jurisdiction as specified in paragraph (b) of this subsection (7) so as to protect present and future beneficial uses of water.

(b) (I) The division shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges to surface waters of the state affected by such discharges.

(II) Neither the commission nor the division shall require permits for, or otherwise regulate, other activities subject to the jurisdiction of the implementing agencies, unless the commission finds, after notice and public hearing, that:

(A) Such regulation is necessary to assure compliance with the federal act, the provisions of articles 80 to 93 of title 37, C.R.S., or water quality standards and classifications adopted for state waters or to protect present and future beneficial uses of water; or

(B) Such regulation is necessary to avoid the imposition of a disproportionate burden on other dischargers or classes of dischargers to the affected state waters who are subject to the requirements of this article; or

(C) The implementing agency fails to provide reasonable assurance that compliance with this subsection (7) has been obtained through its own programs.

(III) Regulation by the commission under this paragraph (b) shall be undertaken solely through the adoption of control regulations under section 25-8-205, or permit regulations under section 25-8-501, and the division may enforce such regulations as provided in this article.

(c) Nothing in this subsection (7) shall relieve any activity from participation in waste load allocation proceedings under this article or limit the emergency authority of the division pursuant to section 25-8-307.

(d) This subsection (7) is intended to restate and clarify existing law and to provide a procedure for coordination between state agencies which have responsibilities to implement water quality protection of state waters. It is not intended either to grant additional jurisdiction to any agency or to curtail the jurisdiction of any agency to fulfill its statutory responsibilities, including jurisdiction to maintain a program consistent with the requirements of the federal “Resource Conservation and Recovery Act of 1976”, as amended.

(8) (a) The commission may adopt rules more stringent than corresponding enforceable federal requirements only if it is demonstrated at a public hearing, and the commission finds, based on sound scientific or technical evidence in the record, that state rules more stringent than the corresponding federal requirements are necessary to protect the public health, beneficial use of water, or the environment of the state. Those findings shall be accompanied by a statement of basis and purpose referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the commission’s conclusion.

(b) The existing policies, rules, and regulations of the commission and division shall be applied in conformance with section 25-8-104 and this section.

Source: **L. 81:** Entire article R&RE, p. 1315, § 1, effective July 1. **L. 85:** (1)(i.5) added and (6) amended, p. 906, §§ 1, 2, effective June 4. **L. 88:** (1)(i) amended and (1)(k) added, p. 1019, § 2, effective July 1. **L. 89:** (7) and (8) added, p. 1172, § 2, effective June 8.

L. 92: IP(7) amended, p. 1970, § 75, effective July 1. **L. 96:** (5) repealed, p. 1260, § 161, effective August 7. **L. 2003:** (1)(l) added, p. 1036, § 8, effective April 17. **L. 2005:** (4) amended, p. 283, § 25, effective August 8. **L. 2006:** (1)(g) amended, p. 1275, § 3, effective May 26; IP(1) amended and (1)(m), (1)(n), (1)(o), and (1)(p) added, p. 1128, § 4, effective July 1. **L. 2008:** (1)(q) added, p. 431, § 2, effective August 5. **L. 2012:** (1)(m) amended, (HB 12-1126), ch. 137, p. 494, § 4, effective August 8.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2003 act enacting subsection (1)(l), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, “The Burden of Maintaining Colorado’s Water Quality”, see 18 Colo. Law. 23 (1989).

Future as well as existing sources must be considered by the commission to fulfill the purpose of the Act to maximize the beneficial uses of water. *Amax, Inc. v. Water Quality Control Comm’n*, 790 P.2d 879 (Colo. App. 1989).

Judicial review of the commission’s regulations which are predominantly policy determinations is limited to considerations of reasonableness. *Amax, Inc. v. Water Quality Control Comm’n*, 790 P.2d 879 (Colo. App. 1989).

The Colorado water quality control commission and the Colorado water quality control division are expressly delegated authority to approve site locations of wastewater treat-

ment facilities. *Barr Lake Vill. Metro. District v. Colo. Water Quality Control Comm’n*, 835 P.2d 613 (Colo. App. 1992).

When mining company entered into settlement agreement with the mined land reclamation division concerning a permit violation, res judicata did not apply because the division did not have the authority to enforce the permit issued by the Water Quality Control Division. *Mid-Continent Res., Inc. v. Looby*, 877 P.2d 1385 (Colo. App. 1994).

The state engineer’s water quality control responsibilities are integrated into the general administration of water quality under the Water Quality Control Act. *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1 (Colo. 1996).

25-8-203. Classification of state waters. (1) The commission may classify state waters.

(2) The types of classes shall be determined by regulations and may be based upon or intended to indicate or describe any relevant characteristic, such as:

(a) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

(b) Whether or not pollution arises from natural sources;

(c) Present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition, or the beneficial uses for which it is to become suitable as a goal;

(d) The character and uses of the land area bordering the water;

(e) The need to protect the quality of the water for beneficial uses such as domestic, agricultural, municipal, and industrial uses, the protection and propagation of fish and wildlife, recreation, drinking water, or such beneficial uses as the commission deems consistent with the policies of section 25-8-102 and the need to minimize negative impacts on water rights;

(f) The type and character of the water, such as surface or subsurface, lake or stream, together with volume, flow, depth, stream gradient, temperature, surface area involved, and daily or seasonal variability of any of such characteristics. Waters in ditches and other man-made conveyance structures shall not be classified, and water quality standards shall not be applied to them but may be utilized for purposes of discharge permits.

(3) The particular class into which any particular segment of state waters is placed shall be determined by regulation.

Source: **L. 81:** Entire article R&RE, p. 1317, § 1, effective July 1. **L. 85:** (2)(e) amended, p. 906, § 3, effective June 4.

Cross references: For circumstances that will result in the repeal of this section, see § 25-8-507.

ANNOTATION

Law reviews. For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "The Emerg-

ing Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

25-8-204. Water quality standards. (1) Water quality standards shall be promulgated by the commission by regulations which describe water characteristics or the extent of specifically identified pollutants for state waters.

(2) Water quality standards may be promulgated with respect to any measurable characteristic of water, including, but not limited to:

- (a) Toxic substances;
- (b) Suspended solids, colloids, and combinations of solids with other suspended substances;
- (c) Bacteria, fecal coliform, fungi, viruses, and other biological constituents and characteristics;
- (d) Dissolved oxygen, and the extent of oxygen demanding substances;
- (e) Phosphates, nitrates, and other dissolved nutrients;
- (f) pH and hydrogen compounds;
- (g) Chlorine, heavy metals, and other chemical constituents;
- (h) Salinity, acidity, and alkalinity;
- (i) Trash, refuse, oil and grease, and other foreign material;
- (j) Taste, odor, color, and turbidity;
- (k) Temperature.

(3) Water quality standards may be promulgated for use in connection with any one or more of the classes of state waters established by the commission pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state water or to all state waters.

(4) In promulgating water quality standards, the commission shall consider:

- (a) The need for standards which regulate specified pollutants;
- (b) Such information as may be available to the commission as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;

(c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;

(d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

- (e) Whether the pollutant arises from natural sources;
- (f) Beneficial uses of water; and
- (g) Such information as may be available to the commission regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms.

(5) In establishing water quality standards using statistical methodologies or in requiring the use of statistical methodologies for permit or enforcement purposes, statistical methodologies used must be based on assumptions that are compatible with the water quality data.

(6) For the purpose of implementing section 303(c)(2)(B) of the federal act, the commission may adopt numerical water quality standards for toxic pollutants listed pursuant to section 307(a)(1) of the federal act for which criteria have been published under section 304(a) of the federal act, and these standards may be applied in accordance with this article to discharges of pollutants to specified portions or segments of surface waters where such pollutants may be discharged or are present in the affected surface waters and could

reasonably be expected to interfere with classified uses. Monitoring requirements for discharges of such pollutants shall be reasonably related to the potential for the presence of such pollutants in the discharge at levels inconsistent with water quality standards and shall be imposed to the maximum extent practical on those responsible for the presence of the pollutants. This subsection (6) does not in any way limit the commission's authority to adopt water quality standards in order to comply with provisions of the federal act.

(7) If, after full application of publicly owned treatment work authority pursuant to section 307(b)(1) of the federal act, stream standards or effluent limitations established pursuant to subsection (6) of this section are exceeded as a result of a discharge from a publicly owned treatment work, the commission, upon request of a publicly owned treatment work, shall conduct a public hearing to investigate the source of pollution causing such exceedance.

Source: **L. 81:** Entire article R&RE, p. 1317, § 1, effective July 1. **L. 85:** (3) amended, p. 907, § 4, effective June 4. **L. 89:** (6) and (7) added, p. 1174, § 3, effective June 8. **L. 96:** (7) amended, p. 1260, § 162, effective August 7.

Cross references: (1) For circumstances that will result in the repeal of this section, see § 25-8-507.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For note, "A Survey of Colorado Water Law", see 47 Den. L.J. 226 (1970). For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

Water quality standards include numerical limits on the concentration of constituents in water and descriptions of water characteristics which are sufficient to protect the particular use classifications. *Amax, Inc., v. Water Quality Control Comm'n*, 790 P.2d 879 (Colo. App. 1989).

25-8-205. Control regulations. (1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;

(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306 (b) (1) (A) of the federal act;

(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works;

(e) To describe requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids to protect public health and to prevent the discharge of pollutants into state waters, except as authorized by permit. The commission requirements described pursuant to this paragraph (e) shall be no more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Fees shall be established as set forth in section 30-20-110.5, C.R.S., and the commission shall have no authority to levy additional or duplicative fees.

(f) To describe requirements, prohibitions, standards, and concentration limitations on the reuse of reclaimed domestic wastewater for purposes other than drinking that will protect public health and encourage the reuse of reclaimed domestic wastewater.

(2) In the formulation of each control regulation, the commission shall consider the following:

(a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;

(b) The need for regulations that specify treatment requirements for various types of discharges;

(c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;

(d) Control requirements promulgated by agencies of the federal government;

(e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;

(f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the oil and gas conservation commission, the state board of health, and other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations that require agricultural nonpoint source dischargers to utilize treatment techniques that require additional consumptive or evaporative use which would cause material injury to water rights. With regard to nonpoint source water pollution control related to agricultural practices, the commission and division shall pursue incentive, grant, and cooperative programs in preference to the promulgation of control regulations. When interested water conservation districts, water conservancy districts, and conservation districts recommend nonpoint source control activities related to agricultural practices to the division and commission, the division and commission, after consultation with such districts, shall give substantial weight to the recommendations of such districts into the approved program. Except as provided by section 25-8-205.5, control regulations related to agricultural practices shall be promulgated only if incentive, grant, and cooperative programs are determined by the commission to be inadequate and such regulations are necessary to meet state law or the federal act. This subsection (5) does not allocate wasteloads or relieve any source from participation in wasteload allocations determined necessary under any duly promulgated regulations established by the water quality control commission under this section.

(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic, environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5).

Source: **L. 81:** Entire article R&RE, p. 1318, § 1, effective July 1. **L. 88:** (5) amended, p. 1022, § 1, effective April 6. **L. 90:** (5) amended, p. 1330, § 3, effective July 1. **L. 93:** (1)(e) added, p. 1578, § 2, effective July 1. **L. 2000:** (1)(f) added, p. 252, § 2, effective March 31. **L. 2002:** (5) amended, p. 517, § 11, effective July 1.

ANNOTATION

Law reviews. For article, “Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law”, see 58 Den. L.J. 715 (1981). For article, “The Emerging Relationship Between Environmental Regulations and Colorado Water Law”, see 53 U. Colo. L. Rev. 597 (1982). For article, “What is a ‘Material Injury’ to a Water Right?”, see 19 Colo. Law. 1333 (1990).

Water quality standards may be revised pursuant to this section in addition to § 25-8-207. This section, unlike § 25-8-207, does not require findings of inconsistency. Bd. of County Comm’rs v. Water Quality Control Comm’n, 809 P.2d 1107 (Colo. App. 1991).

25-8-205.5. Pollution from agricultural chemicals - rules. (1) **Legislative declaration.** The general assembly hereby declares that the public policy of this state is to protect groundwater and the environment from impairment or degradation due to the improper use of agricultural chemicals while allowing for their proper and correct use, in particular, to provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in groundwater and to provide for the education and training of agricultural chemical applicators and the general public regarding groundwater protection, agricultural chemical use, and the use of other agricultural methods.

(2) **Definition.** For the purpose of this section only, “groundwater” means any sub-surface water in a zone of saturation which is or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas.

(3) **Powers and duties of the commissioner of agriculture.** (a) The commissioner of agriculture shall identify agricultural management areas in the state.

(b) The commissioner shall promulgate rules for the following:

(I) Facilities for the storage of pesticides in bulk;

(II) Mixing and loading areas where any of the following are handled in any one-year period:

(A) Five hundred gallons or more, in the aggregate, of formulated product or combination of formulated products of liquid pesticides;

(B) Three thousand pounds or more, in the aggregate, of formulated product or combination of formulated products of dry pesticides;

(C) One thousand five hundred pounds or more, in the aggregate, of active ingredients of pesticides;

(III) Storage facilities where any liquid fertilizer is stored in any container or series of interconnected containers having a capacity greater than five thousand gallons;

(IV) Storage facilities where fifty-five thousand pounds or more, in the aggregate, of formulated product or combination of formulated products of bulk dry fertilizer are stored;

(V) Mixing and loading areas at any storage facility subject to the provisions of this section.

(b.1) No rule promulgated pursuant to paragraph (b) of this subsection (3) shall apply to any field mixing and loading of agricultural chemicals.

(b.2) Every rule promulgated pursuant to paragraph (b) of this subsection (3) shall include a three-year phase-in period after promulgation of the rule for persons subject to the rule.

(b.3) Pursuant to paragraph (h) of this subsection (3), the commissioner is authorized to enforce rules promulgated pursuant to paragraph (b) of this subsection (3).

(c) The commissioner may, in his discretion, develop best management practices for any other activity relating to the use of any agricultural chemical.

(d) If the commissioner determines that the use of best management practices is ineffective or insufficient to prevent or mitigate the pollution of groundwater, the commis-

sioner may require, by rule and regulation adopted pursuant to article 4 of title 24, C.R.S., the use of agricultural management plans.

(e) The commissioner is authorized to adopt, pursuant to article 4 of title 24, C.R.S., any other reasonable rules and regulations for the administration and implementation of this section.

(f) The commissioner is authorized to enter into an agreement with the Colorado cooperative extension service to provide training and education as specified in subsection (4) of this section.

(g) The commissioner shall perform the monitoring specified in subsection (5) of this section. The commissioner shall enter into an agreement with the department of public health and environment to assist in the identification of agricultural management areas and to perform analysis, interpretation, and reporting of groundwater monitoring data supplied by the commissioner.

(h) With respect to any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) only, the commissioner shall have the following investigation and enforcement powers:

(I) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(A) To all areas, buildings, yards, warehouses, and storage facilities in which any agricultural chemicals are kept, stored, handled, processed, or transported; and

(B) To all records, if any, required to be kept and to make copies of such records.

(II) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(III) Any complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on any such person subject to a rule or regulation adopted pursuant to paragraph (b) of this subsection (3).

(IV) (A) Whenever the commissioner has reasonable cause to believe that a violation of any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any such rule or regulation. Such cease-and-desist order shall set forth the rule or regulation alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

(B) At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not such violation has occurred. Such hearing shall be concluded in not more than ten days after such request, excluding Saturdays, Sundays, and any legal holidays, and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(C) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.

(D) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(E) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

(V) Whenever the commissioner possesses evidence satisfactory to him that any person has engaged in or is about to engage in any act or practice constituting a violation of any

rule or regulation adopted pursuant to paragraph (b) of this subsection (3), he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with the rule or regulation. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(VI) (A) Any person who violates any rule or regulation adopted pursuant to paragraph (b) of this subsection (3) is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation. Each day the violation occurs shall constitute a separate violation.

(B) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(C) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(D) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

(4) **Training and education.** The Colorado cooperative extension service, acting in cooperation with the commissioner of agriculture and pursuant to any contract authorized in paragraph (f) of subsection (3) of this section, shall disseminate information and provide training regarding agricultural management areas, best management practices, and agricultural management plans.

(5) **Monitoring.** Pursuant to the commissioner's duties as set forth in any contract authorized in paragraph (g) of subsection (3) of this section, the commissioner shall identify agricultural management areas as defined in section 25-8-103 (1.1) and shall conduct monitoring programs to determine:

(a) The presence of any agricultural chemical in groundwater at a level which meets or exceeds any water quality standard applicable under this article or which has a reasonable likelihood of meeting or exceeding any such standard; or

(b) The likelihood that an agricultural chemical will enter the groundwater, based upon the existence of sufficient, valid scientific data which reasonably predict the behavior of a particular agricultural chemical in the soil.

(6) **Reporting of monitoring results - regulation.** (a) If the division determines that any agricultural chemical exists at a level which meets or exceeds any water quality standard or which has a reasonable likelihood of meeting or exceeding any such standard, it shall so notify the commissioner of agriculture and shall provide him with any written reports it deems necessary or desirable to define the extent of such occurrence. When the commissioner has been notified of such an occurrence related to an agricultural chemical which is registered as a pesticide, he shall take reasonable steps to notify the registrant of any such pesticide. When the commissioner has been notified of such an occurrence related to any other agricultural chemical, he shall take reasonable steps to notify the distributors of such chemical in the area affected by such occurrence.

(b) Unless such occurrence is determined by the commissioner of agriculture and the water quality control commission to require a control regulation as set forth in paragraph (c) of this subsection (6), the commissioner of agriculture may promulgate rules and regulations regarding the use of any agricultural chemical giving rise to the occurrence.

(c) If continued monitoring reveals that rules and regulations adopted by the commissioner pursuant to this section are not preventing or mitigating the presence of the subject agricultural chemical to the extent necessary, the commissioner of agriculture and the water quality control commission shall confer and determine whether an amendment to such rules and regulations may be sufficient to prevent or mitigate the occurrence to the extent necessary. Only if the commissioner of agriculture and the water quality control commission determine that such rules and regulations have been or will be insufficient to meet the requirements of state law or the federal act shall the occurrence be referred to the water quality control commission for the promulgation of a control regulation. In the event that

the commissioner of agriculture and the water quality control commission fail to agree on such a determination, the authority of the water quality control commission shall be final.

(7) **Promulgation of control regulations.** (a) With respect to the regulation of pollutants from agricultural chemicals, the water quality control commission is authorized to promulgate control regulations only when:

(I) Any occurrence has been referred to the commission pursuant to subsection (6) of this section; or

(II) Incentive, grant, and cooperative programs are determined by the water quality control commission to be inadequate as set forth in section 25-8-205 (5).

(b) Any such control regulations shall be promulgated in consultation with the commissioner of agriculture.

(8) **Groundwater protection fund - transfer of moneys to the plant health, pest control, and environmental protection cash fund - fees.** The fees as specified and collected pursuant to sections 35-9-118 (3) (a) and 35-12-106 (1), C.R.S., and any civil fines imposed pursuant to subparagraph (VI) of paragraph (h) of subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the same to the plant health, pest control, and environmental protection cash fund created in section 35-1-106.3, C.R.S. Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the groundwater protection fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

(9) Repealed.

Source: **L. 90:** Entire section added, p. 1330, § 4, effective July 1. **L. 91:** (8) amended, p. 1918, § 41, effective June 1. **L. 93:** (3)(b) amended and (3)(b.1), (3)(b.2), and (3)(b.3) added, p. 996, § 1, effective June 2. **L. 94:** (3)(g) amended, p. 2789, § 519, effective July 1. **L. 96:** (9) repealed, p. 1260, § 163, effective August 7. **L. 2002:** (3)(g) and 1P(5) amended, p. 1101, § 1, effective June 3. **L. 2009:** (8) amended, (HB 09-1249), ch. 87, p. 319, § 15, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3)(g), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-8-206. Prior acts validated. (1) All acts, hearings, orders, rules, regulations, and standards adopted by the water pollution control commission as constituted and empowered by the laws of this state prior to July 6, 1973, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

(2) All acts, hearings, orders, rules, regulations, and standards adopted by the water quality control commission as constituted and empowered by the laws of this state prior to July 1, 1981, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

(3) All acts, orders, and rules adopted by the state board of health under the authority of part 2 of article 1.5 of this title, part 1 of article 10 of this title, and section 30-20-110.5, C.R.S., prior to July 1, 2006, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with said provisions, be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of such provisions of law. No provision of this article shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

Source: L. 81: Entire article R&RE, p. 1320, § 1, effective July 1. **L. 2006:** (3) added, p. 1129, § 5, effective July 1.

25-8-207. Review of classifications and standards. (1) The commission, upon petition or upon its own motion, shall review, pursuant to section 24-4-103, C.R.S., any classification, standard, designation, or regulation adopted pursuant to sections 25-8-203, 25-8-204, and 25-8-209 for consistency with this subsection (1) and consistency with the policies set forth in sections 25-8-102 and 25-8-104. Rule-making hearings on petitions filed under this subsection (1) shall be held expeditiously with respect to such classifications, standards, designations, or regulations adopted prior to July 1, 1992. The commission shall make a finding of inconsistency where:

(a) Use classifications and water quality standards for aquatic life are more stringent than is necessary to protect fish life, shellfish life, and wildlife in water body segments which are reasonably capable of sustaining such fish life, shellfish life, and wildlife from the standpoint of physical, streambed, flow, habitat, climatic, and other pertinent characteristics;

(b) Any use classifications or water quality standards were adopted based upon material assumptions that were in error or no longer apply; or

(c) Any designation does not conform with the provisions of section 25-8-209.

(2) Where the commission determines that an inconsistency exists, it shall declare the inconsistent classifications or standards void ab initio and shall simultaneously establish appropriate classifications or standards.

Source: L. 85: Entire section added, p. 907, § 5, effective June 4. **L. 92:** IP(1) amended and (1)(c) added, p. 1299, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 1992 act amending this section, see section 1 of chapter 188, Session Laws of Colorado 1992.

ANNOTATION

Water quality standards may be revised pursuant to § 25-8-204 in addition to this section. Section 25-8-204, unlike this section,

does not require findings of inconsistency. *Bd. of County Comm'rs v. Water Quality Control Comm'n*, 809 P.2d 1107 (Colo. App. 1991).

25-8-208. Emergency rule-making. In addition to all other powers of the commission, the commission, pursuant to section 24-4-103 (6), C.R.S., shall have the authority to conduct emergency rule-making for the purpose of adopting an interim standard to apply for a specified period of time in place of an existing water quality standard. The commission shall hold emergency rule-making hearings to consider the adoption of such an interim standard whenever it finds, in its discretion, that the petitioner requesting such rule-making has established exigent circumstances which warrant the emergency action.

Source: L. 85: Entire section added, p. 907, § 5, effective June 4.

25-8-209. Water quality designations. (1) The commission may adopt the following water quality designations:

(a) Outstanding waters;

(b) Use-protected waters.

(2) The commission shall promulgate criteria governing the designations provided in subsection (1) of this section. Such criteria shall be consistent with the provisions of this section and sections 25-8-102 and 25-8-104.

(3) (a) **Outstanding waters.** Outstanding waters shall be maintained and protected at their existing quality. Segments shall not be designated as outstanding waters unless the commission determines that:

(I) The quality of the waters is better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water based upon water quality standards

for indicator parameters identified by the commission in the criteria promulgated under the provisions of subsection (2) of this section;

(II) The waters constitute an outstanding natural resource; and

(III) Protection of such resource requires protection in addition to that provided by the combination of water quality classifications and standards and the protection afforded reviewable waters under the provisions of subsection (5) of this section.

(b) All waters that were designated as high quality 1 by the commission prior to July 1, 1992, are hereby designated as outstanding waters.

(4) **Use-protected waters.** Use-protected waters shall be those waters with existing quality that is not better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The quality of waters designated as use-protected may be altered if that quality provided for in applicable water quality classifications and standards is maintained.

(5) **Reviewable waters.** Waters that are not designated as outstanding waters or use-protected waters shall be referred to as reviewable waters. The existing quality of reviewable waters shall be maintained and protected unless it is determined that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located, which shall include all areas directly impacted by the proposed activity. Notwithstanding any other provisions of this subsection (5), that quality which is provided for in applicable water quality classifications and standards shall be maintained for reviewable waters.

(6) Water quality designations and reviewable waters provisions shall not be utilized by the commission or by any other state, federal, or local agency in a manner that is contrary to the provisions of section 25-8-104.

Source: L. 92: Entire section added, p. 1299, § 4, effective July 1.

Cross references: For the legislative declaration contained in the 1992 act enacting this section, see section 1 of chapter 188, Session Laws of Colorado 1992.

PART 3

ADMINISTRATION

25-8-301. Administration of water quality control programs. (1) The department of public health and environment shall administer and enforce the water quality control programs adopted by the commission.

(2) In furtherance of such responsibility of the department, the executive director shall maintain within the division a separate water quality control agency.

(3) The director of said water quality control agency shall be employed pursuant to section 13 of article XII of the state constitution. He or she shall be a licensed professional engineer or have a graduate degree in engineering or other specialty dealing with the problems of pollution and shall also have appropriate practical and administrative experience related to such problems. Such person shall not be the administrator employed pursuant to section 25-8-202 (4).

(4) The division shall act as staff to the commission in commission proceedings other than adjudicatory or appellate proceedings in which the division is a party.

Source: L. 81: Entire article R&RE, p. 1320, § 1, effective July 1. **L. 94:** (1) amended, p. 2789, § 520, effective July 1. **L. 2004:** (3) amended, p. 1312, § 59, effective May 28.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

25-8-302. Duties of division. (1) The division shall:

- (a) Carry out the enforcement provisions of this article, including the seeking of criminal prosecution of violations and such other judicial relief as may be appropriate;
- (b) Administer the permit system as provided in part 5 of this article;
- (c) Monitor waste discharges and the state waters as provided in section 25-8-303;
- (d) Submit an annual report to the commission as provided in section 25-8-305;
- (e) Maintain a mailing list of persons requesting notice of actions by the division or by the commission and notify persons on the list of such actions, for which service the division shall assess a fee to cover the costs thereof;
- (f) Review and certify, conditionally certify, or deny requests for certifications under the provisions of section 401 of the federal act and this article, known as "401 certificates". Conditions attached to the division's certification shall only implement rules which the commission has made applicable to 401 certifications. General or nationwide permits under section 404 of the federal act shall be certified for use in Colorado without the imposition of any additional state conditions. Appeals by an affected entity of a final 401 certification decision of the division shall be heard in accordance with section 24-4-105, C.R.S., of the "State Administrative Procedure Act".
- (g) Perform such other duties as may lawfully be assigned to it.

Source: L. 81: Entire article R&RE, p. 1321, § 1, effective July 1. L. 82: (1)(b) amended, p. 625, § 29, effective April 2. L. 85: (1)(f) amended, p. 908, § 6, effective June 4.

Editor's note: Section 17 of chapter 218, Session Laws of Colorado 1985, provides that all conditions which the water quality control division has certified to the army corps of engineers, prior to June 4, 1985, for use of general or nationwide permits under section 404 of the federal "Clean Water Act", are declared to be regulations which are hereby repealed. Said section further provides that the division shall inform the corps of engineers that all such conditions have been repealed and withdrawn, and that general and nationwide 404 permits, which are otherwise applicable in Colorado, do not include the state conditions.

25-8-303. Monitoring. (1) The division shall take such samplings as may be necessary to enable it to determine the quality of every reasonably accessible segment of state waters, wherever practical. In sampling such waters the division shall give consideration to characteristics such as those listed in section 25-8-204 (2), but if pollution is suspected the sampling shall not be limited or restricted by reason of the fact that no water quality standard has been promulgated for the suspected type of pollution.

(2) As to every segment of state waters so sampled, the division shall endeavor to determine the nature and amount of each pollutant, whether a new or different water quality standard is needed, the source of each pollutant, the place where each such pollutant enters the water, and the names and addresses of each person responsible for or in control of each entry.

- (3) As to each separate pollution source identified, the division shall:
 - (a) Determine what control regulations are applicable, if any;
 - (b) Determine whether the discharge is covered by a permit and whether or not any condition of the permit is being violated;
 - (c) Determine what further control measures with respect to such pollution source are practicable.
- (4) The division shall inform the commission of any unusual problem which creates difficulties in abating pollution.

Source: L. 81: Entire article R&RE, p. 1321, § 1, effective July 1.

25-8-304. Monitoring, recording, and reporting. (1) The owner or operator of any facility, process, or activity from which a discharge of pollutants is made into state waters or into any municipal domestic wastewater treatment works shall, according to standard procedures and methods prescribed by the division:

- (a) Establish and maintain records;
- (b) Make reports;
- (c) Install, calibrate, use, and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods;
- (d) Sample discharges;
- (e) Provide additional reasonably available information relating to discharges into domestic wastewater treatment works.

Source: L. 81: Entire article R&RE, p. 1322, § 1, effective July 1.

25-8-305. Annual report. On or before October 1 of each year, the division through the executive director shall report to the commission on the effectiveness of the provisions of this article and shall include in such report such recommendations as it may have with respect to any regulatory or legislative changes that may be needed or desired. Such report shall include the then current information that has been obtained pursuant to section 25-8-303 and information concerning the status of the division's implementation of the discharge permit program established in part 5 of this article. The report shall be filed with the house agriculture, livestock, and natural resources committee and the senate agriculture, natural resources, and energy committee, or any successor committees.

Source: L. 81: Entire article R&RE, p. 1322, § 1, effective July 1. **L. 2000:** Entire section amended, p. 191, § 2, effective March 23. **L. 2008:** Entire section amended, p. 1907, § 103, effective August 5.

25-8-306. Authority to enter and inspect premises and records. (1) The division has the power, upon presentation of proper credentials, to enter and inspect at any reasonable time and in a reasonable manner any property, premise, or place for the purpose of investigating any actual, suspected, or potential source of water pollution, or ascertaining compliance or noncompliance with any control regulation or any order promulgated under this article. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.

(2) In the making of such inspections, investigations, and determinations, the division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the department of agriculture. The division may also request assistance from any other state or local agency or institution.

(3) If such entry or inspection is denied or not consented to, the division is empowered to and shall obtain, from the district or county court for the judicial district or county in which such property, premise, or place is located, a warrant to enter and inspect any such property, premise, or place prior to entry and inspection. The district and county courts of the state of Colorado are empowered to issue such warrants upon a proper showing of the need for such entry and inspection.

Source: L. 81: Entire article R&RE, p. 1322, § 1, effective July 1.

25-8-307. Emergencies. Whenever the division determines, after investigation, that any person is discharging or causing to be discharged or is about to discharge into any state waters, directly or indirectly, any pollutant which in the opinion of the division constitutes a clear, present, and immediate danger to the health or livelihood of members of the public, the division shall issue its written order to said person that he must immediately cease or prevent the discharge of such pollutant into such waters and thereupon such person shall immediately discontinue such discharge. Concurrently with the issuance of such order, the division may seek a restraining order or injunction pursuant to section 25-8-607.

Source: **L. 81:** Entire article R&RE, p. 1322, § 1, effective July 1.

25-8-308. Additional authority and duties of division - fee and penalties. (1) In addition to the authority specified elsewhere in this article, the division has the power to:

(a) Conduct or cause to be conducted studies, research, and demonstrations with respect to water pollution and the control, abatement, or prevention thereof, as requested by the commission;

(b) Furnish technical advice and services relating to water pollution problems and control techniques;

(c) Designate one or more persons or agencies in any area of the state as a water quality control authority, as agent of the division, to exercise and perform such powers and duties of the division as may be specified in such designation;

(d) Administer, in compliance with regulations and the priority ranking adopted by the commission, loans and grants from the federal government and from other public sources;

(e) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the federal government, other states, and interstate agencies, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies of the commission; but any such agreement involving, authorizing, or requiring compliance in this state with any standard or regulation shall not be effective unless or until the commission has held a hearing with respect to such standard or regulation and has adopted the same in compliance with this article;

(f) Certify, when requested, the existence of any facility, land, building, machinery, equipment, treatment works, or sewage or disposal systems as have been acquired, constructed, or installed in conformity with the purposes of this article;

(g) Take such action in accordance with rules and orders promulgated by the commission as may be necessary to prevent, abate, and control pollution;

(h) Implement a program, in accordance with rules and orders of the commission, for the reuse of reclaimed domestic wastewater for purposes other than drinking.

(2) All fees collected by the division shall be transmitted to the state treasurer for deposit to the credit of the water quality control fund created by section 25-8-502 and shall be subject to appropriation by the general assembly. Except as provided in section 25-8-608, all fines and penalties for violations of this article shall be transmitted to the state treasurer for deposit to the credit of the general fund.

Source: **L. 81:** Entire article R&RE, p. 1323, § 1, effective July 1. **L. 83:** (2) amended, p. 1079, § 3, effective July 1. **L. 2000:** (1)(h) added, p. 252, § 3, effective March 31. **L. 2006:** (2) amended, p. 1273, § 1, effective May 26.

25-8-309. Study of classification and standard issues. (Repealed)

Source: **L. 2002:** Entire section added, p. 1656, § 1, effective June 7. **L. 2005:** Entire section repealed, p. 284, § 26, effective August 8.

25-8-310. Education program - storm water. (1) The division may develop education programs for use by state and local governmental entities.

(2) The educational programs developed in accordance with subsection (1) of this section shall be designed to inform the public about storm water quality problems resulting from:

(a) The washing of motor vehicles on nonpermeable surfaces and the advantages of washing motor vehicles at car wash facilities that comply with recognized industry water conservation and water quality control standards;

(b) The disposal of leaves, litter, pet wastes, and debris in street gutters and storm drains;

(c) The disposal of used oil, antifreeze, paints, and other household chemicals in storm sewers or drains; and

(d) Soil erosion on property due to lack of planting of ground cover and stabilization of erosion-prone areas.

(3) The division may obtain gifts, grants, and donations to fund the costs of developing the education programs described in subsection (1) of this section. If the funding necessary to comply with said subsection (1) is not obtained, the division shall not be required to comply with said subsection (1) until such funding is obtained.

Source: L. 2007: Entire section added, p. 1252, § 2, effective August 3.

PART 4

PROCEDURES

25-8-401. Authority and procedures for hearings. (1) The commission or the division may hold public hearings, which shall be held pursuant to and in conformity with article 4 of title 24, C.R.S., and with this article.

(2) The commission may adopt such rules and regulations governing procedures and hearings before the commission or division as may be necessary to assure that such procedures and hearings will be fair and impartial. Such rules and regulations shall be consistent with the pertinent provisions of article 4 of title 24, C.R.S.

(3) In all proceedings before the commission or the division with respect to any alleged violation of any control regulation, permit, or order, the burden of proof shall be upon the division.

(4) Except for classification and water quality standard-setting proceedings, the commission or the department of public health and environment may designate a hearing officer or an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of public health and environment. When appropriate, the hearing officer may be an employee of the department of public health and environment or a member of or the administrator of the commission.

(5) (a) Any request for a variance with respect to a permit condition shall be made within thirty days after issuance by the division of the final permit. Requests for variances from any other application of a control regulation shall be made within thirty days of legal notice by the division of the regulation or prior to operation of any new or expanded facility which would be affected by the control regulations. A variance may also be sought within thirty days of facts becoming available which had not been reasonably available to the applicant prior to that time or upon application to the commission for good cause shown.

(b) The division shall approve or disapprove any variance request and issue its decision within ninety days after receipt of the variance request. Notice of a variance request shall be sent to anyone who has requested such notice and shall be included on the next commission agenda. In the case of a variance being granted prior to the final permit being issued, the division shall publish for public notice and comment the entire draft permit with the variance incorporated therein. In the case of a variance granted after a final permit has been issued, the division shall publish for public notice and comment the variance as a proposed modification to the permit. Within forty-five days of issuance of a variance decision by the division which does not involve discharge permit conditions required by the federal act, the commission on its own motion or on the motion of the division or any interested person may decide to review the variance decision. In such event, a hearing pursuant to section 24-4-105, C.R.S., shall be held, and the commission may affirm, modify, or deny the decision. Variance decisions of the division which involve discharge permit conditions required by the federal act shall be subject to review by an administrative law judge of the department of personnel pursuant to section 24-4-105, C.R.S., as part of any challenge to the conditions of a final discharge permit issued by the division.

Source: L. 81: Entire article R&RE, p. 1323, § 1, effective July 1. **L. 85:** (5)(b) amended, p. 908, § 7, effective June 4. **L. 87:** (4) and (5)(b) amended, p. 972, § 85, effective March 13. **L. 94:** (4) amended, p. 2789, § 521, effective July 1. **L. 95:** (5)(b) amended, p. 663, § 97, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1995 act amending this section, see section 112 of chapter 167, Session Laws of Colorado 1995.

ANNOTATION

Applied in Colorado Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982).

25-8-402. Procedures to be followed in classifying state waters and setting standards and control regulations. (1) Prior to the classification of state waters and promulgating any water quality standard or any control regulation authorized in this article, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S., but such notice shall be given at least sixty days prior to the hearing and shall include each proposed standard or regulation.

(2) Any person desiring to propose a standard or regulation differing from the standard or regulation proposed by the commission shall file such other written proposal with the commission not less than twenty days prior to the hearing, and, when on file, such proposal shall be open for public inspection.

(3) Witnesses at the hearing shall be subject to cross-examination by or on behalf of the commission, by or on behalf of persons who have proposed standards or regulations pursuant to subsection (2) of this section, and by or on behalf of persons who have obtained party status to the proceeding.

(4) Standards or regulations promulgated pursuant to this section shall take effect as provided in section 24-4-103 (5), C.R.S.

(5) Any emergency rule-making proceedings by the commission shall be conducted pursuant to section 24-4-103 (6), C.R.S., and not pursuant to this section. Any rule adopted pursuant to such proceedings may be effective for a specified period longer than one hundred twenty days, but not later than one year, if the commission determines that such longer period is necessary to complete rule-making pursuant to section 24-4-103, C.R.S., to reconsider the emergency rule.

Source: **L. 81:** Entire article R&RE, p. 1324, § 1, effective July 1. **L. 85:** (5) added, p. 908, § 8, effective June 4. **L. 88:** (1) amended, p. 1020, § 3, effective July 1. **L. 2010:** (5) amended, (HB 10-1346), ch. 137, p. 461, § 2, effective April 15.

25-8-403. Administrative reconsideration. During the time permitted for seeking judicial review of any final order or determination of the commission or division, any party directly affected by such order or determination may apply to the commission or division, as appropriate, for a hearing or rehearing with respect to, or reconsideration of, such order or determination. The determination by the commission or division of whether to grant or deny the application for a hearing, rehearing, or reconsideration shall be made within ten days after receipt by the commission or division of such application. Such determination by the commission may be made by telephone or mail or at a meeting, but in any event shall be confirmed at the next meeting of the commission. If the application for a hearing, rehearing, or reconsideration is granted, the order or determination to which such application pertains shall not be considered final for purposes of judicial review, and the commission or the division may affirm, reverse, or modify, in whole or in part, the pertinent order or determination; thereafter such order or determination shall be final and not subject to stay or reconsideration under this section.

Source: **L. 81:** Entire article R&RE, p. 1325, § 1, effective July 1.

ANNOTATION

Applied in Colorado Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982).

25-8-404. Judicial review. (1) Any final rule, order, or determination by the division or the commission, including but not limited to classification of state waters, approval of areawide waste treatment management plans, water quality standards, site approvals, permits, control regulations, enforcement orders, cease-and-desist orders, and clean-up orders, shall be subject to judicial review in accordance with the provisions of this article and article 4 of title 24, C.R.S. All regulations, orders, and determinations of the commission or division shall be adopted, promulgated, or issued in accordance with the provisions of said article 4 of title 24.

(2) Any proceeding for judicial review of any final order or determination of the commission or division shall be filed in the district court for the district in which the pollution source affected is located.

(3) Any proceeding for judicial review of any final rule, order, or determination of the commission or division shall be filed within thirty days after said rule, order, or determination has become final. Rule-making determinations shall become final in accordance with the "State Administrative Procedure Act". Quasi-judicial determinations shall become final upon issuance of such determinations to those parties to the proceedings. The period for filing the action for judicial review shall be stayed while any application for a hearing, rehearing, or reconsideration is pending pursuant to section 25-8-403, and the period during which any such application is pending shall extend the time for filing a proceeding for judicial review an equal length of time.

(4) (a) Except with respect to emergency orders issued pursuant to section 25-8-307, any person to whom a cease-and-desist order, clean-up order, or other order has been issued by the division or commission, or against whom an adverse determination has been made, may petition the district court for a stay of the effectiveness of such order or determination. Such petition shall be filed in the district court in which the pollution source affected is located.

(b) Such petitions may be filed prior to any such order or determination becoming final or during any period in which such order or determination is under judicial review.

(c) Such stay shall be granted by the court if there is probable cause to believe that refusal to grant a stay will cause serious harm to the affected person or any other person, and:

(I) That the alleged violation or activity to which the order or determination pertains will not continue, or if it does continue, any harmful effects on state waters will be alleviated promptly after the cessation of the violation or activity; or

(II) That the refusal to grant a stay would be without sufficient corresponding public benefit.

(5) Any party may move the court to remand the case to the division or the commission in the interests of justice, for the purpose of adducing additional specified and material evidence, and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.

(6) If the court does not stay the effectiveness of an order of the commission or division, the court shall enforce compliance with that order by issuing a temporary restraining order or injunction at the request of the commission or division.

Source: L. 81: Entire article R&RE, p. 1325, § 1, effective July 1.

ANNOTATION

Formal party status is not prerequisite to right of judicial review under § 24-4-106 (4), and by analogy, under subsections (1) and (2) so

long as the concerned plaintiff can show that it is adversely affected or aggrieved by any agency action. *Town of Frederick v. Colo. Water Qual-*

ity Control Comm'n, 628 P.2d 129 (Colo. App. 1980).

Where there is no final order, judicial review is not available under this section. Nat'l Wildlife Fed'n v. Cotter Corp., 665 P.2d 598 (Colo. 1983).

The standard for review of the constitutionality of administrative regulations is beyond a reasonable doubt and not clear and convincing evidence. Stone Envir. Eng. Serv. v. State Dept. of Health, 762 P.2d 737 (Colo. App. 1988).

The doctrine of separation of powers prohibits the court from ordering an administrative agency to perform a certain function. Stone Envir. Eng. Serv. v. State Dept. of Health, 762 P.2d 737 (Colo. App. 1988).

Applied in Colo. Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982); Parrish v. Water Quality Control Div., 934 P.2d 913 (Colo. App. 1997).

25-8-405. Samples - secret processes. (1) If samples of water or water pollutants are taken for analysis, the person believed to be responsible for any suspected violation or who is or will be subject to any remedial action shall be notified immediately of the collection of the samples and a representative portion of the sample shall be furnished immediately upon request to said person. A representative portion of such sample shall be furnished to any suspected violator whenever any remedial action is taken with respect thereto by the division. A duplicate of every analytical report pertaining to such sample shall also be furnished as soon as practicable to such person. Any request for a sample split shall be made within six months of the notification of the collection of samples.

(2) Any information relating to any secret process, method of manufacture or production, or sales or marketing data which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the commission or the division, but shall be kept confidential. Any person seeking to invoke the protection of this subsection (2) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

Source: L. 81: Entire article R&RE, p. 1326, § 1, effective July 1. **L. 88:** (1) amended, p. 1020, § 4, effective July 1.

25-8-406. Administrative stays - renewal permits. If a permittee requests a hearing pursuant to section 24-4-105, C.R.S., challenging final action by the division in regard to any terms and conditions of a renewal permit, said permit shall become effective in its entirety unless a stay is granted pursuant to this section. The division may stay any contested terms and conditions of a permit for good cause shown. The division shall act on any stay request within ten days of receipt thereof. Any stay granted under this section shall expire when a final determination is made after the conclusion of the hearing held pursuant to section 24-4-105, C.R.S. During the period of any such stay, the corresponding terms and conditions of the prior permit shall be in effect. Action by the division granting or denying a stay pursuant to this section shall be final agency action subject to de novo determination pursuant to section 25-8-404.

Source: L. 85: Entire section added, p. 909, § 9, effective June 4.

PART 5

PERMIT SYSTEM

Editor's note: Section 17 of chapter 218, Session Laws of Colorado 1985, provides that all conditions which the water quality control division has certified to the Army Corps of Engineers, prior to June 4, 1985, for use of general or nationwide permits under section 404 of the federal "Clean Water Act", are declared to be regulations which are hereby repealed. Said section further provides that the division shall inform the corps of engineers that all such conditions have been repealed and withdrawn and that general and nationwide 404 permits, which are otherwise applicable in Colorado, do not include the state conditions.

Law reviews: For article, "Land and Natural Resources", which discusses recent Tenth Circuit decisions dealing with water quality control, see 63 Den. U.L. Rev. 417 (1986); for article, "Section 319 and Hydrologic Modifications: Another Assault - Parts I and II", see 19 Colo. Law. 2251 and 2445 (1990); for article, "The Impact of § 319: A Rebuttal", see 20 Colo. Law. 67 (1991).

25-8-501. Permits required for discharge of pollutants - administration. (1) No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article. No person covered by this article shall use or dispose of biosolids, except as authorized by regulations that shall not be more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Existing authorization for the use or disposal of biosolids shall continue until permits are issued in accordance with this part 5. Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this article, and each permit issued pursuant to the federal act shall be deemed to be a temporary permit issued under this article which shall expire upon expiration of the federal permit.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into state waters and for the use and disposal of biosolids. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the commission. Until modified pursuant to this article, final permits shall be governed by their existing limitations.

(3) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of pollutants, which regulations shall include, but not be limited to, procedures for the issuance of a variance pursuant to section 25-8-503 (4), and shall also require that, in appropriate circumstances, the effluent limitations contained in a permit shall be adjusted to account for the pollutants contained in the discharger's intake water. Such regulations shall be consistent with the provisions of this article and with federal requirements and shall be in furtherance of the policy contained in section 25-8-102. Such regulations shall establish a permit process that allows permit conditions to remain in effect as long as circumstances dictate those conditions. In order to comply with federal requirements, but not to lessen compliance with federal standards, such permit process may require periodic renewal of permits even where minimal or no changes in the permit conditions are necessary. Renewal shall be required where more than minimal changes in permit conditions are necessary. The regulations may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

- (a) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;
- (b) Location and quantity and quality characteristics of the permitted discharge;
- (c) Effluent limitations and conditions for treatment prior to discharge to a publicly owned treatment works;
- (d) Monitoring as well as record-keeping and reporting requirements consistent with standard procedures and methods established by the division;
- (e) Schedules of compliance;
- (f) Procedures to be followed by division personnel for entering and inspecting premises;
- (g) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of a waste discharge;
- (h) Restrictions on transfers of the permit;
- (i) Procedures to be followed in the event of expansion or modification of the process, facility, or activity from which the discharge occurs or the quality, quantity, or frequency of the discharge;
- (j) Duration of the permit and renewal procedures using a risk-based approach that limits the amount of work required to renew permits that have minimal or no changes in the permit conditions to streamline the renewal process;

(k) Authority of the division to require changes in plans and specifications for control facilities as a condition for the issuance of a permit;

(l) Identification of control regulations over which the permit takes precedence and identification of control regulations over which a permit may never take precedence;

(m) Notice requirements of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new or altered discharge;

(n) Effectiveness under this article of permit applications submitted to and permits issued by the federal government under the federal act.

(4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the division.

(5) Every permit issued for a domestic wastewater treatment works shall contain such terms and conditions as the division determines to be necessary or desirable to assure continuing compliance with applicable control regulations. Such terms and conditions may require that whenever deemed necessary by the division to assure such compliance the permittee shall:

(a) Require pretreatment of effluent from industrial, governmental, or commercial facilities, processes, and activities before such effluent is received into the gathering and collection system of the permittee;

(b) Prohibit any connection to any municipal permittee's interceptors and collection system that would result in receipt by such municipal permittee of any effluent other than sewage required by law to be received by such permittee;

(c) Include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by a municipal permittee;

(d) Initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty percent of design capacity;

(e) Commence construction of such domestic wastewater treatment works expansion whenever throughput and treatment reaches ninety-five percent of design capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced; except that building permits may continue to be issued for any construction which would not have the effect of increasing the input of domestic wastewater to the sewage treatment works of the municipality involved. The term "commence construction", as used in this paragraph (e), includes execution of, and commencement of work under, contracts for engineering design, plans, and specifications for erection, building, alteration, remodeling, improvement, or extension of treatment works and commitment to the completion of construction of such treatment works prior to exceeding permit effluent limitations based upon facility design and capacity or execution of a contract for the construction thereof.

(6) Inclusion of the requirements authorized by paragraph (d) of subsection (5) of this section shall be presumed unnecessary to assure compliance upon a showing that the area served by a domestic wastewater treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the division should it be felt that growth is occurring or will occur in the area.

Source: L. 81: Entire article R&RE, p. 1326, § 1, effective July 1. L. 83: (5)(e) amended, p. 1074, § 1, effective June 10. L. 85: (2) amended, p. 909, § 10, effective June 4. L. 93: (1) and (2) amended, p. 1579, § 3, effective July 1. L. 2001: IP(3) and (3)(j) amended, p. 41, § 1, effective July 1.

Cross references: For circumstances resulting in the repeal of this section, see § 25-8-507.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980). For article, "Oil Shale and Water Quality: The Colorado Prospectus

Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53

U. Colo. L. Rev. 597 (1982). For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

Guidelines for establishing rules and regulations applying to individual disposal systems were unconstitutionally vague. Guide-

lines which required that effluent at point of sampling "consistently meet" each specified standard was unconstitutionally vague and resulted in a denial of due process. *Stone Envir. Eng. Serv. v. State Dept. of Health*, 762 P.2d 737 (Colo. App. 1988).

25-8-501.1. Permit required for point source water pollution control - definitions - housed commercial swine feeding operations - legislative declaration. (1) The people of the state of Colorado hereby find, determine, and declare that the advent of large housed commercial swine feeding operations in Colorado has presented new challenges to ensuring that the quality of the state's environment is preserved and protected. As distinguished from more traditional operations that historically have characterized Colorado's livestock industry, large housed swine feeding operations use significant amounts of process water for flushing and disposing of swine waste, commonly store this waste in large impoundments, and dispose of it through land application. The waste storage, handling and disposal by such operations are particularly odorous and offensive. The people further find that it is necessary to ensure that the storage and land application of waste by housed commercial swine feeding operations is done in a responsible manner, so as not to adversely impact Colorado's valuable air, land and water resources.

(2) As used in this section, unless the context otherwise requires:

(a) "Agronomic rate of application" means the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants, as specified by the most current published fertilizer suggestions of the Colorado state university cooperative extension service for the plants, or most closely related plant type, to which the nutrients are applied.

(b) "Housed commercial swine feeding operation" means a housed swine feeding operation that is capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations. Two or more housed swine confined feeding operations shall be considered to comprise a single housed commercial swine feeding operation if they are under common or affiliated ownership or management, and are adjacent to or utilize a common area or system for manure disposal, are integrated in any way, are located or discharge within the same watershed or into watersheds that are hydrologically connected, or are located on or discharge onto land overlying the same groundwater aquifer.

(c) "Housed swine feeding operation" means the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for forty-five days or longer in any twelve-month period, and crop or forage growth or production is not sustained in the area of confinement.

(d) "Process wastewater" means any process-generated wastewater used in a housed commercial swine feeding operation, including water used for feeding, flushing, or washing, and any water or precipitation that comes into contact with any manure, urine, or any product used in or resulting from the production of swine.

(3) No person shall operate, construct, or expand a housed commercial swine feeding operation without first having obtained an individual discharge permit from the division.

(4) On or before March 31, 1999, the commission shall promulgate rules necessary to ensure the issuance and effective administration and enforcement of permits under this section by July 1, 1999. Such rules shall incorporate the preceding subsection (3) and shall, at a minimum, require:

(a) That the owner or operator of a housed commercial swine feeding operation must obtain division approval of construction, operations and swine waste management plans that, for any land waste application, includes a detailed agronomic analysis. Said plans shall employ the best available waste management practices, provide for remediation of residual soil and groundwater contamination, and ensure that disposal of solid or liquid waste to the soil not exceed agronomic rates of application.

(b) That appropriate setbacks for maintaining water quality be established for land waste application areas and waste impoundments;

(c) That waste impoundments or manure stock piles shall not be located within a one-hundred-year floodplain unless proper flood proofing measures are designed and constructed;

(d) That the owner or operator of the housed commercial swine feeding operation shall provide financial assurances for the final closure of the housed commercial swine feeding operation, the conduct of any necessary postclosure activities, the undertaking of any corrective action made necessary by migration of contaminants from the housed commercial swine feeding operation into the soil and groundwater, or cleanup of any spill or breach;

(e) That the owner or operator of a housed commercial swine feeding operation shall ensure that no solid or liquid waste generated by it shall be applied to land by any person at a rate that exceeds, in amount or duration, the agronomic rate of application; and

(f) That, because waste storage and disposal by housed commercial swine feeding operations pose particular jeopardy for state trust lands, in light of the mandate in the Colorado constitution, article IX, section 10, that state land board trust lands be held in trust and be protected and enhanced to promote long-term productivity and sound stewardship, the construction, operations and waste management plans approved for housed commercial swine feeding operations on such lands, shall not permit the degradation of the physical attributes or value of any state trust lands.

(5) Any spill or contamination by a housed commercial swine feeding operation shall be reported immediately to the division and the county or district public health agency for the county in which the housed commercial swine feeding operation is conducted, and, within twenty-four hours after the spill or contamination, a written report shall be filed with the division and the county or district public health agency for the county in which the housed commercial swine feeding operation is conducted.

(6) Housed commercial swine feeding operations shall submit to the division and the county or district public health agency quarterly, comprehensive monitoring reports and agronomic analyses that demonstrate that the operation has land-applied solid and liquid waste at no greater than agronomic rates. The division shall require the sampling and monitoring of chemical and appropriate biological parameters to protect the quality and existing and future beneficial uses of groundwater including, at a minimum, nitrogen, phosphorus, heavy metals, and salts. At a minimum, the monitoring program shall include quarterly samples, analysis, and reporting of the groundwater, soils within the root zone, and soils beneath the root zone within each waste application site, and shall also include monitoring to ensure that no excessive seepage occurs from any waste impoundments.

(7) Repealed.

(8) The division shall enforce the provisions of this section and shall take immediate enforcement action against any housed commercial swine feeding operation that has exceeded the agronomic rate limit of this section. In addition, any person who may be adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(9) These provisions shall not preclude any local government from imposing requirements more restrictive than those contained in this section.

Source: Initiated 98: Entire section added, effective upon proclamation of the Governor, December 30, 1998. **L. 2007:** (7) repealed, p. 1454, § 2, effective July 1. **L. 2010:** (5) and (6) amended, (HB 10-1422), ch. 419, p. 2104, § 119, effective August 11.

Editor's note: (1) This section was contained in an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure enacting this section was effective upon the proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR: 790,852

AGAINST: 438,873

ANNOTATION

Law reviews. For article, “Colorado’s Not-So-Little Pig Farms Meet the Big Bad Wolf”, see 28 Colo. Law. 85 (June 1999).

25-8-502. Application - definitions - fees - water quality control fund - animal feeding operations fund - public participation - repeal. (1) (a) For the purposes of this section:

(I) “Discharge” means discharge of pollutants as defined in section 25-8-103 (3), and also includes land application.

(II) “Land application” is any discharge being applied to the land for treatment purposes.

(b) (I) Except as otherwise provided by law, in addition to the fees assessed pursuant to paragraphs (b.5), (b.6), (b.7), and (g) of this subsection (1), the only fee the division may assess is an annual fee upon a discharger, and such fee shall be in accordance with the following schedule:

Facility Categories and Subcategories for Permit Fees		Annual Fees
(A) Category 01 Sand and gravel and placer mining		
Subcategory 1	Pit dewatering only	\$ 500
Subcategory 2	Pit dewatering and/or washwater discharge	\$ 570
Subcategory 3	Mercury use with discharge impact	\$ 640
Subcategory 4	Storm water discharge only	\$ 435
(B) Category 02 Coal mining		
Subcategory 1	Sedimentation ponds, surface runoff only	\$ 980
Subcategory 2	Mine water, preparation plant discharge	\$ 1,320
(C) Category 03 Hardrock mining		
Subcategory 1	Mine dewatering from 0 up to 49,999 gallons per day	\$ 1,140
Subcategory 2	Mine dewatering from 50,000 up to 999,999 gallons per day	\$ 2,150
Subcategory 3	Mine dewatering from 1,000,000 gallons per day or over	\$ 3,280
Subcategory 4	Mine dewatering and milling with no discharge	\$ 3,280
Subcategory 5	Mine dewatering and milling with discharge	\$ 9,880
Subcategory 6	No discharge	\$ 1,140
Subcategory 7	Milling with discharge from 0 up to 49,999 gallons per day	\$ 3,350
Subcategory 8	Milling with discharge from 50,000 gallons per day or greater	\$ 6,680
(D) Category 04 Oil shale		
Subcategory 1	Sedimentation ponds, surface runoff only	\$ 1,990
Subcategory 2	Mine water from 0 up to 49,999 gallons per day	\$ 2,150
Subcategory 3	Mine water from 50,000 up to 999,999 gallons per day	\$ 2,670
Subcategory 4	Mine water from 1,000,000 gallons per day or over	\$ 2,600
Subcategory 5	Mine water and process water discharge	\$ 9,880
Subcategory 6	No discharge	\$ 1,830

(E) Category 05 Concentrated animal feeding operations (CAFOs)

Subcategory 1	General permit: The division shall assess a CAFO an annual permit fee, not to exceed \$250 plus \$0.04 per animal unit, based on the CAFO's permitted capacity; except that, from July 1, 2009, through June 30, 2015, the division shall assess a CAFO an annual permit fee not to exceed \$750 plus \$0.09 per animal unit, based on the CAFO's permitted capacity
Subcategory 2	Individual permit: The division shall assess a CAFO an annual permit fee, not to exceed \$500 plus \$0.08 per animal unit, based on the CAFO's permitted capacity; except that, from July 1, 2009, through June 30, 2015, the division shall assess a CAFO an annual permit fee not to exceed \$1,500 plus \$0.09 per animal unit, based on the CAFO's permitted capacity

(F) Category 06 Water treatment plants

Subcategory 1	Intermittent discharge	\$ 570
Subcategory 2	Routine discharge	\$ 820

(G) Category 07 General permits

Subcategory 1A	Sand and gravel with process discharge and storm water	\$ 270
Subcategory 1B	Sand and gravel without process discharge - storm water only	\$ 75
Subcategory 2	Construction dewatering	\$ 500
Subcategory 3	[Reserved for future use]	
Subcategory 4	Placer mining	\$ 520
Subcategory 5	Coal mining	\$ 780
Subcategory 6	Water treatment plants - intermittent discharge	\$ 475
Subcategory 7	Water treatment plants - routine discharge	\$ 715
Subcategory 8	Oil and gas cleanup	\$ 1,840
Subcategory 9A	Construction - storm water only; 5 acres or more of disturbed area	\$ 245
Subcategory 9B	Construction - storm water only; 1 to less than 5 acres of disturbed area	\$ 245
Subcategory 10	Industrial - single municipal industrial - storm water only	\$ 185
Subcategory 11	(Deleted by amendment, L. 2002, p. 1657, § 2, effective June 7, 2002.)	
Subcategory 12	Active mineral mines less than ten acres - storm water only	\$ 125
Subcategory 13	Active mineral mines - ten acres or larger - storm water only	\$ 375
Subcategory 14	Inactive mineral mines - storm water only	\$ 75
Subcategory 15	Department of transportation - sand and gravel storm water permit	\$ 4,360
Subcategory 16	Department of transportation - storm water construction discharges from projects for which the department of transportation is the permittee - statewide permit	\$ 9,400
Subcategory 17	Coal degasification - process water from 0 up to 49,999 gallons per day	\$ 2,150
Subcategory 18	Coal degasification - process water from 50,000 up to 99,999 gallons per day	\$ 3,280

Subcategory 19	Coal degasification - process water more than 100,000 gallons per day	\$ 9,880
Subcategory 20	Storm water municipal greater than 100,000 population	\$ 4,050
Subcategory 21	Storm water municipal from 50,000 up to 100,000 population	\$ 2,020
Subcategory 22	Storm water municipal from 10,000 up to 49,999 population	\$ 810
Subcategory 23	Storm water municipal less than 10,000 population	\$ 355
Subcategory 24	Discharges associated with treated water distribution systems less than or equal to 3,300 population	\$ 105
Subcategory 25	Discharges associated with treated water distribution systems from 3,301 up to 9,999 population	\$ 210
Subcategory 26	Discharges associated with treated water distribution systems greater than or equal to 10,000 population	\$ 315

(H) Category 08 Power plants

Subcategory 1	Cooling water only, no discharge	\$ 1,140
Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 2,150
Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 3,280
Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 9,880
Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 9,880

(I) Category 09 Sugar processing

Subcategory 1	Cooling water only, no discharge	\$ 1,210
Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 1,480
Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 3,700
Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 9,880
Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 9,880

(J) Category 10 Petroleum refining

Subcategory 1	Cooling water only, no discharge	\$ 1,140
Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 2,560
Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 3,285
Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 9,880
Subcategory 5	Process water from 5,000,000 gallons per day or over	\$ 9,880

(K) Category 11 Fish hatcheries

\$ 820

(L) Category 12 Manufacturing and other industry

Subcategory 1	Cooling water only	\$ 1,140
Subcategory 2	Process water from 0 up to 49,999 gallons per day	\$ 2,150
Subcategory 3	Process water from 50,000 up to 999,999 gallons per day	\$ 3,280
Subcategory 4	Process water from 1,000,000 up to 4,999,999 gallons per day	\$ 9,880
Subcategory 5	Process water from 5,000,000 up to 19,999,999 gallons per day	\$ 12,140

Subcategory 6	Process water 20,000,000 gallons per day or over	\$ 19,760
Subcategory 7	No discharge	\$ 1,480

(M) Category 20 Domestic wastewater - lagoons

Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 525
Subcategory 2	Sewage from 50,000 up to 99,999 gallons per day	\$ 845
Subcategory 3	Sewage from 100,000 up to 499,999 gallons per day	\$ 1,230
Subcategory 4	Sewage from 500,000 up to 999,999 gallons per day	\$ 2,120
Subcategory 5	Sewage from 1,000,000 up to 1,999,999 gallons per day	\$ 3,170
Subcategory 6	Sewage 2,000,000 gallons per day or over	\$ 6,460

(N) Category 21 Domestic wastewater - mechanical plants

Subcategory 1	Sewage from 0 up to 19,999 gallons per day	\$ 615
Subcategory 2	Sewage from 20,000 up to 49,999 gallons per day	\$ 980
Subcategory 3	Sewage from 50,000 up to 99,999 gallons per day	\$ 1,440
Subcategory 4	Sewage from 100,000 up to 499,999 gallons per day	\$ 2,240
Subcategory 5	Sewage from 500,000 up to 999,999 gallons per day	\$ 3,720
Subcategory 6	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 6,090
Subcategory 7	Sewage from 2,500,000 up to 9,999,999 gallons per day	\$ 11,410
Subcategory 8	Sewage from 10,000,000 up to 49,999,999 gallons per day	\$ 19,780
Subcategory 9	Sewage from 50,000,000 up to 99,999,999 gallons per day	\$ 22,820
Subcategory 10	Sewage from 100,000,000 gallons per day or over	\$ 25,100

(O) Category 22 Domestic facilities discharging to unclassified waters - general permit

Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 455
Subcategory 2	Sewage from 50,000 up to 199,999 gallons per day	\$ 800
Subcategory 3	Sewage from 200,000 up to 599,999 gallons per day	\$ 1,170
Subcategory 4	Sewage from 600,000 up to 999,999 gallons per day	\$ 1,860

(P) Category 23 Municipal storm water permits

Subcategory 1	Municipalities of 250,000 and over in population	\$ 10,580
Subcategory 2	Municipalities of 100,000 or more, but less than 250,000 in population	\$ 6,225
Subcategory 3	Municipalities of 50,000 or more, but less than 100,000 in population	\$ 3,110
Subcategory 4	Municipalities of 10,000 or more, but less than 50,000 in population	\$ 1,245
Subcategory 5	Statewide permit for department of transportation-owned or -operated municipal separate storm water systems in municipal areas where storm water permits are required	\$ 4,360

(Q) Category 24 Individual industrial storm water permits If a storm water permit is integrated into an existing permit for a facility that has other point source discharges, or for facilities that have individual permits with only storm water discharges, the following additional charges shall apply:

Subcategory 1	Individual industrial - less than ten acres	\$ 295
Subcategory 2	Individual industrial - ten acres or more	\$ 375
Subcategory 3	Individual industrial - storm water only - international airports	\$ 6,220

(R) Category 24.5 Housed commercial swine feeding operations

Except as otherwise provided in this sub-paragraph (R), the division shall assess on each housed commercial swine feeding operation an annual permit fee, not to exceed twenty cents per animal, based on the operation’s working capacity, to offset the direct and indirect costs of the program created in section 25-8-501.1. From July 1, 2009, through June 30, 2015, the division shall assess on each housed commercial swine feeding operation an annual permit fee that shall not exceed twenty-six cents per animal, based on the operation’s working capacity, to offset the direct and indirect costs of the program created in section 25-8-501.1. As used in this sub-subparagraph (R), “working capacity” means the number of swine the housed commercial swine feeding operation is capable of housing at any one time.

(S) Category 25 Permit Amendments Should a permittee holding a permit issued under any of categories 1 to 24 or 26 to 46 or, through June 30, 2015, category 24.5, request an amendment to said permit, the following fees shall apply:

Subcategory 1	Minor amendment - an amount equal to twenty-five percent of the annual fee for the permit being amended, not to exceed	\$ 2,810
Subcategory 2	Major amendment - an amount equal to fifty-five percent of the annual fee for the permit being amended, not to exceed	\$ 5,950

(T) Category 26 Minimal discharge of industrial or commercial wastewaters - general permit

\$ 630

Note: Gallons per day is based on design capacity of the facility, not flow. This applies to all categories.

(II) The division may establish an interim fee which shall be consistent and equitable with the fees contained in subparagraph (I) of this paragraph (b) in any case where a facility other than those listed must be permitted. This interim fee shall apply until the date of adjournment sine die of the next regular session of the general assembly following the imposition of the interim fee.

(b.5) (I) Effective July 1, 2007, in accordance with the provisions of section 25-8-508, the division may assess an annual fee upon each industrial discharger and upon each publicly owned treatment works, and all such fees shall be in accordance with the following schedule:

Facility Categories and Subcategories for Permit Fees	Annual Fees
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(A) Category 30 Industrial dischargers subject to categorical effluent standards discharging to publicly owned treatment works with pretreatment programs (not including categorical industries subject to zero discharge standards)

Subcategory 1	100 to 9,999 gallons per day	\$ 699
Subcategory 2	10,000 to 50,000 gallons per day	\$ 1,047

Subcategory 3	Greater than 50,000 gallons per day	\$ 1,397
Subcategory 4	Very low flow - less than 100 gallons per day	\$ 292

(B) Category 31 All other significant industrial dischargers
discharging to publicly owned treatment works with pretreatment (including categorical industries subject to zero discharge standards)

Subcategory 1	Less than 10,000 gallons per day	\$ 175
Subcategory 2	10,000 to 50,000 gallons per day	\$ 349
Subcategory 3	Greater than 50,000 gallons per day	\$ 465
Subcategory 4	Pit dewatering only	\$ 270

(C) Category 32 Industrial dischargers subject to categorical
effluent standards discharging to publicly owned treatment works without pretreatment programs (not including categorical industries subject to zero discharge standards)

Subcategory 1	Less than 10,000 gallons per day	\$ 815
Subcategory 2	10,000 to 50,000 gallons per day	\$ 1,280
Subcategory 3	Greater than 50,000 gallons per day	\$ 1,746

(D) Category 33 All other significant industrial dischargers
discharging to publicly owned treatment works without pretreatment programs (including categorical industries subject to zero discharge standards)

Subcategory 1	Less than 10,000 gallons per day	\$ 349
Subcategory 2	10,000 to 50,000 gallons per day	\$ 524
Subcategory 3	Greater than 50,000 gallons per day	\$ 699

(E) Category 34 Domestic wastewater - lagoons

Subcategory 1	Sewage from 0 up to 49,999 gallons per day	\$ 75
Subcategory 2	Sewage from 50,000 up to 99,999 gallons per day	\$ 75
Subcategory 3	Sewage from 100,000 up to 499,999 gallons per day	\$ 75
Subcategory 4	Sewage from 500,000 up to 999,999 gallons per day	\$ 75
Subcategory 5	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 81
Subcategory 6	Sewage from 2,500,000 gallons per day	\$ 94

(F) Category 35 Domestic wastewater - mechanical plants

Subcategory 1	Sewage from 0 up to 19,999 gallons per day	\$ 75
Subcategory 2	Sewage from 20,000 up to 49,999 gallons per day	\$ 75
Subcategory 3	Sewage from 50,000 up to 99,999 gallons per day	\$ 75
Subcategory 4	Sewage from 100,000 up to 499,999 gallons per day	\$ 75
Subcategory 5	Sewage from 500,000 up to 999,999 gallons per day	\$ 75
Subcategory 6	Sewage from 1,000,000 up to 2,499,999 gallons per day	\$ 81
Subcategory 7	Sewage from 2,500,000 up to 9,999,999 gallons per day	\$ 94
Subcategory 8	Sewage from 10,000,000 up to 49,999,999 gallons per day	\$ 105
Subcategory 9	Sewage from 50,000,000 up to 99,999,999 gallons per day	\$ 117
Subcategory 10	Sewage from 100,000,000 gallons per day or over	\$ 128

Note: Gallons per day is based on design capacity of the facility, not flow. This applies to all categories.

(II) (A) As used in subparagraph (I) of this paragraph (b.5), “categorical effluent standards” means those standards established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(B) As used in subparagraph (I) of this paragraph (b.5), “significant industrial dischargers” means those industrial dischargers which meet one or more criteria established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(III) All fees collected pursuant to this paragraph (b.5) shall be transmitted to the state treasurer, who shall credit the same to the water quality control fund created in paragraph (c) of this subsection (1). Moneys so collected shall be kept in a separate account in the water quality control fund and shall be annually appropriated by the general assembly to the department of public health and environment for allocation to the division. The general assembly shall review expenditures of such moneys to assure that they are used only to fund the expenses of the industrial pretreatment program. Publicly owned treatment works with approved programs shall each be afforded the opportunity to pay a fee in lieu of an assessment upon indirect dischargers in such publicly owned treatment works’ programs.

(b.6) In accordance with section 25-8-702, the division may assess a fee for the determination of preliminary effluent limitations upon a domestic wastewater treatment works, as defined in section 25-8-103, pursuant to the site location approval process, and all such fees shall be paid in advance of any work done in accordance with the schedule established in this paragraph (b.6). Furthermore, at the request of an entity that is not a domestic wastewater treatment works, and upon payment of the appropriate fee in accordance with the schedule established in this paragraph (b.6), the division may determine preliminary effluent limits for a proposed discharge as described by the requestor. Fees set forth in the schedule established in this paragraph (b.6) shall be increased by an amount equal to seventy-five percent of the applicable fees for each set of preliminary effluent limitations requested by domestic wastewater treatment works for discharges to a second or additional receiving water bodies. The division may, where an entity requests modification of existing division-approved preliminary effluent limitations, complete such modification for a fee equal to twenty-five percent of the applicable fee as set forth in the following schedule:

**Facility Categories and Subcategories
for Preliminary Effluent Limit Fees**

(I) Category 40 Preliminary effluent limitations for individual permits		
Subcategory 1	Less than 100,000 gallons per day	\$ 2,100
Subcategory 2	From 100,000 up to 999,999 gallons per day	\$ 4,200
Subcategory 3	From 1,000,000 up to 9,999,999 gallons per day	\$ 6,300
Subcategory 4	10,000,000 gallons per day or more	\$ 8,400
(II) Category 41 Preliminary effluent limitations for general permits		
	From 0 up to 1,000,000 gallons per day	\$ 1,050
Note: This group includes preliminary effluent limitations for minor domestic facilities that discharge to: Unclassified waters; class 2 (aquatic life) streams with a zero low flow; or class 2 (aquatic life) streams with a low flow greater than zero.		
(III) Category 42 Preliminary effluent limitations for discharges to groundwater		
Subcategory 1	Minor facilities (less than 1,000,000 gallons per day)	\$ 525
Subcategory 2	Major facilities (at least 1,000,000 gallons per day)	\$ 840
(IV) Category 43 Review of preliminary effluent limitations for individual permits (professionally prepared by others)		
Subcategory 1	Minor facilities (less than 1,000,000 gallons per day)	\$ 1,575
Subcategory 2	Major facilities (at least 1,000,000 gallons per day)	\$ 3,150

(b.7) Effective July 1, 2007, in accordance with section 25-8-702, the division may assess a fee upon a domestic wastewater treatment works, and all such fees shall be paid in advance of any work done in accordance with the following schedule:

(I) Category 44 Wastewater site applications			
Subcategory 1	Wastewater treatment plants (less than 100,000 gallons per day)	new	\$ 7,738
		expansion	\$ 6,191
Subcategory 2	Wastewater treatment plants (100,000 gallons to 999,999 gallons per day)	new	\$ 15,477
		expansion	\$ 12,381
Subcategory 3	Wastewater treatment plants (1,000,000 gallons to 9,999,999 gallons per day)	new	\$ 23,215
		expansion	\$ 18,572
Subcategory 4	Wastewater treatment plants (10,000,000 gallons per day or more)	new	\$ 30,953
		expansion	\$ 24,763
Subcategory 5	Lift stations (less than 100,000 gallons per day)	new	\$ 1,935
		expansion	\$ 1,548
Subcategory 6	Lift stations (100,000 gallons to 999,999 gallons per day)	new	\$ 3,869
		expansion	\$ 3,095
Subcategory 7	Lift stations (1,000,000 gallons to 9,999,999 gallons per day)	new	\$ 5,804
		expansion	\$ 4,643
Subcategory 8	Lift stations (10,000,000 gallons per day or more)	new	\$ 7,738
		expansion	\$ 6,191
Subcategory 9	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (less than 100,000 gallons per day)		\$ 451
Subcategory 10	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (100,000 gallons to 999,999 gallons per day)		\$ 903
Subcategory 11	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (1,000,000 gallons to 9,999,999 gallons per day)		\$ 1,354
Subcategory 12	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (10,000,000 gallons per day or more)		\$ 1,806
Subcategory 13	Other amendments to site applications (less than 100,000 gallons per day)		\$ 645

Subcategory 14	Other amendments to site applications (100,000 gallons to 999,999 gallons per day)	\$ 1,290
Subcategory 15	Other amendments to site applications (1,000,000 gallons to 9,999,999 gallons per day)	\$ 1,935
Subcategory 16	Other amendments to site applications (10,000,000 gallons per day or more)	\$ 2,579
Subcategory 17	On-site wastewater treatment systems	\$ 4,500
Subcategory 18	Extension	\$ 650
Subcategory 19	Interceptors site applications	\$ 1,300
Subcategory 20	Interceptor certifications	\$ 300
Subcategory 21	Outfall sewers	\$ 1,300

(II) Category 45 Wastewater design review

Subcategory 1	Wastewater treatment plants (less than 100,000 gallons per day)	
	new	\$ 4,900
	expansion	\$ 3,900
Subcategory 2	Wastewater treatment plants (100,000 gallons to 999,999 gallons per day)	
	new	\$ 9,900
	expansion	\$ 7,900
Subcategory 3	Wastewater treatment plants (1,000,000 gallons to 9,999,999 gallons per day)	
	new	\$ 14,800
	expansion	\$ 11,800
Subcategory 4	Wastewater treatment plants (10,000,000 gallons per day or more)	
	new	\$ 19,700
	expansion	\$ 15,800
Subcategory 5	Lift stations (less than 100,000 gallons per day)	
	new	\$ 1,200
	expansion	\$ 1,000
Subcategory 6	Lift stations (100,000 gallons to 999,999 gallons per day)	
	new	\$ 2,500
	expansion	\$ 2,000
Subcategory 7	Lift stations (1,000,000 gallons to 9,999,999 gallons per day)	
	new	\$ 3,700
	expansion	\$ 3,000
Subcategory 8	Lift stations (10,000,000 gallons per day or more)	
	new	\$ 4,900
	expansion	\$ 3,900
Subcategory 9	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (less than 100,000 gallons per day)	\$ 500
Subcategory 10	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (100,000 gallons to 999,999 gallons per day)	\$ 1,000

Subcategory 11	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (1,000,000 gallons to 9,999,999 gallons per day)	\$ 1,500
Subcategory 12	Amendments to site applications concerning a change from gas chlorination to liquid chlorination or from any form of chlorination to ultraviolet light disinfection (10,000,000 gallons per day or more)	\$ 2,000
Subcategory 13	Other amendments to site applications (less than 100,000 gallons per day)	\$ 700
Subcategory 14	Other amendments to site applications (100,000 gallons to 999,999 gallons per day)	\$ 1,400
Subcategory 15	Other amendments to site applications (1,000,000 gallons to 9,999,999 gallons per day)	\$ 2,100
Subcategory 16	Other amendments to site applications (10,000,000 gallons per day or more)	\$ 2,800
Subcategory 17	On-site wastewater treatment systems	\$ 3,000
Subcategory 18	Interceptors	\$ 1,400
Subcategory 19	Outfall sewers	\$ 1,400

(III) Category 46 Wastewater reuse authorizations

Subcategory 1	Facility capacity (less than 100,000 gallons per day)	\$ 450
Subcategory 2	Facility capacity (100,000 gallons to 499,999 gallons per day)	\$ 840
Subcategory 3	Facility capacity (500,000 gallons to 999,999 gallons per day)	\$ 1,400
Subcategory 4	Facility capacity (1,000,000 to 2,499,999 gallons per day)	\$ 2,300
Subcategory 5	Facility capacity (2,500,000 to 9,999,999 gallons per day)	\$ 4,300
Subcategory 6	Facility capacity (10,000,000 gallons per day or more)	\$ 6,300

(c) Except as otherwise provided in paragraph (i) of this subsection (1), fees collected pursuant to paragraphs (b), (b.6), and (b.7) of this subsection (1) shall be transmitted to the state treasurer, who shall credit the same to the water quality control fund, which fund is hereby created. The moneys in such fund that are collected pursuant to paragraph (b) of this subsection (1) shall be appropriated annually to the department of public health and environment by the general assembly, which shall review expenditures of such moneys to assure that they are used only to fund the expenses of the discharge permit system and other activities included in paragraphs (b), (b.6), and (b.7) of this subsection (1). All interest earned on the investment or deposit of moneys in the fund and all unencumbered or unappropriated balances in the fund shall remain in the fund, shall be appropriated only for the expenses of the discharge permit system, and shall not be transferred or revert to the general fund or any other fund at the end of any fiscal year or any other time. It is the intent of the general assembly that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public; except that the general assembly may determine, in any given fiscal year, that general fund revenues are inadequate to meet general fund demands and that, as a consequence, it shall be necessary to forego, subject to future reconsideration, all or some portion of such general fund contribution to the discharge permit program pursuant to this part 5.

(d) Notwithstanding the amount specified for any fee in paragraph (b) or paragraph (b.5) of this subsection (1), the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently

reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(e) and (f) Repealed.

(g) (I) Effective July 1, 2009, through June 30, 2015, the division shall assess unpermitted concentrated animal feeding operations an annual administrative fee, not to exceed six cents per animal unit based upon the CAFO's registered capacity, to cover the direct and indirect costs associated with the environmental agriculture program, including inspections, compliance assurance, compliance assistance, and associated regulatory interpretation and review.

(II) This paragraph (g) is repealed, effective July 1, 2015.

(h) Commencing with the first regular session of the sixty-eighth general assembly, the department of public health and environment shall report annually to the senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, on the environmental agriculture program. The report shall include, but is not limited to, the number of permits processed, the number of inspections conducted, the number of enforcement actions taken, and the costs associated with all program activities during the preceding year. Such report shall be made on or before March 31 of each year.

(i) There is hereby created the animal feeding operations fund, which shall consist of fees collected pursuant to sub-subparagraphs (E) and (R) of subparagraph (I) of paragraph (b) of this subsection (1), fees collected for amendments requested by housed commercial swine feeding operations pursuant to sub-subparagraph (S) of subparagraph (I) of paragraph (b) of this subsection (1), and fees collected under paragraph (g) of this subsection (1). Any unexpended and unencumbered moneys remaining in the animal feeding operations fund at the end of any fiscal year shall remain in the animal feeding operations fund and shall not be transferred or revert to the general fund or any other fund. Moneys in the animal feeding operations fund shall be annually appropriated by the general assembly to the department of public health and environment for the direct and indirect costs associated with the permitting and oversight of animal feeding operations under this article.

(2) (a) A complete and accurate application for all discharges shall be filed with the division not less than one hundred eighty days prior to the date proposed for commencing the discharge.

(b) The application shall contain such relevant plans, specifications, water quality data, and other information related to the proposed discharge as the division may reasonably require. Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(c) The division shall begin the review of an application within forty-five days after the receipt of the application and shall notify the applicant within ninety days after receipt of the application whether the application is complete. If the division determines that an application is incomplete, the division may request that the applicant submit additional information. If additional information is requested by the division and submitted by the applicant, the division shall have fifteen days after the date the additional information is submitted to determine whether the additional information satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. A final decision that an application is not complete shall be considered final agency action upon issuance of such decision to the applicant and shall be subject to judicial review. A petition for review of such decision shall be given priority scheduling by the court.

(3) (a) The division shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and state statutory and regulatory requirements.

(b) The division shall give public notice of a complete permit application and the division's preliminary analysis of the application as provided in subsection (4) of this section. The notice shall advise of the opportunity for interested persons to submit written comments on the permit application and the division's preliminary analysis or to request,

for good cause shown, a public meeting on the application and analysis. A request for a public meeting shall be made within thirty days after the initial public notice of the permit application and the division's preliminary analysis. If a public meeting is requested and the division, in its discretion and for good cause shown, grants the request, the division shall hold the public meeting not more than seventy-five days after the initial public notice. The division shall provide notice as provided in subsection (4) of this section of the public meeting not less than thirty days prior to the date of the meeting.

(c) The period for public comment shall close thirty days from the date of notice of the permit application and the division's preliminary analysis thereof; except that, if a public meeting is held on the application and analysis, the period for public comment shall close sixty days from the date of notice of the application.

(4) Public notice of every complete permit application and the division's preliminary analysis thereof shall be circulated in a manner designed to inform interested and potentially interested persons of the application and analysis. Procedures for the circulation of such public notice or a notice regarding a public meeting concerning an application and analysis shall be established by the commission and shall include at least the following:

(a) Notice shall be given by at least one publication in a newspaper of general circulation which is distributed within the geographical areas of the proposed discharge.

(b) Notice shall be mailed to any person or group upon request.

(c) The division shall add the name of any person or group upon request to a mailing list to receive copies of notices for all discharge permit applications within the state or within a certain geographical area.

(d) The division shall also, during the period from the date of the initial public notice of the application and analysis to the close of the public comment period, maintain in the office of the county clerk and recorder of the county in which the proposed discharge, or a part thereof, is to occur a copy of its preliminary analysis and a copy of the permit application with all accompanying data for public inspection.

(5) (a) (I) Except as provided in this subsection (5), if the division has not finally issued or denied a permit within one hundred eighty days after receipt of the permit application, unless this time limit is waived or extended by the applicant or if the division determines at any time after receiving an application that it cannot issue a permit prior to the expiration of an existing permit, the division shall issue a temporary permit or the existing permit shall be extended pursuant to the operation of section 24-4-104, C.R.S.

(II) The deadlines established pursuant to subparagraph (I) of this paragraph (a) for a determination on a permit application shall be extended by:

(A) The number of days which an applicant takes to submit information requested by the division pursuant to paragraph (c) of subsection (2) of this section plus the fifteen days provided for the division to evaluate such additional information; and

(B) Forty-five days, if a public meeting is held pursuant to subsection (3) of this section.

(b) All temporary permits shall contain such conditions as are necessary to protect public health and shall not be less restrictive than required by state and federal effluent guidelines unless a schedule of compliance or a variance is set forth therein. A temporary permit shall be issued for a period not to exceed two years and shall expire as provided in the issuance or denial of the final permit. Issuance of a temporary permit shall be final agency action for the purposes of section 24-4-106, C.R.S.

(6) Repealed.

Source: **L. 81:** Entire article R&RE, p. 1328, § 1, effective July 1. **L. 83:** (1)(b) R&RE, (1)(c) amended, and (6) repealed, pp. 1076, 1079, 1080, §§ 1, 2, 8, effective July 1. **L. 85:** (5)(a)(I) amended, p. 909, § 11, effective June 4. **L. 88:** (1)(b)(I) and (1)(c) amended, p. 1025, § 1, effective May 6; (3)(c) amended, p. 1020, effective July 1. **L. 90:** (1)(b)(I) and (1)(c) amended and (1)(b.5) added, p. 1338, § 3, effective July 1. **L. 92:** (1)(b)(I) amended, p. 1301, § 5, effective July 1. **L. 94:** (1)(b.5)(III) and (1)(c) amended, p. 2790, § 522, effective July 1. **L. 98:** (1)(d) added, p. 1335, § 51, effective June 1; IP(1)(b)(I), (1)(b)(I)(G), IP(1)(b.5)(I), and (1)(c) amended and (1)(b)(I)(R) and (1)(b)(I)(S) added, p. 1227, § 1, effective July 1. **L. 2000:** IP(1)(b)(I) and IP(1)(b.5)(I) amended, p. 191, § 1,

effective March 23. **L. 2002:** (1)(b)(I), (1)(b.5)(I), and (1)(c) amended and (1)(b.6) added, p. 1657, § 2, effective June 7. **L. 2003:** (1)(c) amended and (1)(e) and (1)(f) added, p. 1501, § 1, effective May 1. **L. 2007:** (1)(b)(I), (1)(b.5)(I), (1)(b.6), and (1)(c) amended and (1)(b.7) added, p. 1441, § 1, effective July 1. **L. 2008:** (2)(c), (3)(b), IP(5)(a)(II), and (5)(a)(II)(B) amended, p. 431, § 3, effective August 5. **L. 2009:** IP(1)(b)(I), (1)(b)(I)(E), (1)(b)(I)(R), (1)(b)(I)(S), and (1)(c) amended and (1)(g), (1)(h), and (1)(i) added, (HB 09-1330), ch. 352, pp. 1835, 1837, §§ 1, 2, effective July 1. **L. 2012:** (1)(b)(I)(E), (1)(b)(I)(R), (1)(b)(I)(S), and (1)(g) amended, (HB 12-1083), ch. 117, p. 399, § 1, effective July 1; (1)(b.7)(I) and (1)(b.7)(II) amended, (HB 12-1126), ch. 137, p. 494, § 5, effective August 8.

Editor's note: Subsection (1)(e)(II) provided for the repeal of subsections (1)(e) and (1)(f), effective July 1, 2005. (See L. 2003, p. 1501.)

Cross references: (1) For circumstances that will result in the repeal of this section, see § 25-8-507.

(2) For the legislative declaration contained in the 1992 act amending this section, see section 1 of chapter 188, Session Laws of Colorado 1992. For the legislative declaration contained in the 1994 act amending subsections (1)(b.5)(III) and (1)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-8-503. Permits - when required and when prohibited - variances. (1) (a) The division shall issue a permit in accordance with regulations promulgated under this article when the division has determined that the provisions of this article and the federal act and regulations thereunder have been met with respect to both the application and proposed permit.

(b) When necessary for compliance with the federal act for the achievement of technology-based effluent limitations, the division may exercise best professional judgment in establishing effluent limitations on a case-by-case basis for permits as granted pursuant to paragraph (a) of this subsection (1). Technology-based effluent limitations based on best professional judgment shall be made only for good cause and in the absence of federally promulgated effluent guidelines or effluent limitation regulations promulgated by the commission and shall be subject to review as provided for in paragraph (c) of this subsection (1). Any effluent limitations established according to this paragraph (b) shall be made after considering the availability of appropriate technology, its economic reasonableness, the age of equipment and facilities involved, the process employed, and any increase in water or energy consumption.

(c) Review by a hearing officer or an administrative law judge of the department of personnel of technology-based effluent limitations based on best professional judgment shall be on request of the permit applicant or permittee or any aggrieved person and shall take place in an adjudicatory hearing to be held pursuant to section 24-4-105, C.R.S. The necessity of effluent limitations based on best professional judgment, as well as the reasonableness of the effluent limitation, considering all factors enumerated in paragraph (b) of this subsection (1), must be supported by substantial evidence. If such hearing is requested, it shall be held as part of a hearing requested to challenge the conditions of the permit.

(d) Repealed.

(2) No permit shall be issued which is inconsistent with any duly promulgated and controlling state, regional, or local land use plan or any portion of an approved regional wastewater management plan which has been adopted as a regulation pursuant to this article, unless all other requirements and conditions of this act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(3) No permit shall be issued which allows a violation of a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(4) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution

permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements. Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards.

(5) Activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or the release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. Water quality standards may apply to discharges from such activities only if the commission has adopted appropriate control regulations pursuant to section 25-8-205. Nothing in this article shall supersede the provisions of articles 80 to 93 of title 37, C.R.S.

(6) Nothing in subsection (5) of this section shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to this article. All permits for such discharges shall apply at the point where wastewater effluent is released from the control of the discharger. All permits for discharges into ditches or other man-made conveyance structures shall contain such provisions as are necessary for the protection of agricultural, domestic, industrial, and municipal beneficial uses made of the waters of the ditch or other man-made conveyance structures, which use or uses were decreed and in existence prior to the inception of the discharge.

(7) Repealed.

(8) Where a permit requires treatment to levels necessary to protect water quality standards and beyond levels required by technology-based effluent limitation requirements, the division must determine whether or not any or all of the water-quality-standard-based effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104. The division's determination shall be based upon information available to it including information provided during the public comment period on the draft permit or in response to specific requests for information. Such determinations shall be included as a part of the written record of the issuance of the final permit, whether or not a variance is available under subsection (9) of this section to alter the water quality standard based effluent limitations.

(9) The division may grant a variance from otherwise applicable requirements only to the extent authorized in the federal act or implementing regulations. Variances may be granted for no longer than the duration of the permit. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5). Any variances granted prior to June 4, 1985, which were validly granted under the provisions then in effect shall be valid according to their original terms.

Source: **L. 81:** Entire article R&RE, p. 1331, § 1, effective July 1. **L. 83:** (1) amended and (7) repealed, pp. 1081, 1080, §§1, 8, effective July 1. **L. 85:** (1)(b), (1)(c), and (4) amended, (1)(d) repealed, and (8) and (9) added, pp. 909, 911, §§ 12, 15, effective June 4. **L. 87:** (1)(c) amended, p. 972, § 86, effective March 13. **L. 88:** (9) amended, p. 1020, § 6, effective July 1. **L. 95:** (1)(c) amended, p. 663, § 98, effective July 1.

Cross references: (1) For circumstances that will result in the repeal of this section, see § 25-8-507.

(2) For the legislative declaration contained in the 1995 act amending this section, see section 112 of chapter 167, Session Laws of Colorado 1995.

ANNOTATION

Law reviews. For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981). For article, "The Emerg-

ing Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

25-8-504. Agricultural wastes. (1) Neither the commission nor the division shall require any permit for any flow or return flow of irrigation water into state waters except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(2) (a) Neither the commission nor the division shall require any permit for animal or agricultural waste on farms, ranches, and horticultural or floricultural operations, except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(3) No permit or fee shall ever be required pursuant to this part 5 for the diversion of water from natural surface streams.

(4) Nothing in this section shall be construed to affect the requirement of permits for housed commercial swine feeding operations pursuant to section 25-8-501.1.

Source: **L. 81:** Entire article R&RE, p. 1332, § 1, effective July 1. **Initiated 98:** (4) added, effective upon proclamation of the Governor, December 30, 1998. **L. 2005:** (2) amended, p. 350, § 7, effective August 8.

Editor's note: (1) Subsection (4) was enacted by an initiated measure that was adopted by the people at the general election held November 3, 1998. The measure enacting subsection (4) was effective upon the proclamation of the Governor, December 30, 1998.

(2) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR:	790,852
AGAINST:	438,873

ANNOTATION

Law reviews. For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

25-8-505. Permit conditions concerning publicly owned wastewater treatment works. The division is authorized to impose, as conditions in permits for the discharge of pollutants from publicly owned wastewater treatment works, appropriate measures to establish and insure compliance by industrial users with any system of user charges or industrial cost recovery.

Source: **L. 81:** Entire article R&RE, p. 1332, § 1, effective July 1.

Cross references: For circumstances that will result in the repeal of this section, see § 25-8-507.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

Applied in Nat'l Wildlife Fed'n v. Cotter Corp., 646 P.2d 393 (Colo. App. 1981).

25-8-506. Nuclear and radioactive wastes. (1) It is unlawful for any person to discharge, deposit, or dispose of any radioactive waste underground in liquid, solid, or explosive form unless the division, upon application of the person desiring to undertake such activity and after investigation and hearing, has first found, based upon a preponder-

ance of the evidence, that there will be no significant pollution resulting therefrom or that the pollution, if any, will be limited to waters in a specified limited area from which there is no significant migration.

(2) (a) In such case the division shall issue a permit for the proposed activity, upon the payment of a fee of one thousand dollars. The division may include in such permit issued under this subsection (2) such reasonable terms and conditions as it may from time to time require to implement this section in a manner consistent with the purposes of this article. The terms or conditions which may be imposed shall include, without limitation, those with respect to duration of use or operation; monitoring; reporting; volume of discharge or disposal; treatment of wastes; and the deposit with the state treasurer of a bond, with or without surety as the division may in its discretion require, or other security, to assure that the permitted activities will be conducted in compliance with the terms and conditions of the permit, and that upon abandonment, cessation, or interruption of the permitted activities or facilities, appropriate measures will be taken to protect the waters of the state. Other than relief from provisions of this article to the extent specified in this subsection (2), no permit issued pursuant to this subsection (2) shall relieve any person of any duty or liability to the state or to any other person existing or arising under any statute or under common law.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (2), the commission by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(3) No permit for the discharge, deposit, or disposal of nuclear or radioactive waste underground shall be required in any case where groundwater quality regulation is conducted under article 11 of this title, or under the uranium mill tailings radiation control act of 1978 (Pub.L. 95-604) or a successor statute, where such regulation is determined by the division to comply with the standard set forth in subsection (1) of this section.

(4) (a) The provisions of this section revise and replace, in part, section 25-8-505 of this article, the "Colorado Water Quality Control Act", as said article existed prior to July 1, 1981. All permits issued pursuant to said section 25-8-505 prior to July 1, 1981, shall be deemed a permit issued pursuant to this section and subject to the standards of subsection (1) of this section unless or until:

(I) Such permitted activities are exempted by the provisions of subsection (3) of this section. In such case, all permits issued pursuant to said section 25-8-505 shall terminate and have no effect whatsoever; or

(II) Such permitted activities are the subject of a new permit issued pursuant to this section.

(b) Repealed.

Source: **L. 81:** Entire section amended, p. 1340, § 1, effective July 1. **L. 98:** (2) amended, p. 1336, § 52, effective June 1. **L. 2005:** (4)(b) repealed, p. 284, § 27, effective August 8.

Editor's note: This section was originally enacted as § 25-8-505 in House Bill 81-1468, but has been renumbered on revision as § 25-8-506 for ease of location and harmonized with Senate Bill 81-10.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Liabilities of Nonoperating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980). For article, "Synthetic Fuels

— Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law", see 58 Den. L.J. 715 (1981).

25-8-507. Program repeal. If final federal agency action is taken revoking or withdrawing prior federal approval of all or any part of the state permit program, sections 25-8-203, 25-8-204, 25-8-501, 25-8-502, 25-8-503, and 25-8-505 and regulations adopted to implement such provisions are repealed as of the date of that final federal action.

Source: L. 85: Entire section added, p. 911, § 13, effective June 4.

25-8-508. Industrial pretreatment program - creation - fees. (1) The division shall establish an industrial pretreatment program for the state which is designed to eliminate problems that occur when pollutants from industrial wastewaters are discharged into publicly owned treatment works, including health hazards caused to the public and to workers in sewers and treatment plants, pollution of state waters, interference with the operation of treatment plants or increased expense to dispose of sludges, damage to the pipes and equipment that may occur from pollutants, and the potential for explosion caused by highly volatile wastes. The program shall be adopted by the commission pursuant to section 25-8-205 and shall be adequate to comply with requirements set forth in section 307 (a), (b), and (c) of the federal act.

(2) The division is authorized to require compliance with applicable pretreatment requirements and standards by any domestic wastewater treatment works or by any industrial user of such treatment works. The division may grant a variance from applicable requirements only to the extent authorized in the federal act or implementing regulations.

Source: L. 90: Entire section added, p. 1337, § 2, effective July 1.

25-8-509. Permit conditions concerning use and disposal of biosolids. The division is authorized to impose, as conditions to the issuance of permits, requirements, prohibitions, standards, and concentration limitations on the use and disposal of biosolids in accordance with the regulations promulgated by the commission pursuant to section 25-8-205 (1) (e). The requirements, prohibitions, standards, and concentration limitations imposed by the division shall not be more restrictive than the requirements adopted for the solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act.

Source: L. 93: Entire section added, p. 1579, § 4, effective July 1.

PART 6

VIOLATIONS, REMEDIES, AND PENALTIES

25-8-601. Division to be notified of suspected violations and accidental discharges - penalty. (1) Any person or any agency of the state or federal government may apply to the division to investigate and take action upon any suspected or alleged violation of any provision of this article or of any order, permit, or regulation issued or promulgated under authority of this article.

(2) Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the division of such discharge. Any person who fails to notify the division as soon as practicable is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Notification received pursuant to this subsection (2) or information obtained by the exploitation of such notification shall not be used against any such person in a criminal case except prosecution for perjury, for false swearing, or for failure to comply with a clean-up order issued pursuant to section 25-8-606.

(3) Any penalty collected under this section shall be credited to the general fund.

Source: L. 81: Entire article R&RE, p. 1332, § 1, effective July 1. L. 83: (3) amended, p. 1080, § 4, effective July 1.

ANNOTATION

Law reviews. For article, “Liabilities of Non-operating Mineral Interest Owners”, see 51 U. Colo. L. Rev. 153 (1980). For article, “Regulation of Spills of Hazardous Materials”, see 12 Colo. Law. 277 (1983).

Applied in *National Wildlife Fed’n v. Cotter Corp.*, 646 P.2d 393 (Colo. App. 1981).

25-8-602. Notice of alleged violations. (1) Whenever the division has reason to believe that a violation of an order, permit, or control regulation issued or promulgated under authority of this article has occurred, the division shall cause written notice to be served personally or by certified mail, return receipt requested, upon the alleged violator or his agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute a violation, and it may include the nature of any corrective action proposed to be required.

(2) Each cease-and-desist and clean-up order issued pursuant to sections 25-8-605 and 25-8-606 shall be accompanied by or have incorporated in it the notice provided for in subsection (1) of this section unless such notice has been given prior to issuance of such cease-and-desist or clean-up order.

Source: L. 81: Entire article R&RE, p. 1333, § 1, effective July 1.

25-8-603. Hearing procedures for alleged violations. (1) In any notice given under section 25-8-602, the division shall require the alleged violator to answer each alleged violation and may require the alleged violator to appear before it for a public hearing to provide such answer. Such hearing shall be held no sooner than fifteen days after service of the notice; except that the division may set an earlier date for hearing if it is requested by the alleged violator.

(2) If the division does not require an alleged violator to appear for a public hearing, the alleged violator may request the division to conduct such a hearing. Such request shall be in writing and shall be filed with the division no later than thirty days after issuance of a notice under section 25-8-602. If such a request is filed, a hearing shall be held within a reasonable time.

(3) If a hearing is held pursuant to the provisions of this section, it shall be public and, if the division deems it practicable, shall be held in any county in which the violation is alleged to have occurred. The division shall permit all parties to respond to the notice served under section 25-8-602, to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts.

(4) Hearings held pursuant to this section shall be conducted in accordance with section 24-4-105, C.R.S.

Source: L. 81: Entire article R&RE, p. 1333, § 1, effective July 1.

25-8-604. Suspension, modification, and revocation of permit. Upon a finding and determination, after hearing, that a violation of a permit provision has occurred, the division may suspend, modify, or revoke the pertinent permit or take such other action with respect to the violation as may be authorized pursuant to regulations promulgated by the commission.

Source: L. 81: Entire article R&RE, p. 1333, § 1, effective July 1.

25-8-605. Cease-and-desist orders. If the division determines, with or without hearing, that a violation of any provision of this article or of any order, permit, or control

regulation issued or promulgated under authority of this article exists, the division may issue a cease-and-desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated.

Source: L. 81: Entire article R&RE, p. 1333, § 1, effective July 1.

25-8-606. Clean-up orders. The division may issue orders to any person to clean up any material which he, his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters which may pollute them. The division may also request the district attorney to proceed and take appropriate action under section 16-13-305 and sections 16-13-307 to 16-13-315, C.R.S., or section 18-4-511, C.R.S.

Source: L. 81: Entire article R&RE, p. 1334, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Liabilities of Non-operating Mineral Interest Owners", see 51 U. Colo. L. Rev. 153 (1980).

25-8-607. Restraining orders and injunctions. (1) The division may request the district attorney for the judicial district with jurisdiction pursuant to subsection (2) of this section or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any threatened violation of this article or any order, permit, or control regulation issued or promulgated pursuant to this article which violation poses imminent and substantial endangerment to the beneficial uses of state waters and which cannot be timely prevented by a permit modification or permit enforcement action, or any continued violation of this article, or any order, permit, or control regulation issued or promulgated pursuant to this article. In any suit for a violation of an order, the final findings of the division, after opportunity for a hearing, based upon evidence in the record, shall be prima facie evidence of the facts found in such record.

(2) Suits under this section shall be brought in the district or county court for the district or county in which the violation or threatened violation occurs. Emergencies shall be given precedence over all other matters pending in such court. The institution of such injunction proceeding by the division shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other enforcement action or sanction authorized by this article.

Source: L. 81: Entire article R&RE, p. 1334, § 1, effective July 1. **L. 94:** Entire section amended, p. 643, § 1, effective April 14; (1) amended, p. 1650, § 96, effective May 31.

25-8-608. Civil penalties - rules - fund created - temporary moratorium on penalties for minor violations - definitions - repeal. (1) Except as otherwise provided in subsection (3) of this section, any person who violates any provision of this article or of any permit issued under this article, or any control regulation promulgated pursuant to this article, or any final cease-and-desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. In determining the amount of a penalty under this part 6, the following factors shall be considered:

- (a) The potential damage from the violation;
- (b) The violator's compliance history;
- (c) Whether the violation was intentional, reckless, or negligent;
- (d) The impact upon or threat to the public health or environment as a result of the violation;

- (e) The duration of the violation; and
- (f) The economic benefit realized by the violator as a result of the violation.

(1.5) All penalties collected pursuant to subsection (1) of this section shall be transmitted to the state treasurer, who shall credit the same to the water quality improvement fund, which is hereby created. The moneys in such fund shall be subject to annual appropriation. Any interest earned on moneys in the fund shall remain in the fund to be used for purposes of this section.

(1.7) (a) The department shall expend moneys in the water quality improvement fund for the following purposes:

(I) Improving the water quality in the community or water body impacted by the violation;

(II) Providing grants for storm water projects or to assist with planning, design, construction, or repair of domestic wastewater treatment works;

(III) Providing the nonfederal match funding for nonpoint source projects under 33 U.S.C. sec. 1329; or

(IV) Providing grants for storm water management training and best practices training to prevent or reduce the pollution of state waters.

(b) The division may retain five percent of the moneys in the water quality improvement fund to cover the cost of administering the projects or grants under paragraph (a) of this subsection (1.7).

(c) The commission shall promulgate rules as may be necessary to administer this subsection (1.7), including, but not limited to, rules defining who is eligible for grants, and what criteria shall be used in awarding grants. Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(1.8) Notwithstanding any provision of subsection (1.5) or (1.7) of this section to the contrary, on April 20, 2009, the state treasurer shall deduct seven hundred thousand dollars from the water quality improvement fund and transfer such sum to the general fund.

(1.9) The division shall include in a separate section of the annual report required pursuant to section 25-8-305 a full accounting of all projects funded pursuant to this section for the preceding year.

(2) The division may institute a civil action or administrative action to impose and collect penalties under this section. Upon application of the division, penalties shall be determined by the executive director or his or her designee. The final decision of the executive director or his or her designee may be appealed to the commission. The final decision of the commission is subject to judicial review in accordance with article 4 of title 24, C.R.S. Any penalty may be collected by the division by action instituted in a court of competent jurisdiction for collection of such penalty. A stay of any order of the division pending judicial review shall not relieve any person from any liability under subsection (1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

(3) (a) As used in this subsection (3):

(I) "Inspection-related violation" means a civil violation of a provision of this article or of a permit issued under this article that governs storm water discharges occurring in connection with construction activities and that the division or its agent discovers through an inspection of the facilities or of work performed by the violator.

(II) "Minor violation" means a violation that does not harm or threaten public health or safety or the environment and that is either an inspection-related violation or a paperwork violation.

(III) "Paperwork violation" means a civil violation of a provision of this article or of a permit issued under this article that governs storm water discharges occurring in connection with construction activities and that:

(A) Involves the failure of the violator to meet a filing deadline or other deadline; or

(B) Is a nonsubstantive technical error or, as determined by the division, a substantive error reasonably made by the violator in good faith, on a required form or filing.

(b) The division shall not commence any enforcement action against a violator for a minor violation committed on or after June 6, 2012, unless the division notifies the violator of the violation and the violator fails to cure the violation within a reasonable time as determined by the division. In the case of a violator failing to cure the violation within a reasonable time as determined by the division, the division may assess a financial penalty of up to two times the amount authorized in subsection (1) of this section.

(c) Commencing as soon as feasible after June 6, 2012, the division shall collaborate with the construction industry and other interested persons to develop more responsive and streamlined processes for preventing violations of provisions of this article and of permits issued under this article and for enforcing such provisions when violations occur. No later than December 1, 2012, the division shall submit to the general assembly a written report that includes the results of the collaboration, the actions it plans to take to develop more streamlined and responsive processes, and any legislative recommendations that it may have.

(d) This subsection (3) is repealed, effective July 1, 2013.

Source: **L. 81:** Entire article R&RE, p. 1334, § 1, effective July 1. **L. 83:** (1) amended, p. 1080, § 5, effective July 1. **L. 90:** (1) amended, p. 1345, § 4, effective July 1. **L. 2006:** Entire section amended, p. 1273, § 2, effective May 26. **L. 2009:** (1.8) added, (SB 09-208), ch. 149, p. 624, § 23, effective April 20. **L. 2011:** (1.7)(a)(II) and (1.7)(a)(III) amended and (1.7)(a)(IV) added, (HB 11-1026), ch. 159, p. 550, § 2, effective August 10. **L. 2012:** IP(1) amended and (3) added, (HB 12-1119), ch. 264, p. 1378, § 1, effective June 6.

ANNOTATION

Law reviews. For article, “Liabilities of Non-operating Mineral Interest Owners”, see 51 U. Colo. L. Rev. 153 (1980).

Subsection (2) provides only for additional review of the amount of an existing penalty using an abuse of discretion standard, but does not authorize a de novo determination of

the amount of the penalty. The familiar and generally accepted meaning of the words compels the conclusion that the amount of the penalty has already been determined and the role of the court is to consider only its appropriateness. *Water Quality Control Div. v. Casias*, 843 P.2d 665 (Colo. App. 1992).

25-8-609. Criminal pollution - penalties. (1) Any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters or into any domestic wastewater treatment works commits criminal pollution if such discharge is made:

- (a) In violation of any permit issued under this article; or
 - (b) In violation of any cease-and-desist order or clean-up order issued by the division which is final and not stayed by court order; or
 - (c) Without a permit, if a permit is required by the provisions of this article for such discharge; or
 - (d) Repealed.
 - (e) In violation of any pretreatment regulations promulgated by the commission.
- (2) Prosecution under paragraph (a) of subsection (1) of this section shall be commenced only upon complaint filed by the division or a peace officer.
- (3) Any person who commits criminal pollution of state waters shall be fined, for each day the violation occurs, as follows:

- (a) If the violation is committed with criminal negligence or recklessly, as defined in section 18-1-501, C.R.S., the maximum fine shall be twelve thousand five hundred dollars.
- (b) If the violation is committed knowingly or intentionally, as defined in section 18-1-501, C.R.S., the maximum fine shall be twenty-five thousand dollars.
- (c) If two separate offenses under this article occur in two separate occurrences during a period of two years, the maximum fine for the second offense shall be double the amounts specified in paragraph (a) or (b) of this subsection (3), whichever is applicable.
- (d) (Deleted by amendment, L. 2009, (SB 09-119), ch. 223, p. 1009, § 1, effective August 5, 2009.)

(4) Any criminal penalty collected under this section shall be credited to the general fund.

(5) No provision of this article shall be interpreted to supersede, limit, abrogate, or impair the ability to enforce:

(a) Civil or criminal penalties pursuant to article 22 of title 29, C.R.S., if the pollutant discharged into state waters or domestic wastewater treatment works is a “hazardous substance” as defined in section 29-22-101, C.R.S.; or

(b) Civil penalties pursuant to section 25-15-309 or criminal penalties pursuant to section 25-15-310 if the pollutant discharged into state waters or domestic wastewater treatment works is a “hazardous waste” as defined in section 25-15-101.

Source: **L. 81:** Entire article R&RE, p. 1334, § 1, effective July 1. **L. 83:** (3)(d) amended, p. 1080, § 6, effective July 1. **L. 85:** (1)(c) amended and (1)(d) repealed, p. 911, §§ 14, 15, effective June 4. **L. 88:** (1)(e) added, p. 1021, § 7, effective July 1. **L. 90:** IP(1) amended, p. 1345, § 5, effective July 1. **L. 2009:** (2) and (3)(d) amended and (4) and (5) added, (SB 09-119), ch. 223, p. 1009, § 1, effective August 5; (2) amended, (SB 09-292), ch. 369, p. 1971, § 88, effective August 5.

Editor’s note: Amendments to subsection (2) by Senate Bill 09-292 and Senate Bill 09-119 were harmonized.

25-8-610. Falsification and tampering. (1) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(2) Any penalty collected under this section shall be credited to the general fund.

Source: **L. 81:** Entire article R&RE, p. 1335, § 1, effective July 1. **L. 83:** (2) amended, p. 1080, § 7, effective July 1.

25-8-611. Proceedings by other parties. (1) The factual or legal basis for proceedings or other actions that result from a violation of any control regulation inure solely to, and shall be for the benefit of the people of, the state generally, and it is not intended by this article, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state.

(2) A permit issued pursuant to this article may be introduced in any court of law as evidence that the permittee’s activity is not a public or private nuisance. Introduction into evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not a public or private nuisance.

Source: **L. 81:** Entire article R&RE, p. 1335, § 1, effective July 1.

ANNOTATION

Neither this section nor § 25-8-612 authorizes injunctions or creates a private cause of action or right to proceed in the public interest. Nor do they explicitly dispense with the

requirements for a preliminary injunction as set forth in C.R.C.P. 65. *Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209 (Colo. App. 2000).

25-8-612. Remedies cumulative. (1) It is the purpose of this article to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.

(2) No action pursuant to section 25-8-609 shall bar enforcement of any provision of this article or of any rule or order issued pursuant to this article by any authorized means.

(3) Nothing in this article shall abridge or alter rights of action or remedies existing on or after July 1, 1981, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

Source: L. 81: Entire article R&RE, p. 1336, § 1, effective July 1.

ANNOTATION

Neither this section nor § 25-8-611 authorizes injunctions or creates a private cause of action or right to proceed in the public interest. Nor do they explicitly dispense with the

requirements for a preliminary injunction as set forth in C.R.C.P. 65. Baseline Farms Two, LLP v. Hennings, 26 P.3d 1209 (Colo. App. 2000).

PART 7

DOMESTIC WASTEWATER TREATMENT WORKS

25-8-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) “Construction” means entering into a contract for the erection or physical placement of materials, equipment, piping, earthwork, or buildings which are to be part of a domestic wastewater treatment works.

(2) “Eligible project” means a project for the planning, design, or construction of domestic wastewater treatment works or of facilities for the discharge of wastewater or backwash water from public water treatment plants which is, in the judgment of the division, necessary for the accomplishment of the state water quality control program, which conforms with applicable rules and regulations of the commission, and which is eligible for federal assistance under provisions of the federal act.

(3) “Federal assistance” means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for planning, design, or construction of domestic wastewater treatment works, or funds which are used for such planning, design, or construction, under provisions of the federal act.

Source: L. 81: Entire article R&RE, p. 1336, § 1, effective July 1.

25-8-702. Approval for commencement of construction. (1) No person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capacity of an existing domestic wastewater treatment works, unless the site location and the design for the construction or expansion have been approved by the division.

(2) In evaluating the suitability of a proposed site location for a domestic wastewater treatment works, the division shall:

(a) Consider the local long-range comprehensive plan for the area as it affects water quality and any approved regional wastewater management plan for the area;

(b) Determine that the plant on the proposed site will be managed to minimize the potential adverse impacts on water quality; and

(c) Encourage the consolidation of wastewater treatment facilities whenever feasible.

(3) Ninety days prior to commencement of construction of an interceptor line, the entity responsible for that line shall notify the planning agency and the division of such construction. This notification shall be accompanied with a certification by the agency receiving the wastewater for treatment that it has or will have the capacity to treat the

projected wastewater from that interceptor line in accordance with the treatment agency's site approval and discharge permit. Within thirty days of receipt of notification, the planning agency, or the division, if a planning agency does not exist, shall certify that the proposed interceptor line has the capacity to carry the projected flow. In the event the entity responsible for an interceptor line does not have the said certification from the treatment agency and the planning agency, the entity shall be required to apply for a site location approval prior to commencement of construction.

(4) The decision of the division concerning approval of the site location or design may be appealed to the commission. The commission shall hold a hearing on the site location or design in accordance with the provisions of section 24-4-105, C.R.S., and the decision of the commission shall be final administrative action for the purposes of section 24-4-106, C.R.S.

Source: L. 81: Entire article R&RE, p. 1336, § 1, effective July 1. L. 88: (1) R&RE and (2)(a) amended, p. 1021, §§ 8, 9, effective July 1.

ANNOTATION

Law reviews. For article, "Synthetic Fuels — Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980).

Rule providing that a site approval will expire one year from its approval date and that reapplication or request for an extension must be made if construction has not been commenced is well within the powers conferred upon the commission and the division to regu-

late approval as to location, construction, and remodeling of domestic wastewater treatment facilities. Barr Lake Vill. Metro. District v. Colo. Water Quality Control Comm'n., 835 P.2d 613 (Colo. App. 1992).

Applied in Colo. Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982).

25-8-703. State contracts for construction of domestic wastewater treatment works. (1) (a) To meet the responsibility of the state with respect to the protection of public health and to assist municipalities and counties, the division, in the name of the state and to the extent of state funds appropriated therefor, may enter into contracts with municipalities with populations of not more than five thousand persons concerning the planning, design, or construction of domestic wastewater treatment works.

(b) Repealed.

(2) The division shall be the state agency for the administration of funds appropriated for such project grants and shall contract for grant projects only to the extent state general funds have been appropriated. The division may use not more than five percent of the funds appropriated for such project grants for the administration and management thereof.

(3) Domestic wastewater treatment grants shall be authorized based upon water quality needs and public health related problems. The commission shall promulgate a project categorization system for use in determining the relative priority of proposed domestic wastewater projects. The division shall review applications for state funds and may approve only those applications that are consistent with the project categorization system.

(4) During the review process the division shall seek from the division of local government in the department of local affairs a fiscal analysis of the applicant to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the division may authorize a state grant percentage contribution to the project in accordance with the recommendation of the division of local government and with the project categorization adopted by the commission.

(5) Any contract entered into pursuant to this section shall include an estimate of the reasonable cost of the project as determined by the division and shall also include, but not be limited to, provisions which set forth that the municipality shall:

(a) Proceed expeditiously and complete the project in accordance with design documents reviewed by the division;

(b) Provide a plan of operation to the division for approval and shall commence operation of the domestic wastewater treatment works on completion of the project;

(c) Not discontinue operation of the domestic wastewater treatment works without prior approval of the division;

(d) Operate and maintain the domestic wastewater treatment works in accordance with the plan of operation;

(e) Provide for the payment of its share of the project.

(6) In connection with each contract concerning an eligible project, the division shall keep accurate records on the project, including, but not limited to, records of the amount of payment by the state and the amount of federal assistance received by the applicant. Such records may establish the basis for application for federal reimbursement of such payments made by the state, and the division is authorized to make such application in appropriate cases.

Source: **L. 81:** Entire article R&RE, p. 1337, § 1, effective July 1. **L. 2001:** (1), (3), (4), and (6) amended, p. 100, § 1, effective March 20. **L. 2006:** (1)(b)(II) amended, p. 211, § 1, effective March 31.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2011. (See L. 2006, p. 211.)

ANNOTATION

Applied in Colorado Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982).

PART 8

STORM WATER MANAGEMENT SYSTEM ADMINISTRATORS

25-8-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Administrator" or "storm water management system administrator" means a nonprofit entity designated by the division to conduct the activities required under this part 8.

(2) "Advisory board" means an oversight group, established as a required element within each storm water management system administrator's program, that is made up of volunteers representing industry sector stakeholders active in the program, including nonprofit administrator representatives, participants, participating MS4s, and third-party auditors. While acting in the capacity of a board of directors, the advisory board has the authority to establish all program policies and procedures, collect and maintain program records, compile annual participant performance summary reports, and take all necessary actions to maintain the department's designation of the administrator.

(3) "CDPS" means the Colorado discharge permit system.

(4) "CDPS MS4 permit" means a CDPS permit for storm water discharges associated with an MS4.

(5) "CDPS storm water construction permit" means a CDPS permit for storm water discharges associated with construction activities.

(6) "MS4" means a municipal separate storm sewer system.

(7) "MS4 permittee" means a governmental entity with a CDPS permit for storm water discharges associated with an MS4.

(8) "Participant" means a person that is required to obtain a CDPS storm water construction permit from the division and that volunteers to participate in a storm water management system program administered by a storm water management system administrator.

(9) "SWMP" means a storm water management plan as defined in the CDPS permit for storm water discharges associated with construction activities.

(10) "Third-party auditor" means a person who meets the professional qualifications defined in the administrator's written program and who operates independently from, and is not an employee of, any participant or MS4 in the administrator's program.

Source: L. 2011: Entire part added, (HB 11-1026), ch. 159, p. 546, § 1, effective August 10.

25-8-802. Storm water management system administrator. (1) A nonprofit entity may apply to be a storm water management system administrator by completing an application in such form as the division may require. The division may designate one or more storm water management system administrators. To be designated as an administrator, the applicant must demonstrate to the satisfaction of the division that:

(a) The applicant has in place a standardized compliance assistance and assurance program that contains processes, procedures, and associated training for participants that, when fully implemented by the program participants, would result in full compliance with the requirements of the applicable CDPS storm water construction permit. The compliance assistance and assurance program shall assure, at a minimum, that each participant:

(I) Maintains a qualified permit compliance manager in accordance with the CDPS storm water construction permit and the administrator's written policies;

(II) Maintains complete and updated permit documentation available for inspection at the permitted facility;

(III) Completes established minimum requirements for training to maintain permit compliance manager status; and

(IV) Complies with all applicable terms and conditions required by any MS4 permittee with jurisdiction over the participant's construction activities.

(b) The applicant ensures that a third-party audit of each participant facility operating under a CDPS storm water construction permit is completed on a monthly basis using standardized inspection reporting forms and procedures approved by the division. Third-party audit reports must include standardized compliance performance measurement and scoring clearly demonstrating the following:

(I) The adequacy of implementation of each aspect of the administrator's storm water management systems;

(II) The adequacy of the SWMP in meeting all applicable permit requirements defined in this part 8; and

(III) The adequacy of each storm water management practice used to implement the SWMP.

(c) The applicant maintains records of its compliance assistance and assurance program, including a list of participants and each participant facility, and monthly required third-party audits, in a form approved by the division;

(d) The applicant has fully implemented the compliance assistance and assurance program with a sufficient number of participants to demonstrate the adequacy of the program for one year prior to submittal of an application for designation as an administrator;

(e) The applicant maintains an advisory board that meets regularly, but not less than quarterly, and such meetings are open to the public; and

(f) The applicant has a written storm water management program that includes:

(I) An organizational chart defining relationships among stakeholders, including the roles and responsibilities of each;

(II) Advisory board make-up and associated policies and procedures;

(III) Participant policies and procedures, including performance standards and measurement methodology;

(IV) Third-party auditor policies and procedures; and

(V) Other policies and procedures the division may require to demonstrate a complete and functional program.

(2) Upon the division's approval of the application, the division shall designate the applicant as a storm water management system administrator. The applicant shall maintain a compliance assistance and assurance program, including requiring third-party audits and record keeping, consistent with the requirements of this part 8.

(3) A storm water management system administrator shall provide to the division on at least a yearly basis a summary report that describes in detail significant program accomplishments and changes and that adequately demonstrates the overall performance of the

administrator's program in improving participant compliance with the participants' storm water permits. The division shall make the yearly administrator summary report available to the public.

(4) To the extent permitted by federal law, the division may reduce compliance oversight activities for facilities authorized to discharge under a CDPS storm water construction permit participating in a storm water management system administrator program based on a determination by the division that the participants or the participant facilities have a demonstrated record of reduced potential for occurrences of noncompliance and reduced risk of negative impacts on receiving waters. This part 8 does not prohibit or restrict any compliance oversight, including inspections, by the division.

(5) The division may revoke the designation of an administrator for evidence of repeated failure to meet the requirements of this part 8.

(6) The disclosure of any information related to a participant's third-party audit to an administrator is not a disclosure under section 25-1-114.5.

(7) Participation in a storm water management system administrator program by a holder of a CDPS storm water construction permit is strictly voluntary, and a participant may end its participation at any time upon written notice to the administrator.

(8) The administrator may work with the division to establish reporting requirements acceptable to the division that would allow participants in the administrator's program to participate in environmental performance recognition programs, including the department's environmental leadership program.

Source: L. 2011: Entire part added, (HB 11-1026), ch. 159, p. 547, § 1, effective August 10.

25-8-803. Storm water management system administrator audits to support MS4 permittees' programs. (1) MS4 permittees may choose to work with any administrator to assist the MS4 permittee in complying with the terms and conditions of the MS4 permittee's CDPS MS4 permit. An MS4 permittee may utilize all, or portions of, the storm water management system administrator's program as part of the MS4 permittee's program for oversight of construction sites to demonstrate compliance with the requirements of the MS4 permittee's CDPS permit for storm water discharges associated with an MS4.

(2) The division may consider third-party audits conducted pursuant to a storm water management system administrator's program to be part of the MS4 permittee's compliance oversight program required by its CDPS MS4 permit if the MS4 permittee formally utilizes the storm water management system administrator's program that conducted the audit, and the MS4 permittee implements procedures to demonstrate and report to the division, upon division request, that the administrator's program is meeting the requirements for third-party audits in section 25-8-802 (1) and (3) for participant construction activities located within the jurisdiction of the MS4 permittee.

(3) An MS4 permittee may reduce compliance oversight activities for facilities authorized to discharge under a CDPS storm water construction permit that are operated by participants in a storm water management system administrator's program based on a determination by the MS4 permittee that the participants or participant facilities have a demonstrated record of reduced potential for occurrences of noncompliance and reduced risk of negative impacts on receiving waters. This part 8 does not prohibit or restrict any compliance oversight, including inspections, by an MS4 permittee.

(4) Modification of the MS4 permittee's program is subject to division approval in accordance with the requirements of the applicable CDPS MS4 permit.

(5) An MS4 permittee's use of a storm water management system administrator's program is strictly voluntary, and an MS4 permittee may end its use of the program at any time upon written notice to the administrator.

(6) Nothing in this part 8 grants regulatory authority to a storm water management system administrator or the authority to impose any fine.

(7) Nothing in this part 8 preempts or supersedes any authority of an MS4 permittee or any other local agency.

(8) Nothing in this part 8 removes, reduces, or transfers the responsibility for compliance with an MS4 permit from the MS4 permittee.

Source: L. 2011: Entire part added, (HB 11-1026), ch. 159, p. 549, § 1, effective August 10.

ARTICLE 8.5

Cherry Creek Basin Water Quality Authority

25-8.5-101.	Legislative declaration.	25-8.5-112.	Power to issue bonds.
25-8.5-102.	Definitions.	25-8.5-113.	Revenue refunding bonds.
25-8.5-103.	Creation and organization.	25-8.5-114.	Use of proceeds of revenue refunding bonds.
25-8.5-104.	Boundaries of authority.	25-8.5-115.	Facilities - comprehensive program.
25-8.5-105.	Authority members.	25-8.5-116.	Coordination with drainage and flood control measures.
25-8.5-106.	Board of directors.	25-8.5-117.	Transfer of powers.
25-8.5-107.	Voting.	25-8.5-118.	Power to levy special assessments.
25-8.5-108.	Ex officio members.	25-8.5-119.	Inclusion of property.
25-8.5-109.	Meetings.	25-8.5-120.	Exclusion of property.
25-8.5-110.	Powers of board - organization - administration.		
25-8.5-111.	Powers of authority - general and financial.		

25-8.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that the organization of a Cherry Creek basin water quality authority will:

(a) Be for the public benefit and advantage of the people of the state of Colorado;

(b) Benefit the inhabitants and landowners within the authority by preserving water quality in Cherry Creek and Cherry Creek reservoir;

(c) Benefit the people of the state of Colorado by preserving waters for recreation, fisheries, water supplies, and other beneficial uses;

(d) Promote the health, safety, and welfare of the people of the state of Colorado.

(2) It is further declared that the authority will provide for effective efforts by the various counties, municipalities, special districts, and landowners within the boundaries of the authority in the protection of water quality.

(3) It is further declared that the authority should provide that new developments and construction activities pay their equitable proportion of costs for water quality preservation and facilities.

(4) This article, being necessary to secure the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 88: Entire article added, p. 1029, § 1, effective April 28.

25-8.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agricultural lands" means all lands except land rezoned by a county or municipality for business, commercial, residential, or similar uses or subdivided lands. Those include property consisting of a lot one acre or more in size which contains a dwelling unit.

(2) "Authority" means the Cherry Creek basin water quality authority created pursuant to section 25-8.5-103.

(3) "Board" means the governing body of the authority provided for in section 25-8.5-106.

(3.5) "Conservation district" means any conservation district created pursuant to article 70 of title 35, C.R.S.

(4) "County" means any county enumerated in article 5 of title 30, C.R.S.

(5) "Municipality" means a municipality as defined in section 31-1-101 (6), C.R.S.

(6) "Publication" means three consecutive weekly advertisements in a newspaper or newspapers of general circulation within the boundaries of the authority. It shall not be necessary that an advertisement be made on the same day of the week in each of the three

weeks, but not less than twelve days, excluding the day of first publication, shall intervene between the first publication and the last publication. Publication shall be complete on the date of the last publication.

(7) "Resolution" means an ordinance as passed by a member municipality or a resolution as passed by a member county or special district.

(8) (Deleted by amendment, L. 2002, p. 517, § 12, effective July 1, 2002.)

(9) "Special district" means any district created pursuant to article 1 of title 32, C.R.S., which has the power to provide sanitation services or water and sanitation services and has wastewater treatment facilities within the boundaries of the authority.

(10) "Wastewater treatment facility" means a facility providing wastewater treatment services which has a designed capacity to receive sewage for treating, neutralizing, stabilizing, and reducing pollutants contained therein prior to the disposal or discharge of the treated sewage. "Wastewater treatment facility" does not include any pretreatment facilities, lift stations, interceptor lines, or other transmission facilities to transmit sewage effluent outside the boundaries of the authority.

Source: L. 88: Entire article added, p. 1030, § 1, effective April 28. **L. 2002:** (3.5) added and (8) amended, p. 517, § 12, effective July 1.

25-8.5-103. Creation and organization. The Cherry Creek basin water quality authority is hereby created. The authority shall be a quasi-municipal corporation and political subdivision of the state, with the powers provided in this article.

Source: L. 88: Entire article added, p. 1030, § 1, effective April 28.

25-8.5-104. Boundaries of authority. (1) The boundaries of the authority shall be determined by the authority, subject to the following:

(a) The boundaries shall be limited to the drainage basin of Cherry Creek from its headwaters to the dam at Cherry Creek reservoir, which the general assembly hereby finds to be:

(I) Arapahoe county: Portions of sections thirty-five and thirty-six, township four south, range sixty-seven west of the sixth principal meridian; a portion of section thirty-one, township four south, range sixty-six west of the sixth principal meridian; portions of sections one, two, three, ten, fifteen, twenty-two, twenty-three, twenty-seven, and thirty-four, and all of sections eleven, twelve, thirteen, fourteen, twenty-four, twenty-five, twenty-six, thirty-five and thirty-six, township five south, range sixty-seven west of the sixth principal meridian; all of sections seven, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six and portions of sections five, six, eight, nine, fourteen, fifteen, sixteen, twenty-three and twenty-four, township five south, range sixty-six west of the sixth principal meridian; all of section thirty-one and portions of sections nineteen, twenty-nine, thirty, and thirty-two, township five south, range sixty-five west of the sixth principal meridian;

(II) Douglas county: Portions of sections four, nine, sixteen, twenty-one, twenty-eight and thirty-three, and all of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty, twenty-nine, thirty, thirty-one, and thirty-two, township six south, range sixty-five west of the sixth principal meridian; township six south, range sixty-six west of the sixth principal meridian; portions of sections three, ten, fifteen, twenty-one, twenty-two, twenty-eight, thirty-one, thirty-two and thirty-three, and all of sections one, two, eleven, twelve, thirteen, fourteen, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, thirty-four, thirty-five and thirty-six, township six south, range sixty-seven west of the sixth principal meridian; portions of sections four, nine, sixteen, and twenty-one, and all of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three, township seven south, range sixty-five west of the sixth principal meridian; township seven south, range sixty-six west of the sixth principal meridian; portions of sections four, five, nine, fourteen, fifteen, sixteen, twenty-

three, twenty-five, twenty-six, and thirty-six, and all of sections one, two, three, ten, eleven, twelve, thirteen, and twenty-four, township seven south, range sixty-seven west of the sixth principal meridian; portions of sections twenty-eight and thirty-three and all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-nine, thirty, thirty-one, and thirty-two, township eight south, range sixty-five west of the sixth principal meridian; portions of sections six, seven, eighteen, nineteen, twenty-nine, thirty, and thirty-one, and all of sections one, two, three, four, five, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, township eight south, range sixty-six west of the sixth principal meridian; a portion of section one, township eight south, range sixty-seven west of the sixth principal meridian; all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two and thirty-three, township nine south, range sixty-five west of the sixth principal meridian; all of township nine south, range sixty-six west excepting portions of sections six and seven; portions of sections thirteen, twenty-three, twenty-four, twenty-five, and thirty-six, township nine south, range sixty-seven west of the sixth principal meridian; portions of sections twenty-eight and thirty-three, and all of sections four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-nine, thirty, thirty-one, and thirty-two, township ten south, range sixty-five west of the sixth principal meridian; portions of sections five, six, seven, eight, seventeen, eighteen, nineteen, twenty-nine, thirty, thirty-one, and all of sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-two, thirty-three, thirty-four, thirty-five and thirty-six, township ten south, range sixty-six west of the sixth principal meridian; a portion of section one, township ten south range sixty-seven west of the sixth principal meridian.

(b) Lands may be included within the boundaries of the authority pursuant to section 25-8.5-119.

(c) Lands within the boundaries identified in paragraph (a) of this subsection (1) may be excluded from the authority pursuant to section 25-8.5-120.

(2) The authority shall maintain a current map, showing all lands that are included in the authority's boundaries.

Source: L. 88: Entire article added, p. 1031, § 1, effective April 28.

25-8.5-105. Authority members. (1) The following entities shall be members of the authority:

(a) Each county that has property within the authority's boundaries shall have one member;

(b) Each municipality that has property within the authority's boundaries shall have one member;

(c) The special districts that include in their service areas property within the Cherry Creek basin and that own and operate wastewater treatment services facilities in the Cherry Creek basin shall collectively be represented by a single member of the authority. For the purposes of this paragraph (c), wastewater treatment services shall mean a wastewater treatment facility with a designed capacity to receive more than two thousand gallons of sewage per day.

(d) A total of seven members shall be appointed by the governor to represent sports persons, recreational users, and concerned citizens. A minimum of two of these appointees shall be residents of Colorado and shall be from bona fide sports persons' or recreational organizations that have members who use the reservoir. A minimum of two of these appointees shall be from bona fide citizen or environmental organizations interested in preserving water quality with members who use the reservoir or live within Cherry Creek basin. At least three of the appointed members shall have backgrounds in or professional training regarding water quality issues. A simple majority of the appointed members shall be appointed to four-year terms, the remainder shall be appointed to initial two-year terms,

and the members appointed to fill the vacancies upon expiration of such two-year terms shall serve four-year terms. The governor may replace any appointed member with a new member by appointment every four years.

Source: L. 88: Entire article added, p. 1032, § 1, effective April 28. L. 2001: (1) amended, p. 896, § 1, effective August 8.

25-8.5-106. Board of directors. (1) The governing body of the authority shall be a board of directors which shall exercise and perform all powers, rights, privileges, and duties invested or imposed by this article.

(2) Each authority member shall appoint one representative and two alternates to serve on the board. The representative and alternates for the special district authority member shall be chosen by unanimous consent of the special districts referenced in section 25-8.5-105 (1) (c), or included under section 25-8.5-119. Any county, municipality, or special district that provides wastewater treatment services by contract with another entity that is a member of the authority shall not be entitled to a separate member on the board, and such a special district shall not be entitled to representation by the special district member.

(3) Directors shall be appointed for terms of two years. Notice of each appointment shall be given to the recording secretary for the authority.

(4) No director shall receive compensation as an employee of the authority. Reimbursement of actual expenses for directors shall not be considered compensation.

(5) An appointment to fill a vacancy on the board shall be made by the authority member for the remainder of the unexpired term.

(6) If a board member or designated alternate fails to attend two consecutive regular meetings of the board, the authority may submit a written request to the appointing authority member to have its representative attend the next regular meeting. If, following such request, said representative fails to attend the next regular board meeting, the board may appoint an interim representative from the authority member's jurisdiction to serve until the authority member appoints a new representative.

(7) An authority member, at its discretion, may remove from office any board member or designated alternate representing the authority member and appoint a successor.

(8) The board shall elect one of its members as chairman of the authority and one of its members as secretary-treasurer and shall appoint a recording secretary who may be a member of the board.

(9) The recording secretary shall keep in a visual text format that may be transmitted electronically a record of all of the authority's meetings, resolutions, certificates, contracts, bonds given by employees or contractors, and all corporate acts which shall be open to inspection of all interested parties.

(10) The secretary-treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the authority.

Source: L. 88: Entire article added, p. 1032, § 1, effective April 28. L. 2001: (2) amended, p. 897, § 2, effective August 8. L. 2009: (9) amended, (HB 09-1118), ch. 130, p. 561, § 3, effective August 5.

25-8.5-107. Voting. (1) Each authority member, through its designated director or designated alternate acting in the director's place, shall be entitled to one vote.

(2) Board action upon proposed waste load allocations, site location or site plans selected pursuant to section 25-8-702, discharge permits secured pursuant to section 25-8-501, amendments to the authority's wastewater management plan, and all budget and funding decisions shall require an affirmative vote of a majority of all authority members. Any vote by the special district member on such board action shall reflect the majority of the represented special districts.

(3) All decisions of the board not enumerated in subsection (2) of this section shall be made and decided by a majority of the quorum. A quorum requires that at least fifty percent of all authority members be present.

(4) A director shall disqualify himself from voting on any issue in which he has a conflict of interest unless such director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S., in which case such disclosure shall cure the conflict. A director shall abstain from voting if the director would obtain a personal financial gain from the contract or services being voted upon by the authority.

(5) Notwithstanding subsection (2) of this section, any vote regarding a change in the levy and collection of ad valorem taxes pursuant to section 25-8.5-111 (1) (p) (I) shall be limited to authority members representing municipalities or counties within the authority's boundaries.

Source: L. 88: Entire article added, p. 1033, § 1, effective April 28. **L. 2001:** (2) and (3) amended and (5) added, p. 897, § 3, effective August 8.

25-8.5-108. Ex officio members. (1) Ex officio members shall be provided with notice of the authority meetings. Ex officio members shall not serve on the board. Ex officio members are not voting members. The following shall be considered ex officio members:

(a) Every conservation district of which more than two-thirds of its territory is included within the authority's boundaries;

(b) Any other governmental or quasi-governmental agency designated as an ex officio member by the authority.

Source: L. 88: Entire article added, p. 1034, § 1, effective April 28. **L. 2002:** (1)(a) amended, p. 517, § 13, effective July 1.

25-8.5-109. Meetings. (1) The board shall fix the time and place at which its regular meetings shall be held and provide for the calling and holding of special meetings.

(2) Notice of the time and place designated for all regular meetings shall be posted at the office of the county clerk and recorder of each of the counties included within the authority. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed.

(3) Special meetings of the board shall be held at the call of the chairman or upon request of two board members. The authority shall inform all board members five calendar days before the special meeting and shall post notice in accordance with subsection (2) of this section at least three days before the special meeting of the date, time, and place of such special meeting and the purpose for which it is called.

(4) All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public, but the board may hold executive sessions as provided in part 4 of article 6 of title 24, C.R.S.

Source: L. 88: Entire article added, p. 1034, § 1, effective April 28. **L. 91:** (4) amended, p. 821, § 5, effective June 1.

25-8.5-110. Powers of board - organization - administration. (1) The board has the following powers relating to carrying on the affairs of the authority:

(a) To organize, adopt bylaws and rules of procedure, and select a chairman and chairman pro tempore;

(b) To make and pass resolutions and orders which are necessary for the governance and management of the affairs of the authority, for the execution of the powers vested in the authority, and for carrying out the provisions of this article;

(c) To fix the location of the principal place of business of the authority and the location of all offices maintained under this article;

(d) To prescribe by resolution a system of business administration, to create any and all necessary offices, to establish the powers and duties and compensation of all employees, and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the authority;

(e) To appoint and retain employees, agents, and consultants to make recommendations, coordinate authority activities, conduct routine business of the authority, and act on behalf of the authority under such conditions and restrictions as shall be fixed by the board;

(f) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for the letting of contracts on a fair and competitive basis for the construction of works, structures, or equipment or for the performance or furnishing of such labor, materials, or supplies as may be required for the carrying out of any of the purposes of this article.

Source: L. 88: Entire article added, p. 1034, § 1, effective April 28.

25-8.5-111. Powers of authority - general and financial. (1) In order to accomplish its purposes, the authority has the power to:

(a) Develop and implement, with such revisions as become necessary in light of changing conditions, plans for water quality controls for the reservoir, applicable drainage basin, waters, and watershed, to achieve and maintain the water quality standards. In particular, the authority shall submit, within two years after August 8, 2001, a plan to the water quality control commission that is intended to meet state water quality standards, including measures to mitigate the impacts of nonpoint source pollutants.

(b) Conduct pilot studies and other studies that may be appropriate for the development of potential water quality control solutions;

(c) Develop and implement programs to provide credits, incentives, and rewards within the Cherry Creek basin plan for water quality control projects;

(d) Recommend the maximum loads of pollutants allowable to maintain the water quality standards;

(e) Recommend erosion controls and urban runoff control standards and conduct educational programs regarding such controls in the basin;

(f) Recommend septic system maintenance programs;

(g) Incur debts, liabilities, and obligations;

(h) Have perpetual existence;

(i) Have and use a corporate seal;

(j) Sue and be a party to suits, actions, and proceedings;

(k) Enter into contracts and agreements affecting the affairs of the authority including, but not limited to, contracts with the United States and the state of Colorado and any of their agencies or instrumentalities, political subdivisions of the state of Colorado, corporations, and individuals;

(l) Acquire, hold, lease (as lessor or lessee), and otherwise dispose of and encumber real and personal property;

(m) Acquire, lease, rent, manage, operate, construct, and maintain water quality control facilities or improvements for drainage, nonpoint sources, or runoff within or without the authority;

(n) Establish rates, tolls, fees, charges, and penalties except on agricultural land for the functions, services, facilities, and programs of the authority; except that the total annual revenue collected from said rates, tolls, fees, and charges, less the cost of said functions, services, facilities, and programs, shall not exceed thirty percent of the annual authority budget;

(o) Establish in cooperation with the department of natural resources fees for Cherry Creek reservoir users, which amounts shall be subject to the review and approval of the board of parks and outdoor recreation, which shall not unreasonably withhold approval. Said reservoir fees, including all users regardless of activity, however established, shall not in total exceed the amount that would be collected if the reservoir user fee was one dollar per reservoir user per year.

(p) (I) Levy and collect ad valorem taxes on and against all taxable property within the authority subject to the limitation that no mill levy for any fiscal year shall exceed one-half mill; however, ad valorem taxes greater than one-half mill can be levied by the authority if it is approved by the electors at an election held according to the procedures of part 8 of article 1 of title 32, C.R.S.

(II) No property tax shall be levied until the fees from the recreation users and the development fees are established.

(q) Issue and refund revenue and assessment bonds and pledge the revenues of the authority or assessments therefor to the payment thereof in the manner provided in part 4 of article 35 of title 31, C.R.S., and as provided in this article;

(r) Invest any moneys of the authority in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(s) Review and approve water quality control projects of any entity other than the authority within the boundaries of the authority;

(t) Except that the authority shall not have the power to regulate agricultural nonpoint source activities; such agricultural nonpoint source activities shall be subject only to the provisions of section 25-8-205 (5);

(u) Have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the authority by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(2) Nothing in subsection (1) of this section shall be construed as authorizing the authority to take any action or spend any moneys in a manner that is inconsistent with its statutory purpose to protect and preserve the water quality of Cherry Creek reservoir. Consistent therewith, the authority shall expend funds only pertaining to the water quality standards, control regulations, or similar regulations regarding the water quality of Cherry Creek and Cherry Creek reservoir if such expenditures are clearly consistent with improving, protecting, and preserving such water quality. The authority shall focus its efforts on improving, protecting, and preserving the water quality of Cherry Creek and Cherry Creek reservoir, and on achieving and maintaining the existing water quality standards.

(3) Of the revenues collected by the authority under paragraphs (n), (o), and (p) of subsection (1) of this section, a minimum of sixty percent on an annual basis shall be spent on construction and maintenance of pollution abatement projects in the Cherry Creek basin or on payments due under loans or other debt incurred and spent by the authority entirely upon such projects.

Source: L. 88: Entire article added, p. 1035, § 1, effective April 28. L. 89: (1)(r) amended, p. 1111, § 17, effective July 1. L. 2001: (1)(a), (1)(d), (1)(e), and (1)(n) amended and (2) and (3) added, p. 898, § 4, effective August 8.

25-8.5-112. Power to issue bonds. To carry out the purposes of this article, the board is authorized to issue revenue or assessment bonds of the authority. Bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum interest rate set forth in the resolution adopted by the board authorizing the issuance of the bonds, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years after date of issuance. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal thereof. Said bonds shall be executed in the name and on behalf of the authority, signed by the chairman of the board with the seal of the authority affixed thereto, and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons shall bear the original or facsimile signature of the chairman of the board.

Source: L. 88: Entire article added, p. 1036, § 1, effective April 28.

25-8.5-113. Revenue refunding bonds. Any revenue bonds issued by the authority may be refunded by the authority, or by any successor thereof, in the name of the authority, subject to the provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, by the

issuance of bonds to refund, pay, and discharge all or any part of such outstanding bonds, including any interest on the bonds in arrears or about to become due, for the purpose of avoiding or terminating any default in the payment of the interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto or for any combination of such purposes. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this article for an original issue of bonds.

Source: L. 88: Entire article added, p. 1036, § 1, effective April 28.

25-8.5-114. Use of proceeds of revenue refunding bonds. The proceeds of revenue refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor; but, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon or the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption dates in connection with which the board shall exercise a prior redemption option. Any purchase of any refunding bond issued under this article shall in no manner be responsible for the application of the proceeds thereof by the authority or any of its officers, agents, or employees.

Source: L. 88: Entire article added, p. 1037, § 1, effective April 28. **L. 89:** Entire section amended, p. 1111, § 18, effective July 1.

25-8.5-115. Facilities - comprehensive program. (1) The authority, acting by and through the board, may acquire, construct, lease, rent, improve, equip, relocate, maintain, and operate water quality control facilities, any project, or any part thereof for the benefit of the authority and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable.

(2) (a) The authority shall develop a comprehensive program for the water quality control facilities specified in subsection (1) of this section. A comprehensive program may consist of one project or more than one project.

(b) A hearing on the proposed comprehensive program shall be scheduled, and notice of the hearing shall be given by publication and posted in the office of the county clerk and recorder of each member county. Upon closure of the hearing, the board may either require changes to be made in the comprehensive program or the board may approve or reject the comprehensive program as prepared.

(c) If any substantial changes to the comprehensive program are ordered at any time, a further hearing shall be held pursuant to notice which shall be given by publication.

Source: L. 88: Entire article added, p. 1037, § 1, effective April 28.

25-8.5-116. Coordination with drainage and flood control measures. (1) Any exercise by the authority of the powers granted by section 25-8.5-111 or 25-8.5-115 which

affects drainage and flood control shall be consistent with and conform to the drainage and flood control program of the urban drainage and flood control district adopted pursuant to section 32-11-214, C.R.S., the resolutions, rules, regulations, and orders of the district issued pursuant to section 32-11-218 (1) (e), C.R.S., and any flood plain zoning resolutions, rules, regulations, and orders of any public body having jurisdiction to adopt the same.

(2) Construction by the authority of drainage or water quality control facilities which might or will affect drainage or flood control within the boundaries of the urban drainage and flood control district shall not be undertaken until a proposal therefor has been presented to and approved by the board of directors of said district. Such proposal shall demonstrate compliance with the requirements of subsection (1) of this section, and the board shall apply the same standards of flood control and drainage criteria for approval thereof as it applies for review of proposals presented for approval pursuant to section 32-11-221, C.R.S. The provisions of section 32-11-221, C.R.S., shall apply to the presentation, consideration, and determination by said board of directors of any such proposal or modification thereof.

Source: L. 88: Entire article added, p. 1038, § 1, effective April 28.

25-8.5-117. Transfer of powers. (1) Upon the adoption of the board of directors of the urban drainage and flood control district and the board of directors of the authority created herein of a joint resolution delegating the agreed-upon responsibility to the urban drainage and flood control district for carrying out and meeting, within the district's boundaries, the compliance requirements and the permitting requirements imposed with respect to storm water runoff quality by the federal "Water Quality Act of 1987" and any regulations and standards adopted pursuant thereto or pursuant to state law, all powers contained in this act to deal with water quality control and compliance relating to the agreed-upon aspects of storm water runoff and nonpoint sources of pollution, including financial powers and special assessment powers but not including ad valorem taxation powers, shall be transferred to the urban drainage and flood control district.

(2) Upon the transfer of powers as provided in subsection (1) of this section, any allocation of waste loads affecting storm water runoff or nonpoint sources of pollution proposed or adopted by the authority shall be effective only upon adoption thereof or concurrence therewith by the board of directors of the urban drainage and flood control district.

(3) If the urban drainage and flood control district accepts the responsibility and the transfer of powers as provided in subsection (1) of this section, after completion of a plan for water quality controls by the authority which involves storm drainage runoff or nonpoint sources and after commencement of implementation of such plan, the district shall be bound to carry out the plan as it relates to the storm water and nonpoint source powers transferred to it within the time requirements, if any, of the plan.

Source: L. 88: Entire article added, p. 1038, § 1, effective April 28.

25-8.5-118. Power to levy special assessments. (1) The board, in the name of the authority, for the purpose of defraying all the cost of acquiring or constructing, or both, any project or facility authorized by this article, or any portion of the cost thereof not to be defrayed with moneys available therefor from its own funds, any special funds, or otherwise, also has the power under this article:

(a) To levy assessments against all or portions of the property within the authority and to provide for collection of the assessments pursuant to part 6 of article 20 of title 30, C.R.S.;

(b) To pledge the proceeds of any assessments levied under this article to the payment of assessment bonds and to create liens on such proceeds to secure such payments;

(c) To issue assessment bonds payable from the assessments, which assessment bonds shall constitute special obligations of the authority and shall not be a debt of the authority; and

(d) To make all contracts, to execute all instruments, and to do all things necessary or convenient in the exercise of the powers granted in this article or in the performance of the authority's duties or in order to secure the payment of its assessment bonds.

(2) The authority shall give notice, by publication once in a newspaper of general circulation in the authority, to the owners of the property to be assessed, which shall include:

- (a) The kind of improvements proposed;
- (b) The number of installments and the time in which the cost of the project will be payable;
- (c) A description of the properties which will be assessed;
- (d) The probable cost per acre or other unit basis which, in the judgment of the authority, reflects the benefits which accrue to the properties to be assessed; except that no benefit shall accrue to agricultural lands;
- (e) The time, not less than thirty days after the publication, when a resolution authorizing the improvements will be considered;
- (f) A map of the properties to be assessed, together with an estimate and schedule showing the approximate amounts to be assessed, and a statement that all resolutions and proceedings are on file and may be seen and examined by any interested person at the office of the authority or other designated place at any time within said period of thirty days; and
- (g) A statement that all complaints and objections by the owners of property to be assessed in writing concerning the proposed improvements will be heard and determined by the authority before final action thereon.

(3) The finding, by resolution, of the board that said improvements were ordered after notice given and after hearing held and that such proposal was properly initiated by the said authority shall be conclusive of the facts so stated in every court or other tribunal.

(4) Any resolution or order regarding the assessments or improvements may be modified, confirmed, or rescinded at any time prior to the passage of the resolution authorizing the improvements.

Source: L. 88: Entire article added, p. 1039, § 1, effective April 28.

25-8.5-119. Inclusion of property. (1) Any municipality, county, or special district, or any portion thereof, shall be eligible for inclusion upon resolution of its governing body requesting inclusion in the authority and describing the property to be included. The authority, by resolution, may include such property on such terms and conditions as may be determined appropriate by the board.

(2) Upon receipt of a resolution requesting inclusion, the board shall cause an investigation to be made within a reasonable time to determine whether or not the municipality, county, or special district, or portion thereof, may feasibly be included within the authority, whether the municipality, county, or special district has any property which is tributary to the basin, waters, or watersheds governed by the authority, and the terms and conditions upon which the municipality, county, or special district may be included within the authority. If it is determined that it is feasible to include the municipality, county, or special district, or portion thereof, in the authority, and the municipality, county, or special district has property tributary to the basin, waters, or watersheds governed by the authority, the board by resolution shall set the terms and conditions upon which the municipality, county, or special district, or portion thereof, may be included within the authority and shall give notice thereof to the municipality, county, or special district. If the board determines that the municipality, county, or special district, or portion thereof, cannot feasibly be included within the authority or otherwise determines that the municipality, county, or special district should not be included within the authority, the board shall pass a resolution so stating and notifying the municipality, county, or special district of the action of the board. The board's determination that the county, municipality, or special district, or portion thereof, should not be included in the authority shall be conclusive.

(3) (a) If the governing body of the municipality, county, or special district desires to include the municipality, county, or special district, or portion thereof, within the authority upon the terms and conditions set forth by the board, the governing body shall adopt a

resolution declaring that the public health, safety, and general welfare requires the inclusion of said municipality, county, or special district within the authority and that the governing body desires to have said municipality, county, or special district, or portion thereof, included therein upon the terms and conditions prescribed by the board. The governing body of such municipality, county, or special district, before final adoption of said resolution, shall hold a public hearing thereon, notice of which shall be given by publication in a newspaper of general circulation within such municipality, county, or special district, which shall be complete at least ten days before the hearing. Upon the final adoption of said resolution, the clerk of the governing body of such municipality, county, or special district shall forthwith transmit a certified copy of the resolution to the board and to the division of local government in the department of local affairs.

(b) After receipt of a copy of such resolution, the board shall pass and adopt a resolution including said municipality, county, or special district, or portion thereof, in the authority and shall cause a certified copy thereof to be transmitted to the division of local government and a certified copy to the governing body of the municipality, county, or special district.

(4) The director of said division, upon receipt of a certified copy of the resolution of the board, shall forthwith issue a certificate reciting that the municipality, county, or special district, or portion thereof, described in such resolution has been duly included within the authority according to the laws of the state of Colorado. The inclusion of such territory shall be deemed effective upon the date of the issuance of such certificate, and the validity of such inclusion shall not be contestable in any suit or proceeding which has not been commenced within thirty days from such date. The said division shall forthwith transmit to the governing body of such municipality, county, or special district and to the board five copies of such certificate, and the clerk of such governing body shall forthwith record a copy of the certificate in the office of the clerk and recorder of each county in which such municipality, county, or special district, or portion thereof, is located and file a copy thereof with the county assessor of each such county. Additional copies of said certificate shall be issued by the division of local government upon request.

Source: L. 88: Entire article added, p. 1040, § 1, effective April 28.

25-8.5-120. Exclusion of property. (1) Any owner of property within the boundaries of the authority may petition to be excluded from the authority.

(2) In order for such property to be excluded, the board must determine that the property does not receive wastewater treatment services or have an on-site wastewater treatment system located within the authority and either:

(a) Was improperly included within the authority; or

(b) Is not tributary to the basin, waters, or watersheds governed by the authority or will not benefit from projects or improvements provided by the authority.

(3) Any petition for exclusion shall specify the property to be excluded and evidence that the property complies with the criteria of subsection (2) of this section.

(4) The authority shall provide notice of the date, time, and place of the authority's meeting to consider the petition for exclusion.

(5) The authority may approve, modify, or deny a petition for exclusion.

(6) If the authority approves a petition for exclusion of property, the authority shall file a copy of said resolution with the division of local government and with the county, municipality, or special district authority members which includes within its boundaries the excluded property, record a copy of the resolution in the office of the county clerk and recorder in the county in which said excluded property is located, and file a copy with the county assessor in such county.

Source: L. 88: Entire article added, p. 1041, § 1, effective April 28. **L. 2012:** IP(2) amended, (HB 12-1126), ch. 137, p. 499, § 6, effective August 8.

ARTICLE 9

Water and Wastewater Treatment
Facility Operators

25-9-101.	Legislative declaration.		
25-9-102.	Definitions.	25-9-106.2.	Industrial wastewater treatment facility operator.
25-9-103.	Water and wastewater facility operators certification board - composition - repeal of article.	25-9-106.3.	Multiple facility operator.
		25-9-106.5.	Education and experience - substitution allowed.
25-9-104.	Duties of board - rules.	25-9-107.	Certification procedure.
25-9-105.	Water treatment facility operator.	25-9-108.	Fees.
		25-9-109.	Use of title.
25-9-106.	Domestic wastewater treatment facility operator.	25-9-110.	Violations - penalty.

25-9-101. Legislative declaration. To assure adequate operation of water and wastewater facilities, and to preserve the public peace, health, and safety, the provisions of this article and any rules authorized pursuant thereto are enacted to provide for the examination, classification, and certification of water and wastewater facility operators and to establish minimum standards therefor based upon their knowledge and experience, to provide procedures for certification, to encourage vocational education for such operators, to provide a penalty for the wrongful use of the title “certified operator”, to require each water and wastewater facility to be under the supervision of a certified operator, to provide for the classification of all water and wastewater facilities in the state, and to provide a penalty for the operation of a water or wastewater facility without supervision of a certified operator.

Source: L. 73: p. 747, § 1. C.R.S. 1963: § 66-38-1. L. 2000: Entire section amended, p. 767, § 1, effective May 23.

ANNOTATION

Law reviews. For article, “1974 Land Use Legislation in Colorado”, see 51 Den. L.J. 467 (1974).

- 25-9-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Board” means the water and wastewater facility operators certification board.
 - (2) “Certificate” means the certificate of competency issued by the board stating that the operator named thereon has met the requirements for the specified operator classification of the certification program.
 - (3) “Certified operator” means the person who has responsibility for the operation of any water and wastewater facility covered under this article and is certified in accordance with the provisions of this article.
 - (4) “Department” means the Colorado department of public health and environment.
 - (4.3) “Division” means the water quality control division within the department of public health and environment.
 - (4.5) “Domestic wastewater treatment facility” means any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not the facility or group of units is discharging into state waters. “Domestic wastewater treatment facility” specifically excludes on-site wastewater treatment systems.
 - (4.7) “Industrial wastewater treatment facility” means any facility or group of units used for the pretreatment, treatment, or handling of industrial waters, wastewater, reuse water, and wastes that are discharged into state waters. “Industrial wastewater treatment facility” includes facilities that clean up contaminated groundwater or spills; except that such term does not include facilities designed to operate for less than one year or facilities with in-situ discharge.

(4.8) “Small system” means a water or wastewater facility that serves a population of three thousand three hundred or less.

(4.9) “Wastewater collection system” means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility.

(5) “Wastewater treatment facility” means either a domestic wastewater treatment facility or an industrial wastewater treatment facility.

(5.3) “Water and wastewater facility” means a water treatment facility, wastewater treatment facility, water distribution system, or wastewater collection system.

(6) “Water distribution system” means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer.

(7) “Water treatment facility” means the facility or facilities within the water distribution system that can alter the physical, chemical, or bacteriological quality of the water.

Source: **L. 73:** p. 747, § 1. **C.R.S. 1963:** § 66-38-2. **L. 85:** (5) and (6) amended, p. 913, § 1, effective April 24. **L. 94:** (4) amended, p. 2790, § 523, effective July 1. **L. 96:** (4.5) and (4.7) added and (5) amended, p. 356, § 1, effective July 1. **L. 2000:** (1), (3), (4.5), (4.7), (5), (6), and (7) amended and (4.3), (4.8), (4.9), and (5.3) added, p. 767, § 2, effective May 23. **L. 2012:** (4.5) amended, (HB 12-1126), ch. 137, p. 499, § 7, effective August 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, “1974 Land Use Legislation in Colorado”, see 51 Den. L.J. 467 (1974).

25-9-103. Water and wastewater facility operators certification board - composition - repeal of article. (1) There is hereby created the water and wastewater facility operators certification board, which shall constitute a section of the division of administration of the department and shall consist of the following ten members:

(a) A certified water treatment or domestic wastewater treatment facility operator with the highest level of certification available in Colorado;

(b) A certified industrial wastewater treatment facility operator or other representative of a private entity that operates an industrial wastewater treatment facility;

(c) A city manager, manager of a special district, or utility manager in a city, county, or city and county that operates a domestic water or wastewater treatment facility;

(d) A representative of the department of public health and environment, who shall be an ex officio, nonvoting member;

(e) A certified water distribution or wastewater collection system operator with the highest level of certification available in Colorado;

(f) A representative from the Colorado rural water association; and

(g) Four members appointed to achieve geographical representation and to reflect the various interests in the water and wastewater facility certification program. At least one of such members shall reside west of the continental divide, and at least one shall reside in the rural portion of the eastern plains of Colorado.

(2) All members of the board shall be appointed by the governor. At least four of the voting members of the board shall be certified water or wastewater facility operators, including representatives of both the water and wastewater industries.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), appointments are for terms of four years.

(b) The board shall be reconstituted as of July 1, 2004. The governor shall make initial appointments or reappointments to the reconstituted board so that two voting members’

terms expire in 2005, two voting members' terms expire in 2006, two voting members' terms expire in 2007, and three voting members' terms expire in 2008.

(4) This article is repealed, effective July 1, 2013. Prior to such repeal, the water and wastewater facility operators certification board shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 73: p. 748, § 1. C.R.S. 1963: § 66-38-3. L. 88: (4) added, p. 931, § 17, effective April 28. L. 91: (4) amended, p. 688, § 58, effective April 20. L. 96: Entire section amended, p. 357, § 2, effective July 1. L. 2000: (1) and (4) amended, p. 768, § 3, effective May 23. L. 2004: Entire section amended, p. 280, § 3, effective July 1. L. 2011: (3) amended, (SB 11-021), ch. 66, p. 174, § 1, effective July 1.

25-9-104. Duties of board - rules. (1) (a) The board shall elect a chair and secretary each year and shall establish rules in accordance with article 4 of title 24, C.R.S., setting forth the requirements governing certification for water and wastewater facility operators, including application for certification; admission to the examinations; setting and coordination of examination schedules; recording and issuing of certificates for the class of operator for which the applicant is found to be qualified; renewal of certificates; issuance of certificates based on reciprocity; minimum standards of operator performance; and standards for the accreditation of training programs. The board may select and appoint one or more independent nonprofit corporations to carry out the administration of the program and examinations, including, but not limited to, maintaining records of certified operators; notifying operators of expiration of certification; providing information on accredited training requirements; preparing and furnishing the examination material; collecting fees as set forth in section 25-9-108; setting the times, dates, and places for holding examinations, one of which shall be given at least annually, in accordance with rules of the board; grading examination papers; evaluating work experience of applicants; evaluating continuing training achievements for renewal of certification; and evaluating requests for reciprocity. The board shall ensure that an office is maintained for contact with operators and employers. The board shall also ensure, through the use of subject matter experts, that all certification examinations test for information that is relevant to the knowledge that is necessary to operate the level of facility for which certification is sought. The board may adopt such rules in accordance with article 4 of title 24, C.R.S., as are necessary to ensure the proper administration of the program and shall enter into contracts with any nonprofit corporation selected or appointed by the board to ensure that each nonprofit corporation receives applications and fees, conducts such examinations as may be directed by the board, records the results thereof, notifies applicants of results, recommends issuance of certificates, provides feedback to examinees upon request following each examination, and prepares and distributes an annual report. With the permission of the board, a nonprofit corporation contracted with by the board may enter into subsidiary agreements with other nonprofit corporations, educational institutions, and for-profit corporations to carry out the duties assigned by the board; except that any such subsidiary agreements shall be subject to prior approval by the board. The board shall be responsible for and shall retain the final authority for all actions and decisions carried out on behalf of the board by any such nonprofit corporation, educational institution, or for-profit corporation. Such authority shall include, but shall not be limited to, the authority to modify, suspend, or reverse any action or decision of any nonprofit corporation, educational institution, or for-profit corporation.

(b) In order to qualify for consideration to administer the duties set forth in this section, a nonprofit corporation must have expertise in training and testing procedures, as well as demonstrated knowledge of water and wastewater treatment, collection, and distribution systems.

(2) The board may promote and assist in regular training schools and programs designed to aid applicants and other interested persons to acquire the necessary knowledge to meet the certification requirements of this article.

(3) The board shall establish classes of certified water treatment facility operators, classes of domestic wastewater treatment facility operators, classes of industrial wastewater treatment facility operators, classes of water distribution system operators, classes of

wastewater collection system operators, classes of operators for small systems, and classes of other persons who require and qualify for multiple certifications. In establishing each classification, the board shall differentiate the various levels of complexity to be encountered in water and wastewater facility operation and the appropriate qualifications for certification for each class. The board shall set minimum education, experience, examination, and ongoing training requirements for each class.

(4) The board shall maintain for each water and wastewater facility a minimum class of certified operators required for its supervision; except that the board may exempt certain industrial wastewater treatment facilities or classes of facilities from the requirement to operate under the supervision of a certified operator, based upon a determination that such an exemption is not inconsistent with the goal of assuring adequate operation of water and wastewater facilities to protect public health and the environment. In determining whether to provide such an exemption, the board may consider criteria including, but not limited to:

- (a) Discharges of limited duration;
- (b) The sensitivity of the receiving waters;
- (c) The level of toxic pollutants in the discharge; and
- (d) Situations where chemical, mechanical, or biological treatment techniques are not required to meet permit limits, including, but not limited to, sedimentation ponds at mining operations for construction materials, as that term is defined in section 34-32.5-103 (3), C.R.S.

(5) The board shall establish a procedure whereby any decision of the board, the division, or any organization performing duties on behalf of the division can be subject to appeal to the board.

(6) The board shall exercise such other powers and duties as are deemed necessary within the scope of this article. The board, in accordance with the “State Administrative Procedure Act”, article 4 of title 24, C.R.S., shall establish criteria for the discipline or reprimand of any water or wastewater facility operator and for the suspension or revocation of the certification of any such operator. Such criteria shall include but shall not be limited to:

- (a) Willfully or negligently violating, causing, or allowing the violation of rules promulgated pursuant to this article or failing to comply with the provisions of this article;
- (b) Submitting false or misleading information on any document provided to the department, the board, or any organization acting on behalf of the board;
- (c) Using fraud or deception in the course of employment as an operator;
- (d) Failing to conform with minimum standards in the performance of an operator’s duties; and
- (e) Engaging in dishonest conduct during an examination.

(6.5) The division shall have the primary responsibility for the investigation of instances of possible misconduct by water and wastewater facility operators and shall report the results of any investigation to the board and make recommendations regarding appropriate disciplinary action to the board. The board may promulgate rules in accordance with article 4 of title 24, C.R.S., to allow the division to immediately suspend or revoke certifications where such immediate action is necessary to protect the public health or environment.

(7) Members of the board shall serve without compensation, but shall be reimbursed for their necessary expenses.

(8) The board shall exercise its powers and perform its duties and functions as if it were transferred to the department by a **type 1** transfer under the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

Source: L. 73: p. 748, § 1. C.R.S. 1963: § 66-38-4. L. 96: IP(6) amended, p. 1477, § 43, effective June 1; (3), (4), and (6) amended, p. 358, § 3, effective July 1. L. 2000: (1) to (5), IP(6), and (6)(b) amended and (6.5) added, p. 769, § 4, effective May 23. L. 2004: (1)(a) amended, p. 282, § 4, effective July 1. L. 2008: (4) amended, p. 351, § 1, effective August 5.

25-9-105. Water treatment facility operator. (1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as water treatment facility operators or water distribution system operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (d) (Deleted by amendment, L. 2000, p. 771, § 5, effective May 23, 2000.)

Source: L. 73: p. 749, § 1. C.R.S. 1963: § 66-38-5. L. 96: IP(1) and (1)(d) amended, p. 358, § 4, effective July 1. L. 2000: (1) amended, p. 771, § 5, effective May 23.

25-9-106. Domestic wastewater treatment facility operator. (1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as domestic wastewater treatment facility operators or wastewater collection system operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (d) (Deleted by amendment, L. 2000, p. 772, § 6, effective May 23, 2000.)

Source: L. 73: p. 749, § 1. C.R.S. 1963: § 66-38-6. L. 96: IP(1) and (1)(d) amended, p. 359, § 5, effective July 1. L. 2000: (1) amended, p. 772, § 6, effective May 23.

25-9-106.2. Industrial wastewater treatment facility operator. (1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as industrial wastewater treatment facility operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (c) (Deleted by amendment, L. 2000, p. 773, § 7, effective May 23, 2000.)

Source: L. 96: Entire section added, p. 359, § 6, effective July 1. L. 2000: (1) amended, p. 773, § 7, effective May 23.

25-9-106.3. Multiple facility operator. Persons who by specifically related examination, education, and experience are found to be qualified for certification in more than one category of facility operators shall be certified as having the minimum qualifications required for such applicable multiple facility operator classes as the board may establish by rules promulgated in accordance with article 4 of title 24, C.R.S. Such classes of multiple facility operators shall be designed to minimize the number of separate examinations and separate operator certifications that must be held by persons working for small systems, persons in the private sector performing work for a municipality or industry, and other categories and classes where a multiple facility operator certification would be efficient and meet the goals of this article. Such multiple facility certifications may contain conditions established by the board restricting the certification to specific facilities, types of facilities, or activities.

Source: L. 2000: Entire section added, p. 773, § 8, effective May 23.

25-9-106.5. Education and experience - substitution allowed. Water and wastewater facility operator applicants must have a high school diploma or have successfully completed the GED as defined in section 22-33-102 (7), C.R.S.; except that experience or relevant training may be substituted for the high school diploma or GED. Education, training as established under section 25-9-104 (2), and cross-experience may be substituted for experience requirements for certification as a water facility operator, as a water distribution system operator, as a domestic wastewater facility operator, as a wastewater collection system operator, as an industrial wastewater treatment facility operator, or as a multiple facility operator; except that at least fifty percent of any experience requirement shall be met by actual on-site operating experience in a water facility or a wastewater facility, as the case

may be. For the lowest classification of operator in each category, the board may establish rules allowing complete substitution of education for experience for any applicant who passes the applicable examination. For purposes of this section, "cross-experience" means that experience as a wastewater treatment facility operator may be substituted for experience requirements for certification as water treatment facility operator and vice versa.

Source: **L. 77:** Entire section added, p. 1296, § 1, effective May 26. **L. 88:** Entire section amended, p. 1043, § 1, effective July 1. **L. 96:** Entire section amended, p. 360, § 7, effective July 1. **L. 2000:** Entire section amended, p. 774, § 9, effective May 23. **L. 2012:** Entire section amended, (HB 12-1345), ch. 188, p. 749, § 40, effective May 19.

Cross references: (1) For the legislative declaration in the 2012 act amending this section, see section 21 of chapter 188, Session Laws of Colorado 2012.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 21 and 46 of chapter 188, Session Laws of Colorado 2012. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25-9-107. Certification procedure. (1) Any individual possessing the required education and experience may apply for certification in the manner designated by the board on such forms as required and approved by the board. The application shall be accompanied by such fee as required by section 25-9-108. Those applicants who meet the minimum qualifications as established by rules of the board promulgated in accordance with article 4 of title 24, C.R.S., for certification shall be admitted for examination.

(2) When an individual desires certification in a field other than the field in which the individual has experience, the individual's experience shall be evaluated by the board or as directed by the board. The certificate issued is to be based upon the knowledge demonstrated by the applicant through examination and the individual's verified record of work experience in water and wastewater facility operation.

(3) Certificates shall be awarded by the board or at the direction of the board for a period of three years only to those applicants successfully meeting all of the requirements.

(4) (a) Certificates shall be renewed upon payment of the required renewal fee and a showing that the applicant for renewal has met the requirements established by the board for ongoing training.

(b) If any operator fails to renew the operator's certification before the expiration date of such certification, such certification is expired. If a certification expires because of failure to renew before the expiration date of such certification, the operator may renew the certification up to two years after the expiration date upon paying the required renewal fee and meeting the applicable ongoing training requirements for the certification being renewed. If an operator does not renew a certification within two years after the expiration date of such certification, the certification is automatically revoked and an applicant for recertification must meet all the requirements for certification as a new applicant.

(4.5) (Deleted by amendment, L. 96, p. 360, 8, effective July 1, 1996.)

(5) The board, upon application therefor, may issue a certificate, without examination, in a comparable classification to any person who holds a certificate in any state, territory, or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of this article and are of a standard not lower than that specified by regulations adopted under this article. Where there is a question as to the level of certification that should be granted, the board may authorize special examination or other procedures to confirm the appropriate certification level.

(6) to (8) (Deleted by amendment, L. 96, p. 360, § 8, effective July 1, 1996.)

Source: **L. 73:** p. 750, § 1. **C.R.S. 1963:** § 66-38-7. **L. 77:** (5) amended, p. 1296, § 2, effective May 26. **L. 85:** (6) amended and (8) added, p. 913, § 2, effective April 24. **L. 88:** (4) and (8) amended and (4.5) added, p. 1043, § 2, effective July 1. **L. 94:** (4.5) amended,

p. 696, § 4, effective April 19. **L. 96:** (4), (4.5), and (6) to (8) amended, p. 360, § 8, effective July 1. **L. 2000:** Entire section amended, p. 774, § 10, effective May 23.

25-9-108. Fees. (1) Each application for certification shall be accompanied by a fee in the amount of fifteen dollars that is not refundable. The board shall adopt rules that set program fees in addition to the nonrefundable application fee in accordance with the provisions of article 4 of title 24, C.R.S., and such fees shall reflect the actual costs of administering the program as set forth in section 25-9-104 (1). Such fees may be collected and retained by a nonprofit corporation selected and appointed by the board pursuant to section 25-9-104 (1) to pay for its actual costs to administer the program as approved by the board through duly adopted rules. However, any such nonprofit corporation shall remit a portion of the fee in the amount of five dollars for each new and renewal certificate to be issued to the department of the treasury pursuant to the provisions of section 24-36-103, C.R.S. With the approval of the board, all moneys may be paid to the nonprofit corporation and except for the five dollars for new and renewal certifications may be retained by the nonprofit corporation to defray program expenses. Alternatively, if certification and renewal fees are received directly by the board, all moneys shall be deposited with the department of the treasury pursuant to the provisions of section 24-36-103, C.R.S.

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: **L. 73:** p. 751, § 1. **C.R.S. 1963:** § 66-38-8. **L. 98:** Entire section amended, p. 1336, § 53, effective June 1. **L. 2000:** (1) amended, p. 775, § 11, effective May 23.

25-9-109. Use of title. Only a person who has been qualified by the board as a certified operator and who possesses a valid certificate attesting to this certification in this state shall have the right and privilege of using the title “certified water treatment facility operator, class”, “certified domestic wastewater treatment facility operator, class”, “certified industrial wastewater treatment facility operator, class”, “certified wastewater collection system operator, class”, “certified water distribution system operator, class”, or “multiple facilities operator, class”.

Source: **L. 73:** p. 751, § 1. **C.R.S. 1963:** § 66-38-9. **L. 96:** Entire section amended, p. 361, § 9, effective July 1. **L. 2000:** Entire section amended, p. 776, § 12, effective May 23. **L. 2010:** Entire section amended, (HB 10-1422), ch. 419, p. 2104, § 120, effective August 11.

25-9-110. Violations - penalty. (1) It is unlawful for any person to represent himself or herself as a certified operator of any category and of any class without first being so certified by the board and without being the holder of a current valid certificate issued by the board. Any person violating the provisions of this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three thousand dollars.

(2) (a) It is unlawful for any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado to allow the facility to be operated without the supervision of a certified operator of the classification required by the board for the specific facility.

(b) Notwithstanding paragraph (a) of this subsection (2), a sedimentary pond maintained in accordance with a permit issued by the division of reclamation, mining, and safety that does not require a permit issued by the water quality control division of the department of public health and environment shall not require the supervision of a certified operator.

(3) Whenever the division has reason to believe that a violation of subsection (2) of this section has occurred, the division shall cause written notice to be served personally or by certified mail, return receipt requested, upon the alleged violator or their agent for service of process. The notice shall state the provision of subsection (2) alleged to be violated and the facts alleged to constitute a violation and it may include specific action proposed to be required to cease the alleged violation. The division shall require the alleged violator to answer each alleged violation.

(4) Upon being served with any notice given under subsection (3) of this section, the alleged violator may request a public hearing. Such request shall be filed in writing with the division no later than thirty days after service of the notice. If such a request is made, a hearing shall be held within a reasonable time. Hearings held pursuant to this subsection (4) shall be conducted before the board in accordance with section 24-4-105, C.R.S. The determination of the board following a hearing shall be considered final agency action as to whether a violation has occurred.

(5) Any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado who violates subsection (2) of this section shall be subject to a civil penalty of not more than three hundred dollars per day for each day during which such violation occurs. Any civil penalty collected under this section shall be credited to the general fund.

(6) Upon application of the division, any penalty for a violation of subsection (2) of this section shall be determined by the executive director of the department or his or her designee and may be collected by the division through a collection action instituted in a court of competent jurisdiction. The final decision of the executive director or his or her designee may be appealed to the board. A stay of any order of the division pending judicial review shall not relieve any person from any liability under this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty if the party against whom the penalty was assessed raises the issue.

Source: L. 73: p. 751, § 1. C.R.S. 1963: § 66-38-10. L. 96: (1) amended, p. 361, § 10, effective July 1. L. 2000: Entire section amended, p. 776, § 13, effective May 23. L. 2006: (2)(b) amended, p. 214, § 5, effective August 7.

ARTICLE 10

On-site Wastewater Treatment Systems Act

Editor’s note: This article was added in 1973. This article was amended with relocations in 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

25-10-101.	Short title.		approval of systems employing new technology.
25-10-102.	Legislative declaration.		
25-10-103.	Definitions.	25-10-109.	Licensing of systems contractors and systems cleaners.
25-10-104.	Regulation of on-site wastewater treatment systems - state and local rules.	25-10-110.	Enforcement by local public health agencies and local boards of health.
25-10-105.	Minimum standards - variances.	25-10-111.	Authority of local boards of health to deny permits for on-site wastewater treatment systems in unsuitable areas.
25-10-106.	Basic rules for local administration.		
25-10-107.	Fees.	25-10-112.	General prohibitions - rules.
25-10-108.	Performance evaluation and	25-10-113.	Penalties.

25-10-101. Short title. This article shall be known and may be cited as the “On-site Wastewater Treatment Systems Act”.

Source: L. 97: Entire article amended with relocations, p. 122, § 1, effective July 1.
L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 481, § 1, effective August 8.

ANNOTATION

Law reviews. For article, “1974 Land Use and Regulation”, see 51 U. Colo. L. Rev. 465 (1980).
For article, “Synthetic Fuels — Policy (1974).

25-10-102. Legislative declaration. (1) The general assembly declares it to be in the public interest to establish minimum standards and rules for on-site wastewater treatment systems in the state and to provide the authority for the administration and enforcement of those minimum standards and rules:

- (a) To preserve the environment and protect the public health and water quality;
- (b) To eliminate and control causes of disease, infection, and aerosol contamination; and
- (c) To reduce and control the pollution of the air, land, and water.

Source: L. 97: Entire article amended with relocations, p. 122, § 1, effective July 1.
L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 481, § 1, effective August 8.

25-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Absorption system” means a leaching field and adjacent soils or other system for the treatment of sewage in an on-site wastewater treatment system by means of absorption into the ground.

(2) “Applicant” means a person who submits an application for a permit for an on-site wastewater treatment system.

(3) “Cesspool” means an unlined or partially lined underground pit or underground perforated receptacle into which raw household wastewater is discharged and from which the liquid seeps into the surrounding soil. “Cesspool” does not include a septic tank.

(4) “Commission” means the water quality control commission created by section 25-8-201.

(5) “Department” means the department of public health and environment created by section 25-1-102.

(6) “Division” means the division of administration of the department.

(7) “Effluent” means the liquid flowing out of a component or device of an on-site wastewater treatment system.

(8) “Environmental health specialist” means a person trained in physical, biological, or sanitary science to carry out educational and inspectional duties in the field of environmental health.

(9) “Health officer” means the chief administrative and executive officer of a local public health agency, or the appointed health officer of the local board of health. “Health officer” includes a director of a local public health agency.

(10) “Local board of health” means any local, county, or district board of health.

(11) “Local public health agency” means any county, district, or municipal public health agency and may include a county, district, or municipal board of health or local agency delegated by a county, district, or municipal board of health to oversee OWTS permitting and inspection or an OWTS program.

(12) “On-site wastewater treatment system” or “OWTS” and, where the context so indicates, the term “system”, means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(13) “Percolation test” means a subsurface soil test at the depth of a proposed absorption system or similar component of an on-site wastewater treatment system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed.

(14) “Permit” means a permit for the construction or alteration, installation, and use or for the repair of an on-site wastewater treatment system.

(15) “Person” means an individual, partnership, firm, corporation, association, or other legal entity and also the state, any political subdivision thereof, or other governmental entity.

(16) “Professional engineer” means an engineer licensed in accordance with part 1 of article 25 of title 12, C.R.S.

(17) “Septage” means a liquid or semisolid that includes normal household wastes, human excreta, and animal or vegetable matter in suspension or solution generated from a residential septic tank system. “Septage” may include such material issued from a commercial establishment if the commercial establishment can demonstrate to the department that the material meets the definition for septage set forth in this subsection (17). “Septage” does not include chemical toilet residuals.

(18) “Septic tank” means a watertight, accessible, covered receptacle designed and constructed to receive sewage from a building sewer, settle solids from the liquid, digest organic matter, store digested solids through a period of retention, and allow the clarified liquids to discharge to other treatment units for final disposal.

(19) “Sewage” means a combination of liquid wastes that may include chemicals, house wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, and that is discharged from a dwelling, building, or other establishment.

(20) “Sewage treatment works” has the same meaning as “domestic wastewater treatment works” under section 25-8-103.

(21) “Soil evaluation” means a percolation test, soil profile, or other subsurface soil analysis at the depth of a proposed soil treatment area or similar component or system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed or as an application rate of gallons per square foot per day.

(22) “Soil treatment area” means the physical location where final treatment and dispersal of effluent occurs. “Soil treatment area” includes drainfields and drip fields.

(23) “State waters” has the meaning set forth under section 25-8-103.

(24) “Systems cleaner” means a person engaged in and who holds himself or herself out as a specialist in the cleaning and pumping of on-site wastewater treatment systems and removal of the residues deposited in the operation thereof.

(25) “Systems contractor” means a person engaged in and who holds himself or herself out as a specialist in the installation, renovation, and repair of on-site wastewater treatment systems.

Source: L. 97: Entire article amended with relocations, p. 122, § 1, effective July 1. **L. 2004:** (16) amended, p. 1312, § 60, effective May 28. **L. 2006:** (2.5) added and (8) and (21) amended, p. 1129, § 6, effective July 1. **L. 2010:** (11) and (12) amended, (HB 10-1422), ch. 419, p. 2105, § 121, effective August 11. **L. 2012:** Entire article amended, (HB 12-1126), ch. 137, p. 482, § 1, effective August 8.

25-10-104. Regulation of on-site wastewater treatment systems - state and local rules. (1) The division shall develop, and recommend to the commission for adoption, rules setting forth minimum standards for the location, design, construction, performance, installation, alteration, and use of on-site wastewater treatment systems within Colorado. The commission may establish criteria for issuing variances in the rules.

(2) Every local board of health in the state shall develop and adopt detailed rules for on-site wastewater treatment systems within its area of jurisdiction. The rules must comply with the rules adopted by the commission pursuant to subsection (1) of this section and with sections 25-10-105 and 25-10-106. Before finally adopting such rules or any amendment to

the rules, the local board of health shall hold a public hearing on the proposed rules or amendments. The local board of health shall give notice of the time and place of the hearing at least once, at least twenty days before the hearing, in a newspaper of general circulation within its area of jurisdiction. After the public hearing and before final adoption, the local board of health may make changes or revisions to the proposed rules or amendments, and no further public hearing is required regarding the changes or revisions. All rules and amendments must be transmitted to the department no later than five days after final adoption and become effective forty-five days after final adoption unless the department notifies the local board of health before the forty-fifth day that the rules or amendments are not in compliance with this section or section 25-10-105 or 25-10-106.

(3) If a local board of health has not adopted rules in compliance with this section and submitted them to the commission, the commission shall promulgate rules for the areas of the state for which no complying rules have been adopted, except for areas serviced exclusively by a sewage treatment works. Rules for such areas of the state promulgated by the commission must comply with the rules adopted under subsection (1) of this section and sections 25-10-105 and 25-10-106. The rules must be the same for all the areas of the state for which the commission promulgates such rules, except as may be appropriate to provide for differing geologic conditions.

(4) A local board of health may adopt rules after action by the commission under subsection (3) of this section, if the rules comply with the procedural requirements of subsection (2) of this section and are no less stringent than those promulgated by the commission. Rules of the local board so adopted become effective only after they are transmitted to the division and the division determines that they comply with this section and sections 25-10-105 and 25-10-106.

(5) In promulgating rules under this article, the commission and local boards of health shall give consideration to the protection of public health and water quality.

Source: L. 97: Entire article amended with relocations, p. 124, § 1, effective July 1. L. 2006: (1) to (4) amended, p. 1129, § 7, effective July 1. L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 484, § 1, effective August 8.

25-10-105. Minimum standards - variances. (1) Rules adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (1) govern all aspects of the location, design, construction, performance, alteration, installation, and use of on-site wastewater treatment systems and must include minimum standards established by the commission.

(2) (a) A local board of health may grant variances to OWTS rules in accordance with the criteria adopted by the commission under this article.

(b) Applicants for a variance from OWTS rules have the burden of supplying the local board of health with information demonstrating that conditions exist that warrant the granting of the variance.

Source: L. 97: Entire article amended with relocations, p. 126, § 1, effective July 1. L. 2004: (1)(f) to (1)(h) and (1)(l) amended, p. 1312, § 61, effective May 28. L. 2006: (1)(g) and (2)(a) amended, p. 1130, § 8, effective July 1. L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 485, § 1, effective August 8.

25-10-106. Basic rules for local administration. (1) Local boards of health or the commission, as appropriate, shall adopt rules under section 25-10-104 that govern all aspects of the application for and issuance of permits, the inspection and supervision of installed systems, the issuance of cease-and-desist orders, the maintenance and cleaning of systems, and the disposal of waste material. The rules must, at a minimum, include provisions regarding:

(a) Procedures by which a person may apply for a permit for an on-site wastewater treatment system. The permit application must be in writing and must include any

information, data, plans, specifications, statements, and commitments as required by the local board of health to carry out the purposes of this article.

(b) Review of the application and inspection of the proposed site by the local public health agency;

(c) Specification of studies to be performed and reports to be made by the applicant and the circumstances under which the studies or reports may be required by the local public health agency;

(d) Determination on behalf of the local public health agency by an environmental health specialist or a professional engineer after review of the application, site inspection, test results, and other required information, whether the proposed system complies with the requirements of this article and the rules adopted under this article;

(e) Issuance of a permit by the health officer or the health officer's designated representative if the proposed system is determined to be in compliance with this article and the rules adopted under this article;

(f) Review by the local board of health, upon request of an applicant, of applications denied by the local public health agency;

(g) The circumstances under which all applications are subject to mandatory review by the local public health agency to determine whether a permit shall issue;

(h) Final inspection of a system to be made by the local public health agency or its designated professional engineer after construction, installation, alteration, or repair work under a permit has been completed, but before the system is placed in use, to determine that the work has been performed in accordance with the permit and that the system is in compliance with this article and the rules adopted under this article;

(i) Inspection of operating systems at reasonable times, and upon reasonable notice to the occupant of the property, to determine if the system is functioning in compliance with this article and the rules adopted under this article. Officials of the local public health agency are permitted to enter upon private property for purposes of conducting such inspections.

(j) Issuance of a repair permit to the owner or occupant of property on which a system is not in compliance. An owner or occupant shall apply to the local public health agency for a repair permit within two business days after receiving notice from the local public health agency that the system is not functioning in compliance with this article or the rules adopted under this article or otherwise constitutes a nuisance or hazard to public health or water quality. The permit shall provide for a reasonable period of time within which the owner or occupant must make repairs, at the end of which period the local public health agency shall inspect the system to ensure that it is functioning properly. Concurrently with the issuance of a repair permit, the local public health agency may authorize the continued use of a malfunctioning system on an emergency basis for a period not to exceed the period stated in the repair permit. The period of emergency use may be extended, for good cause shown, if, through no fault of the owner or occupant, repairs may not be completed in the period stated in the repair permit and only if the owner or occupant will continue to make repairs to the system.

(k) (I) Issuance of an order to cease and desist from the use of any on-site wastewater treatment system or sewage treatment works that is found by the health officer not to be in compliance with this article or the rules adopted under this article or that otherwise constitutes a nuisance or a hazard to public health or water quality. Such an order may be issued only after a hearing is conducted by the health officer not less than forty-eight hours after written notice of the hearing is given to the owner or occupant of the property on which the system is located and at which the owner or occupant may be present, with counsel, and be heard. The order must require that the owner or occupant bring the system into compliance or eliminate the nuisance or hazard within a reasonable period of time, not to exceed thirty days, or thereafter cease and desist from the use of the system. A cease-and-desist order issued by the health officer is reviewable in the district court for the county in which the system is located and upon a petition filed no later than ten days after the order is issued.

(II) For the purposes of this paragraph (k), any system or sewage treatment works that does not comply with any statute or rule of this title constitutes a nuisance.

(III) For the purposes of this paragraph (k), a sewage treatment works does not include any sewage treatment facility with a discharge permit issued pursuant to section 25-8-501.

(l) Reasonable periodic collection and testing by the local public health agency of effluent samples from on-site wastewater treatment systems for which monitoring of effluent is necessary in order to ensure compliance with this article or the rules adopted under this article. The sampling may be required not more than two times a year, except when required by the health officer in conjunction with action taken pursuant to paragraph (k) of this subsection (1). The local public health agency may charge a fee not to exceed actual costs, plus locally established mileage reimbursement rates for each mile traveled from the principal office of the local public health agency to the site of the system and return, for each sample collected and tested, and payment of such charges may be stated in the permit for the system as a condition for its continued use. Any owner or occupant of property on which an on-site wastewater treatment system is located may request the local public health agency to collect and test an effluent sample from the system. The local public health agency may, at its option, perform such collection and testing services, and is entitled to charge a fee not to exceed actual costs, plus locally established mileage reimbursement rates for each mile traveled from the principal office of the local public health agency to the site of the system and return, for each sample collected and tested.

(m) At the option of the local board of health, maintenance and cleaning schedules and practices adequate to ensure proper functioning of various types of on-site wastewater treatment systems. The local board of health may additionally require proof of proper maintenance and cleaning, in compliance with the schedule and practices adopted under this subsection (1), to be submitted periodically to the local public health agency by the owner of the system.

(n) Disposal of septage at a site and in a manner that does not create a hazard to the public health, a nuisance, or an undue risk of pollution.

Source: **L. 97:** Entire article amended with relocations, p. 128, § 1, effective July 1. **L. 2001:** (1)(k) amended, p. 304, § 1, effective April 9. **L. 2004:** (1)(c), (1)(e), and (1)(h) amended, p. 1313, § 62, effective May 28. **L. 2010:** (1)(f) amended, (HB 10-1422), ch. 419, p. 2105, § 122, effective August 11. **L. 2012:** Entire article amended, (HB 12-1126), ch. 137, p. 487, § 1, effective August 8.

25-10-107. Fees. (1) A local board of health may set fees for permits. The permit fees may be no greater than required to offset the actual indirect and direct costs of the local public health agency's services. With respect to any permit, the local board of health shall set the fee for the permit so as to recover, as nearly as can be practically established, the costs associated with that permit, not to exceed one thousand dollars. A local board of health may also set fees for soil evaluation and other services as requested by the applicant. Such fees may be no greater than required to offset the actual indirect and direct costs of such services.

(2) Local boards of health may set fees for percolation tests and other soil evaluation services that are performed by the local public health agency. The fees may be no greater than required to offset the actual indirect and direct costs of such services.

(3) In addition to the fees established in this section, the division may assess a fee of twenty-three dollars for each permit authorized for a new, repaired, or upgraded on-site wastewater treatment system. Of that fee, the county in which the on-site wastewater treatment system is or will be located shall retain three dollars to cover the county's administrative costs, and twenty dollars shall be transmitted to the state treasurer, who shall deposit that sum in the water quality control fund created in section 25-8-502 (1) (c).

Source: **L. 97:** Entire article amended with relocations, p. 130, § 1, effective July 1. **L. 2007:** (3) added, p. 1457, § 4, effective July 1. **L. 2012:** Entire article amended, (HB 12-1126), ch. 137, p. 490, § 1, effective August 8.

Editor's note: This section was relocated to § 25-10-108 in 1997.

25-10-108. Performance evaluation and approval of systems employing new technology. (1) A systems contractor, a professional engineer, or a manufacturer of on-site wastewater treatment systems that employ new technology may apply to the division for a determination of reliability of the system. The division may hold a public hearing to determine whether the particular design or type of system, based upon improvements or developments in the technology of sewage treatment, has established a record of performance reliability that would justify approval of applications for such systems by the health officer without mandatory review by the local board of health. If the division determines, based upon reasonable performance standards and criteria, that reliability has been established, the division shall so notify each local board of health, and applications for permits for the systems may thereafter be acted upon by the health officer, the health officer's designated representative, or the local board of health's designated representative, in the same manner as applications for systems described in section 25-10-106. The division shall not arbitrarily deny any person the right to a hearing on an application for a determination of reliability under this section.

(2) Except for designs or types of systems that have been approved by the division pursuant to subsection (1) of this section, the local public health agency may approve an application for a type of system not otherwise provided for in section 25-10-106, only if the system has been designed by a professional engineer and only if the application provides for the installation of a backup system, of a type previously approved by the division under subsection (1) of this section, in the event of failure of the primary system. A local public health agency shall not arbitrarily deny any person the right to consideration of an application for such a system and shall apply reasonable performance standards in determining whether to approve an application.

Source: L. 97: Entire article amended with relocations, p. 131, § 1, effective July 1. L. 2004: Entire section amended, p. 1313, § 63, effective May 28. L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 490, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-107 as it existed prior to 1997, and the former § 25-10-108 was relocated to § 25-10-109.

25-10-109. Licensing of systems contractors and systems cleaners. (1) The local board of health may adopt rules that provide for the licensing of systems contractors. The local public health agency may charge a fee, not to exceed actual costs, for the initial license of a systems contractor and for a renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than one year. The local board of health may revoke the license of a systems contractor for violation of this article or the rules adopted under this article or for other good cause shown, after a hearing conducted upon reasonable notice to the systems contractor and at which the systems contractor may be present, with counsel, and be heard.

(2) The local board of health may adopt rules that provide for the licensing of systems cleaners, pursuant to section 25-10-104 (2). The local public health agency may charge a fee, not to exceed actual costs, for the initial license of a systems cleaner and for the renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than one year. The local board of health may suspend or revoke the license of a systems cleaner for violation of this article or the rules adopted under this article or for other good cause shown after a hearing conducted upon reasonable notice to the systems cleaner and at which the systems cleaner may be present, with counsel, and be heard.

Source: L. 97: Entire article amended with relocations, p. 131, § 1, effective July 1. L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 491, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-108 as it existed prior to 1997, and the former § 25-10-109 was relocated to § 25-10-110.

25-10-110. Enforcement by local public health agencies and local boards of health. The primary responsibility for the enforcement of this article and the rules adopted under

this article lies with local public health agencies and local boards of health. If a local public health agency or local board of health substantially fails to administer and enforce this article and the rules adopted under this article, the department may assume any functions of the local public health agency or board of health as may be necessary to protect the public health and water quality.

Source: L. 97: Entire article amended with relocations, p. 132, § 1, effective July 1.
L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 491, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-109 as it existed prior to 1997, and the former § 25-10-110 was relocated to § 25-10-111.

25-10-111. Authority of local boards of health to deny permits for on-site wastewater treatment systems in unsuitable areas. Nothing in this article preempts or affects the ability of a local board of health to prohibit issuance of OWTS permits, in accordance with applicable land use laws and procedures, for defined areas in which the local board of health determines that construction and use of additional on-site wastewater treatment systems may constitute a hazard to public health or water quality.

Source: L. 97: Entire article amended with relocations, p. 132, § 1, effective July 1.
L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 491, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-110 as it existed prior to 1997, and the former § 25-10-111 was relocated to § 25-10-112.

25-10-112. General prohibitions - rules. (1) No city, county, or city and county shall issue to any person:

(a) A permit to construct or remodel a building or structure that is not serviced by a sewage treatment works until the local public health agency has issued a permit for an on-site wastewater treatment system; or

(b) A city, county, or city and county occupancy permit for the use of a building that is not serviced by a sewage treatment works until the local public health agency makes a final inspection of the on-site wastewater treatment system, as provided for in section 25-10-106 (1) (h), and the local public health agency approves the installation.

(2) Construction of new cesspools is prohibited.

(3) A person shall not connect more than one dwelling, commercial, business, institutional, or industrial unit to the same on-site wastewater treatment system unless such multiple connection was specified in the application submitted and in the permit issued for the system.

(4) No person shall construct or maintain any dwelling or other occupied structure that is not equipped with adequate facilities for the sanitary disposal of sewage.

(5) All persons shall dispose of septage removed from systems in the process of maintenance or cleaning at an approved site and in an approved manner under this article.

Source: L. 97: Entire article amended with relocations, p. 132, § 1, effective July 1.
L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 492, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-111 as it existed prior to 1997, and the former § 25-10-112 was relocated to § 25-10-113.

25-10-113. Penalties. (1) Any person who commits any of the following acts or violates this article commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S.:

(a) Constructs, alters, installs, or permits the use of any on-site wastewater treatment system without first applying for and receiving a permit as required under this article;

(b) Constructs, alters, or installs an on-site wastewater treatment system in a manner that involves a knowing and material variation from the terms or specifications contained in the application, permit, or variance;

(c) Violates the terms of a cease-and-desist order that has become final under section 25-10-106 (1) (k);

(d) Conducts a business as a systems contractor without having obtained the license provided for in section 25-10-109 (1) in areas in which the local board of health has adopted licensing regulations pursuant to that section;

(e) Conducts a business as a systems cleaner without having obtained the license provided for in section 25-10-109 (2) in areas in which the local board of health has adopted licensing regulations pursuant to that section;

(f) Falsifies or maintains improper record-keeping concerning system cleaning activities not performed or performed improperly; or

(g) Willfully fails to submit proof of proper maintenance and cleaning of a system as required by rules adopted pursuant to section 25-10-106.

(2) Upon a finding by the local board of health that a person is in violation of this article or of rules adopted and promulgated pursuant to this article, the local board of health may assess a penalty of up to fifty dollars for each day of violation. In determining the amount of the penalty to be assessed, the local board of health shall consider the seriousness of the danger to the health of the public caused by the violation, the duration of the violation, and whether the person has previously been determined to have committed a similar violation.

(3) A person subject to a penalty assessed pursuant to subsection (2) of this section may appeal the penalty to the local board of health by requesting a hearing before the appropriate body. The request must be filed within thirty days after the penalty assessment is issued. The local board of health shall conduct a hearing upon the request in accordance with section 24-4-105, C.R.S.

Source: L. 97: Entire article amended with relocations, p. 133, § 1, effective July 1. L. 2002: IP(1) amended, p. 1537, § 269, effective October 1. L. 2012: Entire article amended, (HB 12-1126), ch. 137, p. 493, § 1, effective August 8.

Editor's note: This section is similar to former § 25-10-112 as it existed prior to 1997.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 11

Radiation Control

Cross references: For western interstate nuclear compact, see part 14 of article 60 of title 24.

PART 1

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PART 2

PART 3

RADIOACTIVE WASTE DISPOSAL

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PART 1

GENERAL PROVISIONS

25-11-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Civil penalty" means a monetary penalty levied against a licensee or registrant because of a violation of a statute, rule, license, or registration certificate. "Civil penalty" does not include any criminal penalty levied under section 25-1-114 or 25-11-107 (3).

(2) "Department" means the department of public health and environment.

(2.5) "Mammographer" means a person who operates a machine source of radiation, commonly known as an "X-ray machine", in the conduct of a mammography exam.

(2.7) "Naturally occurring radioactive material" means any nuclide that is radioactive in its natural physical state and is not manufactured. "Naturally occurring radioactive material" does not include source material, special nuclear material, or by-products of fossil fuel combustion, including bottom ash, fly ash, and flue-gas emission by-products.

(3) "Radiation" means ionizing radiation, which includes gamma rays, X rays, alpha particles, beta particles, high-speed electrons, high-speed neutrons, high-speed protons, and other high-speed nuclear particles.

(4) "Radiation machine" means a device capable of producing radiation; except that "radiation machine" does not include a device with radioactive material as its only source of radiation.

(5) "Radioactive" means emitting radiation.

(6) "Radioactive material" means any material, whether solid, liquid, or gas, that emits radiation spontaneously.

(7) "Specific license" means a license issued to a person to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, radioactive materials occurring naturally or produced artificially.

(8) "State board" means the state board of health created in section 25-1-103.

Source: **L. 65:** p. 716, § 1. **C.R.S. 1963:** § 66-26-1. **L. 79:** IP amended and (4) added, p. 1063, § 1, effective July 1; IP amended, p. 1070, § 3, effective January 1, 1980. **L. 83:** (1) R&RE and (1.5) added, p. 1084, §§ 1, 2, effective July 1. **L. 93:** (2.7) added, p. 487, § 1, effective April 26; (2.5) added, p. 701, § 2, effective July 1. **L. 94:** (1.5) amended, p. 2791, § 525, effective July 1. **L. 2010:** Entire section amended, (HB 10-1149), ch. 282, p. 1309, § 1, effective May 26.

Editor's note: (1) Subsection (2.7) was enacted as subsection (2.5) by Senate Bill 93-126, Session Laws of Colorado 1993, but was renumbered on revision for ease of location.

(2) Subsections (4), (5), and (6) were numbered as subsections (6), (4), and (5), respectively, in House Bill 10-1149 but were renumbered on revision to place defined terms in alphabetical order.

Cross references: For the legislative declaration contained in the 1993 act enacting subsection (2.7), see section 1 of chapter 184, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act enacting subsection (1.5), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

25-11-101.5. Coordination of regulatory interpretations regarding in situ leach uranium mining. The general assembly recognizes that the proper and orderly regulation of in situ leach mining, as defined in section 34-32-103, C.R.S., for uranium ore has aspects that may involve more than one regulatory agency of state government and that the statutes that each agency is responsible for administering may, due to the use of terms of art and other technical words, phrases, and definitions, hold the potential of being interpreted inconsistently or to be held in conflict with each other. It is the intent of the general assembly that, with regard to in situ leach mining for uranium ore, the relevant agencies coordinate to the maximum extent practicable to resolve any such conflicts or inconsistencies.

Source: L. 2010: Entire section added, (HB 10-1348), ch. 388, p. 1818, § 1, effective June 8.

25-11-102. Agreements for transfer of functions from federal government to state government. (1) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government providing for the assumption by this state through the department, and the discontinuance by the federal government, of any responsibilities within the state of Colorado relating to the protection of persons and property from the hazards of radioactive materials and other sources of radiation.

(2) The governor, on behalf of this state, is authorized, from time to time, to enter into agreements with the federal government, other states, or interstate agencies whereby the department shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of radiation.

(3) No such agreement entered into pursuant to the provisions of subsections (1) or (2) of this section shall transfer to, delegate to, or impose upon the department any power, authority, or responsibility that is not fully consistent with the provisions of this article.

Source: L. 65: p. 716, § 2. **C.R.S. 1963:** § 66-26-2. **L. 2010:** (1) and (2) amended, (HB 10-1149), ch. 282, p. 1310, § 2, effective May 26.

25-11-103. Radiation control agency - powers and duties. (1) The department is designated as the radiation control agency of this state.

(2) Pursuant to rules adopted as provided in section 25-11-104, the department shall issue licenses pertaining to radioactive materials, prescribe and collect fees for such licenses, and require registration of other sources of radiation. No other agency or branch of this state has such power or authority.

(3) The department shall develop and conduct programs for evaluation and control of hazards associated with the use of radioactive materials and other sources of radiation, including criteria for disposal of radioactive wastes and materials to be considered in approving facilities and sites pursuant to part 2 of this article.

(4) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this part 1 and may make said personnel available for participation in any program of the federal government, other states, or interstate agencies in furtherance of the purposes of this part 1.

(5) In the event of an emergency relating to any source of radiation that endangers the public peace, health, or safety, the department has the authority to issue such orders for the protection of the public health and safety as may be appropriate, including orders to lay an embargo upon or impound radioactive materials and other sources of radiation in the

possession of any person who is not equipped to observe or who fails to comply with this part 1 or any rules promulgated under this part 1.

(6) The department or its duly authorized representatives has the power to enter at all reasonable times, in accordance with applicable state or federal regulations, into the areas in which sources of radiation are reasonably believed to be located for the purpose of determining whether or not the owner, occupant, or licensee is in compliance with or in violation of this part 1 and the rules promulgated under this part 1, and the owner, occupant, or person in charge of such property shall permit such entry and inspection.

(7) (a) In order to provide for the concentration, storage, or permanent disposal of radioactive materials consistent with adequate protection of the public health and safety, the state, through the department, may acquire by gift, transfer from another state department or agency, or other transfer any and all lands, buildings, and grounds suitable for such purposes. Any such acquisition shall be subject to the provisions of paragraph (h) of this subsection (7).

(b) The state, through the department, may, by lease or license with private persons or corporations, provide for the operation of sites or facilities, for the purposes stated in paragraph (a) of this subsection (7), in, under, and upon lands and grounds acquired under said paragraph (a) in accordance with rules and regulations established by the department; but no lease or license shall be authorized except with the prior approval of the state engineer. The department may permit the conduct thereon of other related activities involving radioactive materials not contrary to the public interest, health, and safety. Each such lease or license shall cover only one site or facility and shall provide for a term up to ninety-nine years, which shall be renewable. Each such lease or license shall provide for the payment to the state of a fee based upon the quantity of radioactive material stored in the lands covered thereby. Such fee shall be established at such rate that interest on the sum of all fees reasonably anticipated as payable under any lease or license shall provide an annual amount equal to the anticipated reasonable costs to the state of such maintenance, monitoring, and other supervision of the lands and facilities covered by such lease or license, following the term thereof, as are required in the interest of the public health and safety. In arriving at the rate of the fee, the department shall consider the nature of the material to be stored, the storage space available, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(c) Said lease shall include a payment in lieu of taxes which shall be paid over to local governmental units in compensation for loss of valuation for assessment. Said payment shall be adjusted annually to conform with current mill levies, assessment practices, and value of land and improvements.

(d) All fees provided in this section shall be paid quarterly, as accrued, to the department, which shall receipt for the same and shall transmit such payment to the state treasurer and take his receipt therefor.

(e) The department may require, as a condition to the issuance of any lease or license under paragraph (b) of this subsection (7), that the lessee or licensee give reasonable security for the payment of the amount of all fees reasonably anticipated during the full term of such lease or license, and the department may also require, as a condition to the issuance of any lease or license, that the lessee or licensee post a bond or other security under such regulation as the department may prescribe to cover any tortious act committed during the term of the lease or license.

(f) Prior to the issuance of any lease or license under paragraph (b) of this subsection (7), the department, at the expense of the applicant, shall hold a public hearing on the application, in the area of the proposed site or facility, after reasonable public notice.

(g) The operation of any and all sites and appurtenant facilities established for the purposes of paragraph (a) of this subsection (7) shall be under the direct supervision of the department and shall be in accordance with rules and regulations adopted under section 25-11-104.

(h) It is recognized by the general assembly that any site used for the concentration, disposal, or storage of radioactive material and the contents thereof will represent a continuing and perpetual responsibility involving the public health, safety, and general welfare and that ownership of said site and its contents must ultimately be reposed in a

solvent government, without regard for the existence of any particular agency, instrumentality, department, division, or officer thereof. To this end and subject only to the terms of any lease or license issued under paragraph (b) of this subsection (7), all lands, buildings, and grounds acquired by the state under paragraph (a) of this subsection (7) which are used as sites for the concentration, storage, or disposal of radioactive materials shall be owned in fee simple absolute by the state and dedicated in perpetuity to such purposes, and all radioactive material received at such facility, upon permanent storage therein, shall become the property of the state and shall be in all respects administered, controlled, and disposed of, including transfer by sale, lease, loan, or otherwise, by the state, through the department, unless the general assembly shall designate another agency, instrumentality, department, or division of the state so to act.

(8) The state board of health shall prescribe, revise periodically as appropriate, and provide for the collection of fees from any person for radiation control services provided by the department.

Source: **L. 65:** p. 717, § 3. **C.R.S. 1963:** § 66-26-3. **L. 67:** p. 763, § 1. **L. 75:** (6) amended, p. 884, § 1, effective July 14. **L. 79:** (2) to (6) amended and (8) added, p. 1063, § 2, effective July 1; (4) to (6) amended, p. 1070, § 4, effective January 1, 1980. **L. 2010:** (2), (3), (5), and (6) amended, (HB 10-1149), ch. 282, p. 1310, § 3, effective May 26.

ANNOTATION

County exercises a separate power from that of the department of public health and environment in the issuance of licenses under this section, and therefore has standing to chal-

lenge the department's licensing decisions. *Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't*, 218 P.3d 336 (Colo. 2009).

25-11-104. Rules to be adopted - fees - fund created. (1) (a) The state board shall formulate, adopt, and promulgate rules as provided in subsection (2) of this section that cover subject matter relative to radiation machines and radioactive materials, including naturally occurring radioactive materials and other sources of radiation. The subject matter of the rules shall include: Licenses and registration; records; permissible levels of exposure; notification and reports of accidents; technical qualifications of personnel; technical qualifications of mammographers; handling, transportation, and storage; waste disposal; posting and labeling of hazardous sources and areas; surveys; monitoring; and financial assurance warranties.

(b) The state board may adopt rules concerning the disposal of naturally occurring radioactive materials at any time after the promulgation by the federal environmental protection agency or its successor of rules for the disposal of naturally occurring radioactive materials.

(c) Notwithstanding any provision of section 25-11-103 (7) (h), it is not necessary that a governmental entity own any site that is used for the concentration, storage, or disposal of radioactive material that at the time of its acceptance for concentration, storage, or disposal is owned or generated by the United States department of energy and is defined as low-level radioactive waste under the federal "Low-level Radioactive Waste Policy Act Amendments of 1986", as amended, if the owner of the site complies with rules promulgated by the board in accordance with this section. The rules shall ensure the long-term protection of the public health and safety and may include financial assurance warranties pursuant to this part 1, deed annotations and restrictions, easement provisions, restrictive covenants, and adequate markers to warn of the presence of radioactive materials.

(2) Rules promulgated under this section shall be consistent with regulations proposed by the conference of radiation control program directors, inc., or its successor, under the title, "Suggested State Regulations for Control of Radiation"; except that, if the state board concludes on the basis of detailed findings that a substantial deviation from any of the suggested state regulations is warranted and that a substitute rule or no rule would effectively permit maximum utilization of sources of radiation consistent with the health and safety of all persons who might otherwise become exposed to the radiation, the state

board need not maintain the suggested state regulation or may promulgate a substitute rule as the case may be.

(2.5) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26, 2010.)

(3) The rules adopted pursuant to this part 1 shall never be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a duly licensed practitioner of the healing arts.

(4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26, 2010.)

(5) In adopting, amending, or repealing rules under this section, the board shall comply with article 4 of title 24, C.R.S.

(6) (a) The state board shall promulgate a fee schedule, in accordance with section 24-4-103, C.R.S., for radiation control services provided by the department. Radiation control services for which fees may be established include application processing for qualified inspectors, qualified experts, and service companies as defined by the state board, which fees shall be paid by the applicants or service companies; issuance of categories of specific licenses to accord with categories established by the nuclear regulatory commission and which shall include licenses for special nuclear material, source material, by-product material, well logging and surveys and tracer studies, and for human use; and inspections of licensees as authorized by section 25-11-103 (6). Licenses and fees shall, where appropriate, be in accordance with policies and priorities of the nuclear regulatory commission.

(b) The state board shall set fees that provide sufficient revenues to reimburse the state for the actual direct and indirect costs of the radiation control services specified in paragraph (a) of this subsection (6). In so doing, the state board shall take into account any special arrangements between the state and the licensee, another state, or a federal agency whereby the cost of the service is otherwise recovered.

(c) All fees collected pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the radiation control fund, which fund is hereby created. Moneys credited to the radiation control fund, in amounts determined annually by the general assembly by appropriation, shall be expended for radiation control services as provided in this subsection (6).

(7) The state board shall promulgate rules as necessary to implement section 25-11-107 (5).

(8) (a) The state board shall adopt rules requiring that all machine sources of radiation be inspected and certified by qualified inspectors as safe for the intended uses consistent with 42 U.S.C. sec. 263b and in compliance with the specifications of the state board and the equipment manufacturer. Rules shall include minimum specifications for radiation machines, minimum standards for the qualifications of individuals authorized to inspect and certify radiation machines, and procedures for inspection of radiation machines. If a qualified inspector determines that a radiation machine fails to meet the required specifications, the inspector shall notify the owner or operator immediately and shall notify the department within three days after the determination. A radiation machine that fails to meet the required specifications and is determined by a qualified inspector to be unsafe for human use shall not thereafter be used for human use until subsequent certification, and the qualified inspector shall affix an official noncertification sticker issued by the department indicating that the machine is not authorized for human use. A certification or noncertification sticker shall be affixed on each radiation machine in a location conspicuous to machine operators and to persons on whom the machine is used.

(a.5) and (b) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26, 2010.)

(c) In establishing or revising specifications for each type of machine that is a source of radiation, the standards for approval of qualified inspectors, and the procedures for making inspections, the department shall consult with manufacturers of radiation equipment, health care providers and operators who use the equipment in diagnostic and therapeutic treatment of humans, and qualified inspectors and individuals.

(d) The general assembly hereby finds that the setting of minimum specifications for radiation machines and the establishment of minimum standards for qualified inspectors of those machines are matters of statewide concern. Therefore, no other state agency, political subdivision, or local government shall establish any other specifications for radiation machines or standards for radiation machine inspectors, or impose any fees therefor.

Source: L. 65: p. 718, § 4. C.R.S. 1963: § 66-26-4. L. 79: (2) and (3) amended and (6) added, p. 1064, § 3, effective July 1; (3) amended, p. 1071, § 5, effective January 1, 1980. L. 83: (6)(c) R&RE, p. 1087, § 1, effective July 1; (7) added, p. 1084, § 3, effective July 1. L. 88: (6)(c) amended and (8) added, p. 1045, § 1, effective July 1. L. 93: (1) amended, p. 487, § 2, effective April 26; (1) amended and (2.5) and (8)(a.5) added, p. 701, §§ 3, 4, effective July 1. L. 94: (1)(b) amended, p. 731, § 1, effective April 19. L. 97: (1)(a) amended and (1)(c) added, p. 1632, § 1, effective August 15. L. 98: IP(8)(a) and (8)(a)(III) amended, p. 1337, § 54, effective June 1. L. 2002: (8)(a)(II) and (8)(a)(III) amended, p. 533, § 1, effective May 24. L. 2003: IP(8)(a) amended, p. 711, § 43, effective July 1. L. 2007: IP(8)(a) amended, p. 552, § 1, effective April 16. L. 2010: Entire section amended, (HB 10-1149), ch. 282, p. 1311, § 4, effective May 26. L. 2011: (1)(a) amended, (HB 11-1303), ch. 264, p. 1167, § 63, effective August 10.

Editor's note: Amendments to subsection (1) by Senate Bill 93-126 and House Bill 93-1185 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (1) and enacting subsections (2.5) and (8)(a.5) see section 1 of chapter 184, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

25-11-105. Radiation advisory committee. (1) The governor shall appoint a radiation advisory committee of nine members, no more than four of whom shall represent any one political party and three of whom shall represent industry, three the healing arts, and three the public and private institutions of higher education. Members of the committee shall serve at the discretion of the governor and shall be reimbursed for necessary and actual expenses incurred in attendance at meetings or for authorized business of the board. The committee shall furnish to the department such technical advice as may be desirable or required on matters relating to the radiation control program.

(2) Repealed.

Source: L. 65: p. 719, § 5. C.R.S. 1963: § 66-26-5. L. 86: Entire section amended, p. 420, § 43, effective March 26. L. 89: (2) repealed, p. 1147, § 3, effective April 6.

25-11-105.5. Mammography quality assurance advisory committee - repeal. (Repealed)

Source: L. 93: Entire section added, p. 702, § 5, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1998. (See L. 93, p. 702.)

25-11-106. Injunction proceedings. If, in the judgment of the department, any person has engaged in or is about to engage in an act or practice that constitutes a violation of this part 1 or of any license, registration, rule, or order issued under this part 1, the attorney general shall, at the request of the department, apply to the district court for an order

enjoining the act or practice or for an order directing compliance with this part 1 and all rules and orders and the terms and conditions of a license or registration issued under this part 1.

Source: L. 65: p. 719, § 6. C.R.S. 1963: § 66-26-6. L. 79: Entire section amended, p. 1065, § 4, effective July 1; entire section amended, p. 1071, § 6, effective January 1, 1980. L. 2010: Entire section amended, (HB 10-1149), ch. 282, p. 1315, § 5, effective May 26.

ANNOTATION

Private parties who are adversely affected or aggrieved have standing to seek judicial review of the department's action. Nat'l Wild-

life Fed'n v. Cotter Corp., 665 P.2d 598 (Colo. App. 1983).

25-11-107. Prohibited acts - violations - penalties - rules - cease-and-desist orders.

(1) Except as allowed by rule of the state board:

(a) No person shall acquire, own, possess, or use any radioactive material occurring naturally or produced artificially without having been granted a license therefor from the department; or

(b) Transfer to another or dispose of such material without first having been granted approval of the department therefor.

(2) Except as allowed by rule of the state board, no person shall knowingly use, manufacture, produce, transport, transfer, receive, send, acquire, own, or possess any source of radiation unless such person is licensed by or registered with the department. The exceptions promulgated by the state board shall include use of domestic television receivers, computer monitors, household microwave ovens, radiant heat devices, cellular telephones, incandescent gas mantles, and vacuum tubes.

(2.5) No person shall knowingly use any radiation machine to treat or diagnose any disease or conditions of the human body if the radiation machine is not certified for such treatment or diagnosis as provided in section 25-11-104 (8).

(3) Any person who violates the provisions of subsection (1), (2), or (2.5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

(4) If a person does not pay the fee for radiation control services, the department may request the attorney general to commence a civil action against the person. If the court finds in such action that such person has not paid the fee for radiation control services, the court shall require such person to pay the fee together with a penalty not greater than twice the amount of the fee or one thousand dollars, whichever is greater. All civil penalties collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit them to the general fund.

(5) (a) Any person who violates subsection (1), (2), or (2.5) of this section, any licensing or registration provision, any rule or order issued under this part 1, or any term, condition, or limitation of any license or registration certificate issued pursuant to this part 1 is subject to an administrative penalty not to exceed fifteen thousand dollars per day for each violation.

(b) If the department has reason to believe, based upon facts available to it, that a person has committed any of the violations designated in paragraph (a) of this subsection (5), it shall send the person, within a reasonable time, a written notice of the violation specifying:

(I) The factual basis of each act or omission with which the person is charged; and

(II) The particular provision of the statute, rule, order, license, or registration certificate violated.

(c) (I) The department shall send the notice required by paragraph (b) of this subsection (5) by certified or registered mail, return receipt requested, to the last-known address

of the alleged violator, or the department shall personally serve the notice of the violation upon the alleged violator or the alleged violator's agent.

(II) The alleged violator shall have thirty days following the receipt of the notice to submit a written response containing data, views, and arguments concerning the alleged violation and potential corrective measures.

(III) In addition, the alleged violator may request an informal conference with department personnel to discuss the notice of violation required by paragraph (b) of this subsection (5). The alleged violator shall request the informal conference within fifteen days after receiving the notice, and the conference shall be held within the thirty days allowed for a written response.

(IV) After consideration of any written response and informal conference, the department shall issue a letter, within thirty days after the date of the informal conference or the receipt of a written response, whichever is later, affirming or dismissing the violation. Any remaining corrective measures that are necessary, and any administrative penalty determined to be appropriate, will be incorporated into an administrative order.

(c.3) In determining the amount of any administrative penalty, the department shall consider the factors in subparagraphs (I) to (X) of this paragraph (c.3). The factors contained in subparagraphs (VII), (VIII), and (IX) of this paragraph (c.3) are mitigating factors and may be applied, with other factors, to reduce any administrative penalty. Such factors are:

(I) The seriousness of the violation;

(II) Whether the violation was intentional, reckless, or negligent;

(III) The impact on, or threat to, the public health or the environment as a result of the violation;

(IV) The degree of recalcitrance, if any, on the part of the violator;

(V) Whether the violator is a recidivist;

(VI) The economic benefit realized by the violator as a result of the violation;

(VII) The violator's voluntary, timely, and complete disclosure of the violation, if prior to the department's knowledge of the violation, and if all reports required pursuant to state environmental control laws have been submitted as required;

(VIII) The violator's full and prompt cooperation with the department following disclosure or discovery of a violation, including, when appropriate, entering into and implementing, in good faith, a legally enforceable agreement with the department to undertake compliance and remediation efforts;

(IX) The existence of a comprehensive regulatory compliance program or an audit program that the violator adopted in good faith and in a timely manner, which program includes measures determined by the department to be sufficient to identify and prevent future noncompliance; and

(X) Any other aggravating or mitigating circumstance.

(c.5) In accordance with article 4 of title 24, C.R.S., and based upon the factors enumerated in paragraph (c.3) of this subsection (5), the state board shall adopt rules for determining administrative penalties imposed under this subsection (5).

(c.7) The department may compromise, mitigate, or remit an administrative penalty imposed pursuant to this subsection (5). The department may enter into a settlement agreement regarding any penalty or claim resolved under this part 1. The settlement agreement may include the payment or contribution of moneys to state or local agencies for other environmentally beneficial purposes.

(d) If the circumstances warrant, the department shall issue an order containing the elements of both the notice of violation specified in paragraph (b) of this subsection (5) and the letter described in subparagraph (IV) of paragraph (c) of this subsection (5).

(e) (I) The letter issued pursuant to subparagraph (IV) of paragraph (c) of this subsection (5) and the order issued pursuant to paragraph (d) of this subsection (5) shall notify the alleged violator of the right to request a hearing within thirty days, which hearing shall be held in accordance with section 24-4-105, C.R.S., to determine any of the following:

(A) Whether the alleged violation exists or did exist;

(B) The reasonableness of the time set for abatement; and

(C) Whether the administrative penalty is reasonable in light of the statutory criteria on which it is based.

(II) The alleged violator shall address each alleged violation in the request for the hearing and shall specify which of the alleged violations the alleged violator is appealing. An allegation not addressed in the request for the hearing shall be deemed admitted.

(III) No person engaged in conducting the hearing or participating in a decision or an initial decision shall be responsible for or subject to the supervision or direction of any department employee engaged in the performance of an investigatory or prosecuting function for the department.

(IV) The final action of the department is subject to judicial review pursuant to section 24-4-106, C.R.S.

(f) and (g) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1315, § 6, effective May 26, 2010.)

(h) At the request of the department, the attorney general may institute a civil action to collect an administrative penalty imposed pursuant to this subsection (5).

(i) Except as specified in paragraph (c.3) of this subsection (5), all administrative penalties collected pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit them to the general fund.

(j) For any site or facility licensed under part 2 of this article determined by the department to have caused a release to the groundwater that exceeds the basic standards for groundwater as established by the water quality control commission, until remediation has been completed, the licensee shall provide annual written notice of the status of the release and any remediation activities associated with the release, by certified or registered mail, return receipt requested, to the current address for each registered groundwater well within one mile of the release as identified in the corrective action monitoring program, unless the licensee demonstrates that a distance less than one mile is warranted.

(6) Any qualified inspector who incorrectly certifies a machine that is a source of radiation as meeting the applicable specifications as required in section 25-11-104 (8) is subject to disciplinary action in accordance with section 24-4-104, C.R.S.

(7) If the department has reasonable cause to believe that a violation of this part 1 or of a license, registration, rule, or order issued under this part 1 has occurred or is occurring, the department may issue a cease-and-desist order setting forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the violation must cease. Except for emergency orders issued to protect the public health or the environment, for which a person to whom the emergency order has been issued may request an immediate hearing pursuant to section 24-4-105 (12), C.R.S., a person to whom a cease-and-desist order has been issued may petition the district court for the district in which the violation is alleged to have occurred or be occurring for a stay of the order. The court shall grant the request to stay if the person demonstrates that immediate and irreparable injury will result if the stay is not granted and that granting the stay will not result in serious harm to the public health, safety, or welfare or the environment.

Source: L. 65: p. 719, § 7. C.R.S. 1963: § 66-26-7. L. 67: p. 764, § 2. L. 79: (4) added, p. 1065, § 5, effective July 1. L. 83: (5) added, p. 1084, § 4, effective July 1. L. 88: (2.5) and (6) added and (3) amended, p. 1047, § 2, effective July 1. L. 2010: (1), (2), (2.5), (4), (5), and (6) amended and (7) added, (HB 10-1149), ch. 282, p. 1315, § 6, effective May 26; (5)(j) added, (HB 10-1348), ch. 388, p. 1818, § 2, effective June 8.

Editor's note: Amendments to subsection (5) by House Bill 10-1149 and House Bill 10-1348 were harmonized.

25-11-108. Exemptions. (1) The provisions of sections 25-11-103 and 25-11-104 shall not apply to the following sources or conditions:

(a) Electrical or other equipment or material that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit generally accepted by

the medical profession for any critical organ exposed. The production testing or production servicing of such equipment shall not be exempt.

(b) Radiation machines during process of manufacture or in storage or transit. The production testing or production servicing of such machines shall not be exempt.

(c) Any radioactive material while being transported in conformity with regulations adopted by the atomic energy commission, or any successor thereto, or the surface transportation board and specifically applicable to the transportation of such radioactive materials;

(d) Sound and radio waves and visible infrared and ultraviolet light.

(2) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the atomic energy commission or any successor thereto.

(3) Section 25-11-107 shall not apply to unmined minerals containing radioactive materials including such as are involved in mining operations.

(4) (Deleted by amendment, L. 2010, (HB 10-1149), ch. 282, p. 1320, § 7, effective May 26, 2010.)

(5) Any person may file application for exemption under this section for activities including, but not limited to, licensed sources of radiation for educational or noncommercial public displays or scientific collections.

Source: L. 65: p. 719, § 8. C.R.S. 1963: § 66-26-8. L. 79: (3) amended and (4) and (5) added, p. 1066, § 6, effective July 1. L. 2001: (1)(c) amended, p. 1275, § 38, effective June 5. L. 2010: (3) and (4) amended, (HB 10-1149), ch. 282, p. 1320, § 7, effective May 26.

25-11-109. Provisional license. In the event the department has failed to issue or has denied a request for a license, or an amendment thereto, as authorized by this article, within thirty days of the date of receipt by the department of a completed application made on the appropriate forms designated by the department to a hospital as licensed or certified pursuant to section 25-1.5-103 (1) (a) (I) and (1) (a) (II), a provisional license shall be deemed to have been issued by the department. In the case of a denial, the department shall provide the applicant in writing with information and substantive reasons in explanation thereof. The provisional license shall be in effect for a period of ninety days and may be continued for one additional ninety-day period. Such provisional license shall apply only to licensed or certified hospitals when the purpose is to acquire, possess, and use radioactive material for diagnostic or therapeutic human use.

Source: L. 79: Entire section added, p. 1066, § 7, effective July 1. L. 2003: Entire section amended, p. 711, § 44, effective July 1.

25-11-110. Financial assurance warranties - definitions. (1) As a part of any license, certificate, or authorization issued under this article and pursuant to regulations promulgated by the state board of health, the department may require financial assurance warranties.

(2) As used in this section, unless the context otherwise requires:

(a) "Decommissioning warranty" means a financial assurance arrangement provided by a person licensed, certified, or authorized pursuant to this article that is required to ensure decommissioning and decontamination of a facility and proper disposal of radioactive materials to meet the requirements of this part 1, the regulations promulgated pursuant thereto, or the license.

(b) "Financial assurance warranty" means a decommissioning warranty or a long-term care warranty.

(c) "Indirect costs" means those costs established annually in accordance with federal circular A-87, or any applicable successor document.

(d) "Long-term care warranty" means a financial assurance arrangement provided by a person licensed, certified, or authorized pursuant to this article that is required to cover the

costs incurred by the department in conducting surveillance of a disposal site in perpetuity subsequent to the termination of the radioactive materials license for that site.

(3) (a) Financial assurance warranties may be provided by the licensee or by a third party or combination of persons.

(b) Any financial assurance warranty required pursuant to this section shall be in a form prescribed by the state board of health by regulation.

(c) The department may refuse to accept any financial assurance warranty if:

(I) The form, content, or terms of the warranty are other than as prescribed by the state board of health by regulation;

(II) The financial institution providing the financial assurance instrument is an off-shore, nondomestic institution or does not have a registered agent in the state of Colorado;

(III) The value of the financial assurance warranty offered is dependent upon the success, profitability, or continued operation of the licensed business or operation; or

(IV) The department determines that the financial assurance warranty cannot be converted to cash within thirty days after forfeiture.

(4) (a) The department shall determine the amount of financial assurance warranties required, taking into account the nature, extent, and duration of the licensed activities and the magnitude, type, and estimated cost for proper disposal of radioactive materials, decontamination, and decommissioning or long-term care.

(b) The amount of a decommissioning warranty shall be sufficient to enable the department to dispose of radioactive materials and complete decontamination and decommissioning of affected buildings, fixtures, equipment, personal property, and lands if necessary.

(c) The amount of the decommissioning warranty shall be based upon cost estimates of the total costs that would be incurred if an independent contractor were hired to perform the decommissioning, decontamination, and disposal work, and may include reasonable administrative costs, including indirect costs, incurred by the department in conducting or overseeing disposal, decontamination, and decommissioning and to cover the department's reasonable attorney costs that may be incurred in successfully revoking, foreclosing, or realizing the decommissioning warranty as authorized in section 25-11-111 (4).

(d) The amount of a long-term care warranty shall be enough that, with an assumed six percent annual real interest rate, the annual interest earnings will be sufficient to cover the annual costs of site surveillance by the department, including reasonable administrative costs incurred by the department, in perpetuity, subsequent to the termination of the radioactive materials license for that site.

(e) If the state of Colorado is the long-term caretaker for the disposal facility pursuant to section 25-11-103 (7) (h), long-term care moneys shall be transferred, pursuant to section 25-11-113 (3), to the long-term care fund, created in section 25-11-113, prior to license termination and shall be used by the department to perform site surveillance and to cover the department's administrative and reasonable attorney costs.

(f) The department is authorized to transfer a long-term care warranty to the United States department of energy or another federal agency if that agency will be the long-term caretaker for the disposal facility.

(5) (a) The department shall take reasonable measures to assure the continued adequacy of any financial assurance warranty and may annually or for good cause increase or decrease the amount of required financial assurance warranties or require proof of the value of existing warranties.

(b) The licensee shall submit an annual report to the department demonstrating proof of the value of existing warranties. The annual report shall describe any changes in operations, estimated costs, or any other circumstances that may affect the amount of the required financial assurance warranties, including any increased or decreased costs attributable to inflation.

(c) Public notice of the submittal of the licensee's annual report shall be posted on the department's web site and published by the operator in the local paper of general circulation. Any person may submit written comments to the department concerning the adequacy of any financial assurance warranties. The act of submitting such comments does not provide a right to administrative appeal concerning the financial assurance warranties.

(d) The licensee shall have sixty days after the date of written notification by the department of a required adjustment to establish a warranty fulfilling all new requirements unless granted an extension by the department. If the licensee disputes the amount of the required financial assurance warranties, the licensee may request a hearing to be conducted in accordance with section 24-4-105, C.R.S.

(e) If the licensee requests a hearing, no new classified material, as that term is defined in section 25-11-201, may be brought on site and no classified material may be processed until the licensee's dispute over the financial assurance warranty is resolved, unless the licensee posts a bond in a form approved by the department equal to the amount in dispute.

(6) (a) Financial assurance warranties shall be maintained in good standing until the department has authorized in writing the discontinuance of such warranties.

(b) (I) If a financial warranty is provided by a corporate surety, the department shall require the surety to be A.M. Best rated "A-V" or better and listed on the United States treasury's federal register of companies holding certificates of authority as acceptable sureties on federal bonds; except that, the corporate surety shall notify the department and the licensee, in writing, as soon as practicable in the event its A.M. Best, or equivalent, rating deteriorates below an "A-V" rating or such corporate surety is removed from the department of the treasury's list of companies holding certificates of authority as acceptable sureties on federal bonds.

(II) The board may promulgate rules and regulations concerning other circumstances that may constitute an impairment of the warranties referenced in this article that would require reasonable notice to the department by the warrantor.

(III) A financial warrantor shall notify the department not less than ninety days prior to any cancellation, termination, or revocation of the warranty, unless the department has authorized in writing the discontinuance of such warranties.

Source: L. 97: Entire section added, p. 1633, § 2, effective August 15. **L. 2010:** (5) amended, (HB 10-1348), ch. 388, p. 1819, § 3, effective June 8.

25-11-111. Forfeiture of decommissioning warranties - use of funds. (1) A decommissioning warranty shall be subject to immediate forfeiture whenever the department determines that any one of the following circumstances exist:

(a) The licensee has violated an emergency, abatement, or cease-and-desist order or court-ordered injunction or temporary restraining order related to decommissioning, decontamination, or disposal and, if decommissioning, decontamination, or disposal was required in such order, has failed to complete such decommissioning, decontamination, or disposal although reasonable time to have done so has elapsed; or

(b) The licensee is in violation of decommissioning, decontamination, or disposal requirements as specified in the license and the regulations and has failed to cure such violation although the licensee has been given written notice thereof pursuant to section 25-11-107 (5) and has had reasonable time to cure such violation; or

(c) The licensee has failed to provide an acceptable replacement warranty when:

(I) The licensee's financial warrantor no longer has the financial ability to carry out obligations under this article; or

(II) The department has received notice or information that the financial warrantor intends to cancel, terminate, or revoke the warranty; or

(d) The licensee has failed to maintain its financial assurance warranty in good standing as required by section 25-11-110 (6) (a); or

(e) An emergency endangering public health or safety has been caused by or resulted from the licensee's use or possession of radioactive materials.

(2) (a) Upon determining that a decommissioning warranty should be forfeited under subsection (1) of this section, the department shall issue to the licensee an order forfeiting the decommissioning warranty. The order shall contain written findings of fact and conclusions of law to support its decision and shall direct affected financial warrantors to deliver to the department the full amounts warranted by applicable decommissioning warranties within not more than thirty days after the date of the order.

(b) The licensee may request a hearing on the order of forfeiture that shall be conducted in accordance with section 24-4-105, C.R.S., and that, if the department alleges in the forfeiture order a violation of a license, regulation, or order, the hearing may be conducted in conjunction with a hearing requested under section 25-11-107 (5). Any request for a hearing pursuant to this part 1 shall be made within twenty days after the date of the order of forfeiture and shall not affect the obligation to submit to the department funds from decommissioning warranties forfeited by such order unless a stay of forfeiture is granted by the department or by administrative or judicial order.

(3) The department may request the attorney general, and the attorney general is authorized, to commence legal proceedings necessary to secure or recover amounts warranted by decommissioning warranties. The attorney general shall have the power to collect, foreclose upon, present for payment, take possession of, or dispose of pledged property, and otherwise reduce to cash any financial assurance arrangement required by this article.

(4) (a) Decommissioning funds recovered by the department pursuant to this section shall be immediately deposited into the decommissioning fund created in section 25-11-113 and shall be used solely for the disposal of radioactive materials for the facility covered by the forfeited financial assurance warranties; the decommissioning and decontamination of buildings, equipment, personal property, and lands covered by the forfeited financial assurance warranties; and to cover the department's reasonable attorney and administrative costs associated with disposal, decommissioning, and decontamination for such facility.

(b) The department or its agent shall have a right to enter property of the licensee to dispose of radioactive materials, decommission, and decontaminate buildings, equipment, personal property, and lands. Upon completion of disposal, decommissioning, and decontamination activities, the department shall present to the licensee a full accounting and shall refund all unspent decommissioning warranty moneys, including interest.

(5) Licensees shall remain liable for the total actual cost of disposal of, decommissioning, and decontaminating affected buildings, equipment, personal property, and lands, less any amounts expended by the department pursuant to subsection (4) of this section, notwithstanding any discharge of applicable financial assurance warranties.

Source: L. 97: Entire section added, p. 1635, § 2, effective August 15.

25-11-112. Forfeiture of long-term care warranty - use of funds. (1) A long-term care warranty shall be subject to immediate forfeiture whenever the department determines that any one of the following circumstances exist:

(a) The licensee is in violation of long-term care requirements as specified in the license and the regulations and has failed to cure such violation although the licensee has been given written notice thereof pursuant to section 25-11-107 (5) and has had reasonable time to cure such violation; or

(b) The licensee has failed to provide an acceptable replacement warranty when:

(I) The licensee's financial warrantor no longer has the financial ability to carry out obligations under this article; or

(II) The department has received notice or information that the financial warrantor intends to cancel, terminate, or revoke the warranty; or

(c) The licensee has failed to maintain its financial assurance warranty in good standing as required by section 25-11-110 (6) (a).

(2) (a) A long-term care warranty shall be subject to immediate use and expenditure by the department whenever the department determines that disposal, decommissioning, and decontamination requirements specified in the license conditions and regulations have been satisfied. The department shall give the licensee written notice of the department's intent to use the long-term care warranty for long-term care purposes. The notice shall contain findings of fact and conclusions of law to support its decision and shall direct affected financial warrantors to deliver to the department the full amounts warranted by applicable long-term care warranties within not more than thirty days after the date of the notice.

(b) The licensee may request a hearing on a notice under paragraph (a) of this subsection (2) that shall be conducted in accordance with section 24-4-105, C.R.S. Any

request for a hearing under this subsection (2) shall be made within thirty days after the date of the notice and shall not affect the obligation to submit to the department funds from long-term care warranties unless a stay is granted by the department or by administrative or judicial order.

(3) The department may request the attorney general, and the attorney general is authorized, to commence legal proceedings necessary to secure or recover amounts warranted by long-term care warranties. The attorney general shall have the power to collect, foreclose upon, present for payment, take possession of, or dispose of pledged property, and otherwise reduce to cash any financial assurance arrangement required by this article.

(4) (a) Long-term care funds recovered by the department pursuant to this section shall be immediately deposited into the long-term care fund created in section 25-11-113 and shall be used solely for the long-term care for the facility covered by the financial assurance warranty and to cover the department's reasonable attorney and administrative costs associated with long-term care for such facility.

(b) The department or its agent shall have a right to enter property of the licensee to perform long-term care and monitoring. Upon completion of long-term care activities, the department shall present to the licensee a full accounting and shall refund all unspent warranty moneys, including interest.

Source: L. 97: Entire section added, p. 1637, § 2, effective August 15.

25-11-113. Forfeitures - deposit - radiation control - decommissioning fund - long-term care fund. (1) The department is hereby authorized to collect funds from forfeited decommissioning warranties and from long-term care warranties.

(2) (a) A fund to be known as the decommissioning fund is hereby created in the state treasury. The fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from decommissioning warranties pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the decommissioning fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this article, and no part of the fund shall be expended or appropriated for any other purpose.

(b) The moneys in the fund shall be continuously appropriated for the purposes set forth in this part 1 and shall not be transferred to or revert to the general fund.

(3) Moneys in the decommissioning fund shall be available for use by the department for the sole purpose of disposing of radioactive materials and completing decontamination and decommissioning of affected buildings, fixtures, equipment, personal property, and lands, and to cover the department's reasonable attorney costs that may be incurred in successfully revoking, foreclosing, or realizing any decommissioning warranty, and reasonable administrative costs, including indirect costs, incurred by the department in conducting disposal, decontamination, and decommissioning.

(4) (a) A fund to be known as the long-term care fund is hereby created and established in the state treasury. Such fund shall be interest-bearing and invested to return the maximum income feasible as determined by the state treasurer and consistent with otherwise applicable state law. All moneys collected from long-term care warranties pursuant to this section shall be transmitted to the state treasurer who shall credit the same to the long-term care fund. All moneys deposited in the fund and all interest earned on moneys in the fund shall remain in the fund for the purposes set forth in this part 1 and no part thereof shall be expended or appropriated for any other purpose.

(b) Moneys in the long-term care fund shall be annually appropriated by the general assembly to the department in an amount sufficient to implement the provisions of this part 1.

(c) Moneys in the long-term care fund shall be available for use by the department for the sole purposes of:

(I) Performing annual site inspections to confirm the integrity of the stabilized waste system, environmental monitoring, and maintenance of the waste disposal site, including fixtures, cover, and equipment;

(II) Covering the department's reasonable attorney costs that may be incurred in successfully collecting or realizing any long-term care warranty, and reasonable administrative costs, including indirect costs, incurred by the department in conducting long-term care of the disposal facility.

Source: L. 97: Entire section added, p. 1638, § 2, effective August 15. **L. 99:** (2)(a) and (4)(a) amended, p. 625, § 27, effective August 4. **L. 2010:** (2)(a) amended, (HB 10-1348), ch. 388, p. 1819, § 4, effective June 8.

PART 2

RADIOACTIVE WASTE DISPOSAL

25-11-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) (a) "Classified material" means radioactive materials that are one or more of the following types:

(I) "Type 2 byproduct material" as byproduct material is defined in 42 U.S.C. sec. 2014 (e) (2);

(II) Naturally occurring or technologically enhanced naturally occurring radioactive material;

(III) Non-11 e (2) material; or

(IV) Ore.

(b) Nothing in this subsection (1) shall be deemed to include the following naturally occurring radioactive materials or technologically enhanced naturally occurring radioactive materials:

(I) Residuals or sludges from the treatment of drinking water by aluminum, ferric chloride, or similar processes; except that the material may not contain hazardous substances that otherwise would preclude receipt;

(II) Sludges, soils, or pipe scale in or on equipment from oil and gas exploration, production, or development operations or drinking water or wastewater treatment operations; except that the material may not contain hazardous substances that otherwise would preclude receipt;

(III) Materials from or activities related to construction material mining regulated under article 32.5 of title 34, C.R.S.

(c) Nothing in this part 2 shall be deemed to apply to the treatment, storage, management, processing, or disposal of solid waste, which may include naturally occurring radioactive material as defined in section 25-11-101 (2.7), and tenorm as defined in subsection (4) of this section, either pursuant to a certificate of designation issued under article 20 of title 30, C.R.S., or at a solid waste disposal site and facility considered approved or otherwise deemed to satisfy the requirement for a certificate of designation pursuant to article 20 of title 30, C.R.S., or section 25-15-204 (6).

(1.5) "Disposal" means burial in soil, release through a sanitary sewerage system, incineration, or long-term storage with no intention of or provision for subsequent removal; except that, with regard to classified material, "disposal" shall not include release through a sanitary sewer or incineration at a facility.

(1.6) "Facility" means a uranium mill, processing, or disposal facility required to be licensed pursuant to this article and a site for such facility.

(1.7) "Non-11 e (2) material" means material that is not type 2 byproduct material or ore. "Non-11 e (2) byproduct material" does not include depleted or enriched uranium as defined by Colorado or federal statute or rule.

(1.8) "Ore" means naturally occurring uranium-bearing, thorium-bearing, or radium-bearing material in its natural form prior to chemical processing such as roasting, beneficiating, or refining, and specifically includes material that has been physically processed, such as by crushing, grinding, screening, or sorting.

(2) “Radioactive” means emitting alpha rays, beta rays, gamma rays, high-energy neutrons or protons, or other high-level radioactive particles. The term “radioactive” does not include material in which the estimated specific activity is not greater than .002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed.

(3) “Radioactive waste” means all radioactive materials which have no useful purpose and are to be discarded and are:

(a) Capable of producing radiation exposures with acute effects associated with the operation and decommissioning of nuclear reactors for commercial, military, research, and other purposes, including spent fuel if discarded, fuel reprocessing waste and radionuclides removed from associated process streams or effluents, and with the United States nuclear weapons program;

(b) Transuranic (radionuclides with atomic numbers greater than 92); and

(c) Radionuclides which have been used for industrial and research use, and material contaminated with them, and which are capable of producing radiation exposures with acute effects as determined by the department of public health and environment.

(4) “Technologically enhanced naturally occurring radioactive material” or “tenorm” means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. “Tenorm” does not include:

(a) Background radiation or the natural radioactivity of rocks or soils;

(b) “Byproduct material” or “source material”, as defined by Colorado statute or rule; or

(c) Enriched or depleted uranium as defined by Colorado or federal statute or rule.

Source: L. 79: Entire part added, p. 1066, § 8, effective July 1. L. 94: (3)(c) amended, p. 2791, § 526, effective July 1. L. 2002: (1) amended and (1.5) added, p. 230, § 1, effective April 5. L. 2003: (1) and (1.5) amended and (1.6), (1.7), (1.8), and (4) added, p. 2188, § 1, effective June 3.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-11-202. Disposal of foreign radioactive waste prohibited. The disposal of any radioactive waste which originates or has been used outside this state and has not been used in this state is prohibited except as provided in section 25-11-203.

Source: L. 79: Entire part added, p. 1067, § 8, effective July 1.

25-11-203. Approval of facilities, sites, and shipments for disposal of radioactive waste. (1) (a) No facility shall be constructed or site approved for the disposal of radioactive waste originating or used outside Colorado unless such facility or site has been approved as provided in subsection (3) of this section.

(b) (I) No facility shall dispose of or receive for storage incident to disposal or processing at the facility classified material unless such facility has received a license, a five-year license renewal, or license amendment pertaining to the facility’s receipt of classified material, in accordance with sections 24-4-104 and 24-4-105, C.R.S., for such receipt, storage, processing, or disposal of classified material and such license, license renewal, or license amendment approves that type of classified material.

(II) Nothing in this paragraph (b) shall apply to a contract for the storage, processing, or disposal of less than the sum of one hundred ten tons of classified material per source or to a contract for a bench-scale or a pilot-scale testing project or a contract for less than a de minimis amount of classified material as determined by the department for storage, processing, or disposal.

(III) License amendments for the receipt of classified material at a facility are subject to subsections (2) and (3) of this section except when the material is from an approved source and such amendment would not result in a change in ownership, design, or operation

of the facility. License amendments not subject to subsections (2) and (3) of this section are subject to subsection (4) of this section.

(2) (a) Any person desiring to have a facility or site referred to in subsection (1) of this section approved shall apply to the department of public health and environment for approval of such facility or site. The application shall contain such information as the department requires and shall be accompanied by an application fee determined by the board pursuant to the provisions of part 1 of this article.

(b) In addition to the requirements of paragraph (a) of this subsection (2), each proposed license, five-year license renewal, or license amendment pertaining to the facility's receipt of classified material shall include a written application to the department and information relevant to the pending application, including:

(I) Transcripts of two public meetings hosted and presided over by a person selected upon agreement by the department, the board of county commissioners of the county where the facility is located, and the applicant. One or both of the meetings shall be a hearing conducted to comply with section 24-4-104 or 24-4-105, C.R.S. The reasonable, necessary, and documented expense of the meetings or hearing shall be paid by the facility. Such meetings shall not be held until the department determines that the application is substantially complete. The facility shall provide the public with:

(A) Pursuant to part 1 of article 70 of title 24, C.R.S., at least two weeks' written notice before the first meeting and an additional two weeks' written notice before the second meeting;

(B) At both meetings, summaries of the facility's license to receive, store, process, or dispose of classified material and the nature of the classified material, and an opportunity to be heard; and

(C) Access to make copies of a transcript of the meetings, and shall provide an electronic copy to the department in a manner that allows posting on the department's web site within ten days after receipt from the transcription service;

(II) An environmental assessment as defined in paragraph (c) of this subsection (2);

(III) A response, if any, to the environmental assessment written by the board of county commissioners of the county in which the classified material is proposed to be received for storage, processing, or disposal at a facility and provided to the facility within ninety days after the first public meeting. Upon request of and documentation of the expenditure by such board, the applicant shall provide the board with up to fifty thousand dollars, which shall be available to the board for the reasonable and necessary expenses during the pendency of the application to assist the board in responding to the application, including to pay for an independent environmental analysis by a disinterested party with appropriate environmental expertise to assist the board in preparing its response. The board's response may consider whether the approval of the license, five-year license renewal, or license amendment pertaining to the facility's receipt or disposal of the classified material will present any substantial adverse impact upon the safety or maintenance of transportation infrastructure or transportation facilities within the county.

(c) As used in paragraph (b) of this subsection (2), "environmental assessment" means a report and assessment submitted to the department by a facility upon and in connection with application for a license, a five-year renewal, or license amendment pertaining to the facility's receipt of classified material, proposing to receive classified material for storage, processing, or disposal at a facility that addresses the impacts of the receipt for storage, processing, or disposal of such material. The environmental assessment shall contain all information deemed necessary by the department, and shall include, at a minimum:

(I) The identification of the types of classified material to be received, stored, processed, or disposed of;

(II) A representative presentation of the physical, chemical, and radiological properties of the type of classified material to be received, stored, processed, or disposed of;

(III) An evaluation of the short-term and long-range environmental impacts of such receipt, storage, processing, or disposal;

(IV) An assessment of the radiological and nonradiological impacts to the public health from the application;

(V) Any facility-related impact on any waterway and groundwater from the application;

(VI) An analysis of the environmental, economic, social, technical, and other benefits of the proposed application against environmental costs and social effects while considering available alternatives;

(VII) A list of all material violations of local, state, or federal law at the facility since the submittal date of the previous license application or license renewal application;

(VIII) For an application for a license or license amendment pertaining to the facility's receipt of classified material for storage, processing, or disposal at the facility, a demonstration that:

(A) There are no outstanding material violations of any state or federal statutes, compliance orders, or court orders applicable to the facility, and any releases giving rise to any such violation have been remediated;

(B) The operator, after a good faith review of the facility and its operations, is not aware of any current license violation at the facility;

(C) There are no current releases to the air, ground, surface water, or groundwater that exceed permitted limits; and

(D) No conditions exist at the facility that would prevent the department of energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954", 42 U.S.C. sec. 2113;

(IX) A list of all necessary permits and any changes to local land use ordinances that are needed to construct or operate the facility; and

(X) For sites or facilities placed on the national priority list pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act", 42 U.S.C. sec. 9605, a copy of the most recent five-year review and any associated updates that have been issued by the United States environmental protection agency.

(3) (a) Upon receipt of an application or notice as provided in subsection (2) of this section, the department of public health and environment shall notify the public and forward a copy of the application or notice to the governor and the general assembly, as appropriate.

(b) (I) No facility or site referred to in paragraph (a) of subsection (1) of this section shall be constructed or approved by the department of public health and environment unless the governor and the general assembly have approved such facility or site.

(II) The governor and the general assembly, in making their determination, shall consider criteria developed by the department of public health and environment for disposal of radioactive wastes pursuant to section 25-11-103 (3) in approving or disapproving the proposed facility or site.

(c) (I) In deciding whether to approve a license, five-year license renewal, or license amendment pertaining to the facility's receipt of classified material, the department shall consider the transcripts of the public meetings held pursuant to subparagraph (I) of paragraph (b) of subsection (2) of this section, the facility's license, any environmental assessment or analysis performed pursuant to this section, the facility's compliance with financial assurance requirements of section 25-11-110, and the board of county commissioners' response to the environmental assessment prepared pursuant to subparagraph (III) of paragraph (b) of subsection (2) of this section. The department shall deny or approve the application as a whole.

(II) The department may order reasonable mitigation measures to address any substantial adverse impacts to public health or the environment or transportation infrastructure or transportation facilities within the county attributable solely to approval of the license, five-year renewal, or license amendment pertaining to the facility's receipt of classified material.

(III) The applicant shall demonstrate that if the license, five-year renewal, or license amendment pertaining to the facility's receipt of classified material is approved, then the receipt, storage, processing, and disposal of classified material shall:

(A) Be conducted such that the exposures to workers and the public are within the dose limits of part 4 of the department's rules pertaining to radiation control for workers and the public;

(B) Not cause releases to the air, ground, or surface or groundwater that exceed permitted limits; and

(C) Not prevent transfer of the facility to the United States in accordance with 42 U.S.C. sec. 2113 upon completion of decontamination, decommissioning, and reclamation of the facility.

(IV) No facility may be permitted as a hazardous waste treatment, storage, or disposal facility under part 3 of article 15 of this title.

(V) (A) The department shall publish a determination as to whether an application submitted pursuant to paragraph (b) of subsection (2) of this section is substantially complete within forty-five days after receipt of the application.

(B) The first public meeting or hearing required by subparagraph (I) of paragraph (b) of subsection (2) of this section shall be convened within forty-five days after publication of its determination that the application is substantially complete. The second such public meeting or hearing shall be convened within thirty days after the first public meeting.

(C) The department shall approve, approve with conditions, or deny the application submitted under paragraph (b) of subsection (2) of this section within three hundred sixty days after the second public meeting; except that, for an applicant that has completed the second public meeting on or before June 8, 2010, the department shall act upon the application within the time frame prescribed by this sub-subparagraph (C) as it existed as of the date of the application.

(4) (a) (I) At least ninety days before a facility proposes to receive, store, process, or dispose of classified material in a license application or amendment that is not subject to subsections (2) and (3) of this section and for which a material acceptance report has not already been filed with the department, the facility shall notify the department, and the department shall notify the public and the board of county commissioners of the county in which the facility is located, of the specific classified material to be received, stored, processed, or disposed of. The notice shall include:

(A) A representative analysis of the physical, chemical, and radiological properties of the classified material;

(B) The material acceptance report that demonstrates that the classified material does not contain hazardous waste characteristics not found in uranium ore;

(C) A detailed plan for transport, acceptance, storage, handling, processing, and disposal of the material;

(D) A demonstration that the material contains technically and economically recoverable uranium, without taking into account its value as disposal material;

(E) The existing location of the classified material;

(F) The history of the classified material;

(G) A written statement by the applicant describing any preexisting regulatory classification of the classified waste in the state of origin that describes all steps taken by the applicant to identify such classification;

(H) A written statement from the United States department of energy or successor agency that the receipt, storage, processing, or disposal of the classified material at the facility will not adversely affect the department of energy's receipt of title to the facility pursuant to the federal "Atomic Energy Act of 1954 ", 42 U.S.C. sec. 2113;

(I) Documentation showing any necessary approvals of the United States environmental protection agency; and

(J) An environmental assessment as defined in paragraph (c) of subsection (2) of this section, which may incorporate by reference relevant information contained in an environmental assessment previously submitted for the facility.

(II) For classified material that would otherwise be subject to the "Low-level Radioactive Waste Act", part 22 of article 60 of title 24, C.R.S., the facility's notice shall also include written documentation that the rocky mountain low-level radioactive waste board has been notified that the classified material is being considered for disposal in the subject facility.

(b) Within thirty days after the department's receipt of notice pursuant to subparagraph (I) of paragraph (a) of this subsection (4), the department shall determine whether the notice is complete.

(c) Once the department determines that the notice is complete, the department shall publish the notice on its web site and provide a sixty-day public comment period for the receipt of written comments concerning the notice. A public hearing may be held, at the department's discretion, at the operator's expense.

(d) Within thirty days after the close of the written public comment period provided by paragraph (c) of this subsection (4), the department shall approve, approve with conditions, or deny the receipt, storage, processing, or disposal as described in the notice based on whether the material proposed for receipt, storage, processing, or disposal at the facility complies with the facility's license and meets the standards established pursuant to subparagraph (III) of paragraph (c) of subsection (3) of this section.

Source: **L. 79:** Entire part added, p. 1067, § 8, effective July 1. **L. 94:** (2) and (3) amended, p. 2791, § 527, effective July 1. **L. 97:** (3)(b) amended, p. 1023, § 44, effective August 6. **L. 2002:** Entire section amended, p. 231, § 2, effective April 5. **L. 2003:** (1)(b), (2)(b), (2)(c), and (3)(c) amended and (4) added, p. 2190, § 2, effective June 3. **L. 2010:** (1)(b)(III), (2)(b)(I)(C), (3)(a), (3)(c)(V), and (4) amended and (2)(c)(VII), (2)(c)(VIII), (2)(c)(IX), and (2)(c)(X) added, (HB 10-1348), ch. 388, pp. 1820, 1823, §§ 5, 6, effective June 8.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (2) and (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

PART 3

DISPOSAL OF URANIUM MILL TAILINGS

Law reviews: For article, "Administrative Law", which discusses Tenth Circuit decisions dealing with administrative actions based upon agency findings of scientific fact, see 64 Den. U. L. Rev. 111 (1987).

25-11-301. Legislative declaration. (1) The general assembly hereby finds and declares that the existence of uranium mill tailings at active and inactive mill operations poses a potential and significant radiation health hazard. This part 3 is therefore enacted to protect the public health, safety, and welfare by cooperating with the federal government in providing for the stabilization, disposal, and control of such tailings in a safe and environmentally sound manner to prevent or minimize other environmental impacts from such tailings.

(2) The general assembly recognizes the need for the state to expend such funds as are necessary to provide land annotation and site information for purposes of protecting prospective purchasers or users of mill sites designated for cleanup pursuant to public law 95-604. The general assembly therefore declares its intent to assist local governments with the identification, removal, storage, and disposal of tailing deposits associated with such designated mill sites for which remedial action is not taken pursuant to the federal "Uranium Mill Tailings Radiation Control Act of 1978".

Source: **L. 79:** Entire part added, p. 1069, § 1, effective January 1, 1980. **L. 97:** Entire section amended, p. 337, § 2, effective April 16.

25-11-302. Terms defined. For the purposes of this part 3, the terms "processing site" and "residual radioactive material" shall have the meanings specified in section 101 (6) and (7), respectively, of Public Law 95-604, as from time to time amended.

Source: **L. 79:** Entire part added, p. 1069, § 1, effective January 1, 1980.

25-11-303. Authorization to participate - implementation - repeal. (1) The general assembly hereby authorizes the department of public health and environment to participate

in federal implementation of the “Uranium Mill Tailings Radiation Control Act of 1978”, and for such purpose the department has the authority to:

(a) Enter into cooperative agreements with the secretary of energy to perform remedial actions at processing sites designated by the secretary;

(b) Obtain written consent from the record owner of a designated processing site to perform remedial actions at such site;

(c) Provide for reimbursement for the actual cost of any remedial action in accordance with the terms of Public Law 95-604;

(d) (I) Acquire by gift, transfer, exchange, or purchase pursuant to the requirements of article 56 of title 24, C.R.S., any designated processing site, including any interest in such site, and any site to be used for the permanent disposition and stabilization of residual radioactive materials. Acquisition of any such sites shall be for the purpose of performing remedial action and ultimate disposition of the site as required under the federal “Uranium Mill Tailings Radiation Control Act of 1978”.

(II) If the negotiation procedures established in section 24-56-117, C.R.S., fail to accomplish acquisition of the site, the matter may be submitted to arbitration within ten days’ notice by the fee title holder. The arbitration panel shall consist of one arbitrator chosen by the siteowner, one arbitrator chosen by the department, and one arbitrator chosen by the other two arbitrators. If the two arbitrators cannot agree within ten days on a third arbitrator, a request by either party shall be made to the district court for the judicial district of the county in which the site is located for appointment of a third impartial arbitrator. The department and the siteowner shall share equally the cost of the use of the third arbitrator. All arbitrators shall be residents of the county in which the land is located. The arbitration panel shall issue its decision thirty days after its appointment, and the decision shall be made in accordance with the criteria established in section 24-56-117 (1) (c), C.R.S., and the provisions of the federal “Uranium Mill Tailings Radiation Control Act of 1978”. If the arbitration panel will not be able to issue its decision thirty days after its appointment, but at least two of the three arbitrators determine that the panel is near a decision, the panel shall be allowed fifteen days after the expiration of the initial thirty-day period to make its decision. Such decision shall be made by at least a majority of the arbitrators and shall not be binding on any court.

(III) If the acquisition of any such site is not accomplished pursuant to the arbitration procedures established in subparagraph (II) of this paragraph (d), the department is authorized to obtain such site by condemnation proceedings pursuant to the provisions of article 1 of title 38, C.R.S. A decision made pursuant to the provisions of article 1 of title 38, C.R.S., shall be made in accordance with the criteria established in section 24-56-117 (1) (c), C.R.S., and the provisions of the federal “Uranium Mill Tailings Radiation Control Act of 1978”.

(IV) This paragraph (d) is repealed, effective upon the acquisition of all of the nine currently designated sites, as certified by the executive director of the department, for purposes of participating in the federal “Uranium Mill Tailings Radiation Control Act of 1978”;

(e) Participate in the selection and performance of remedial actions in which the state pays a portion of the cost;

(f) Participate in the following activities for which the state may pay any portion or all of the costs:

(I) Land annotation and information gathering, identification, removal, and disposal of tailing deposits associated with mill sites designated for cleanup pursuant to public law 95-604 that remain outside of the disposal cells constructed for remedial purposes pursuant to the federal “Uranium Mill Tailings Radiation Control Act of 1978”; and

(II) The groundwater restoration phase of the federal “Uranium Mill Tailings Radiation Control Act of 1978”.

Source: L. 79: Entire part added, p. 1069, § 1, effective January 1, 1980. L. 86: (1)(d) R&RE, p. 980, § 1, effective May 16. L. 94: IP(1) amended, p. 2791, § 528, effective July 1. L. 97: (1)(f) added, p. 337, § 3, effective April 16.

Editor’s note: As of the 2012 publication date, notice had not been received that all nine designated processing sites as specified in subsection (1)(d)(IV) have been acquired.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Although the policies specified in § 24-56-117 apply to condemnation of property under this section, such policies are modified by the policies for state land acquisition included in the federal Uranium Mill Tailings Radiation Control Act. *The Mill v. State*, Dept. of Health, 868 P.2d 1099 (Colo. App. 1993).

Notwithstanding the rule against consideration of enhanced value in determining fair

value in condemnation proceedings, determination of the fair value of property that is condemned under the federal Uranium Mill Tailings Radiation Control Act may include evidence of the value of the property if it were uncontaminated. *The Mill v. State*, Dept. of Health, 868 P.2d 1099 (Colo. App. 1993).

25-11-304. Financial participation. (1) The general assembly accepts the provisions of section 107 (a) of Public Law 95-604 requiring the state to pay ten percent of the actual cost of any remedial action and administrative costs from nonfederal moneys.

(2) The state of Colorado may receive a share of the net profits derived from the recovery of minerals from residual radioactive materials at any designated processing site within the state in accordance with the provisions of section 108 (b) of Public Law 95-604.

Source: L. 79: Entire part added, p. 1070, § 1, effective January 1, 1980.

25-11-305. Restriction - termination. (1) Nothing in this part 3 shall supersede the provisions of part 1 of this article.

(2) The authority to participate in federal implementation of remedial actions at designated processing sites shall terminate at such time as the authority of the federal government to perform remedial action terminates under the provisions of section 112 (a) of Public Law 95-604.

Source: L. 79: Entire part added, p. 1070, § 1, effective January 1, 1980.

ARTICLE 12

Noise Abatement

25-12-101.	Legislative declaration.		new vehicles.
25-12-102.	Definitions.	25-12-107.	Powers of local authorities.
25-12-103.	Maximum permissible noise levels.	25-12-108.	Preemption.
25-12-104.	Action to abate.	25-12-109.	Exception - sport shooting ranges - legislative declaration - definitions.
25-12-105.	Violation of injunction - penalty.	25-12-110.	Off-highway vehicles.
25-12-106.	Noise restrictions - sale of		

25-12-101. Legislative declaration. The general assembly finds and declares that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in the state of Colorado. Excess noise often has an adverse physiological and psychological effect on human beings, thus contributing to an economic loss to the community. Accordingly, it is the policy of the general assembly to establish statewide standards for noise level limits for various time periods and areas. Noise in excess of the limits provided in this article constitutes a public nuisance.

Source: L. 71: p. 647, § 1. **C.R.S. 1963:** § 66-35-1.

ANNOTATION

Applied in City of Lakewood v. DeRoos, 631 P.2d 1140 (Colo. App. 1981).

25-12-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Commercial zone" means:
 - (a) An area where offices, clinics, and the facilities needed to serve them are located;
 - (b) An area with local shopping and service establishments located within walking distances of the residents served;
 - (c) A tourist-oriented area where hotels, motels, and gasoline stations are located;
 - (d) A large integrated regional shopping center;
 - (e) A business strip along a main street containing offices, retail businesses, and commercial enterprises;
 - (f) A central business district; or
 - (g) A commercially dominated area with multiple-unit dwellings.
- (2) "db(A)" means sound levels in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American national standards institute, publication S1. 4 - 1971.

(3) "Decibel" is a unit used to express the magnitude of a change in sound level. The difference in decibels between two sound pressure levels is twenty times the common logarithm of their ratio. In sound pressure measurements sound levels are defined as twenty times the common logarithm of the ratio of that sound pressure level to a reference level of 2×10^{-5} N/m² (Newton's/meter squared). As an example of the effect of the formula, a three-decibel change is a one hundred percent increase or decrease in the sound level, and a ten-decibel change is a one thousand percent increase or decrease in the sound level.

(4) (a) "Industrial zone" means an area in which noise restrictions on industry are necessary to protect the value of adjacent properties for other economic activity but shall not include agricultural, horticultural, or floricultural operations.

(b) Nothing in paragraph (a) of this subsection (4), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

- (5) "Light industrial and commercial zone" means:
 - (a) An area containing clean and quiet research laboratories;
 - (b) An area containing light industrial activities which are clean and quiet;
 - (c) An area containing warehousing; or
 - (d) An area in which other activities are conducted where the general environment is free from concentrated industrial activity.

(5.2) "Motorcycle" means a self-propelled vehicle with not more than three wheels in contact with the ground that is designed primarily for use on the public highways.

(5.4) "Motor vehicle" means a self-propelled vehicle with at least four wheels in contact with the ground that is designed primarily for use on the public highways.

(5.6) "Off-highway vehicle" means a self-propelled vehicle with wheels or tracks in contact with the ground that is designed primarily for use off the public highways. "Off-highway vehicle" shall not include the following:

- (a) Military vehicles;
- (b) Golf carts;
- (c) Snowmobiles;
- (d) Vehicles designed and used to carry persons with disabilities; and
- (e) Vehicles designed and used specifically for agricultural, logging, firefighting, or mining purposes.

(6) "Residential zone" means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings. The zone includes areas where multiple-unit dwellings, high-rise apartment districts, and redevelopment districts are located. A residential zone may include areas containing accommodations for transients such as motels and hotels and residential areas with limited office development, but it may

not include retail shopping facilities. “Residential zone” includes hospitals, nursing homes, and similar institutional facilities.

(7) “SAE J1287” means the J1287 stationary sound test or any successor test published by SAE international or any successor organization.

(8) “SAE J2567” means the J2567 stationary sound test or any successor test published by SAE international or any successor organization.

(9) “Snowmobile” means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off the public highways. “Snowmobile” shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

Source: **L. 71:** p. 647, § 1. **C.R.S. 1963:** § 66-35-2. **L. 73:** p. 1406, § 47. **L. 86:** (2) amended, p. 501, § 121, effective July 1. **L. 2005:** (4) amended, p. 350, § 8, effective August 8. **L. 2008:** (5.2), (5.4), (5.6), (7), (8), and (9) added, p. 2101, § 1, effective July 1, 2010.

25-12-103. Maximum permissible noise levels. (1) Every activity to which this article is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. Sound levels of noise radiating from a property line at a distance of twenty-five feet or more therefrom in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such noise is a public nuisance:

Zone	7:00 a.m. to next 7:00 p.m.	7:00 p.m. to next 7:00 a.m.
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)

(2) In the hours between 7:00 a.m. and the next 7:00 p.m., the noise levels permitted in subsection (1) of this section may be increased by ten db(A) for a period of not to exceed fifteen minutes in any one-hour period.

(3) Periodic, impulsive, or shrill noises shall be considered a public nuisance when such noises are at a sound level of five db(A) less than those listed in subsection (1) of this section.

(4) This article is not intended to apply to the operation of aircraft or to other activities which are subject to federal law with respect to noise control.

(5) Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.

(6) All railroad rights-of-way shall be considered as industrial zones for the purposes of this article, and the operation of trains shall be subject to the maximum permissible noise levels specified for such zone.

(7) This article is not applicable to the use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the specific period of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.

(8) For the purposes of this article, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five miles per hour.

(9) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

(10) This article is not applicable to the use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow. This subsection (10) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

(11) This article is not applicable to the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays. This subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

(12) (a) Notwithstanding subsection (1) of this section, the public utilities commission may determine, while reviewing utility applications for certificates of public convenience and necessity for electric transmission facilities, whether projected noise levels for electric transmission facilities are reasonable. Such determination shall take into account concerns raised by participants in the commission proceeding and the alternatives available to a utility to meet the need for electric transmission facilities. When applying, the utility shall provide notice of its application to all municipalities and counties where the proposed electric transmission facilities will be located. The public utilities commission shall afford the public an opportunity to participate in all proceedings in which permissible noise levels are established according to the "Public Utilities Law", articles 1 to 7 of title 40, C.R.S.

(b) Because of the statewide need for reliable electric service and the public benefit provided by electric transmission facilities, notwithstanding any other provision of law, no municipality or county may adopt an ordinance or resolution setting noise standards for electric transmission facilities that are more restrictive than this subsection (12). The owner or operator of an electric transmission facility shall not be liable in a civil action based upon noise emitted by electric transmission facilities that comply with this subsection (12).

(c) For the purposes of this section:

(I) "Electric transmission facility" means a power line or other facility that transmits electrical current and operates at a voltage level greater than or equal to 44 kilovolts.

(II) "Rights-of-way for electric transmission facilities" means all property rights and interests obtained by the owner or operator of an electric transmission facility for the purpose of constructing, maintaining, or operating the electric transmission facility.

Source: **L. 71:** p. 648, § 1. **C.R.S. 1963:** § 66-35-3. **L. 82:** (10) added, p. 424, § 1, effective March 11. **L. 87:** (11) added, p. 1154, § 1, effective May 20. **L. 2004:** (12) added, p. 736, § 2, effective July 1.

Cross references: For the legislative declaration contained in the 2004 act enacting subsection (12), see section 1 of chapter 219, Session Laws of Colorado 2004.

ANNOTATION

Residential development of property is not precluded when noise emanating onto property exceeds limits set forth in this section. *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979).

Trier of fact to determine mode to use in measuring noise. *Davis v. Izaak Walton League of Am.*, 717 P.2d 984 (Colo. App. 1985).

Applied in *City of Lakewood v. DeRoos*, 631 P.2d 1140 (Colo. App. 1981).

25-12-104. Action to abate. Whenever there is reason to believe that a nuisance exists, as defined in section 25-12-103, any county or resident of the state may maintain an action in equity in the district court of the judicial district in which the alleged nuisance exists to abate and prevent such nuisance and to perpetually enjoin the person conducting or maintaining the same and the owner, lessee, or agent of the building or place in or upon which such nuisance exists from directly or indirectly maintaining or permitting such nuisance. Notwithstanding any other provision of this section, a county shall not maintain an action pursuant to this section if the alleged nuisance involves a mining operation or the

development, extraction, or transportation of construction materials, as those terms are defined in section 34-32.5-103, C.R.S., a commercial activity, the commercial use of property, avalanche control activities, a farming or ranching activity, an activity of a utility, or a mining or oil and gas operation. When proceedings by injunction are instituted, such proceedings shall be conducted under the Colorado rules of civil procedure. The court may stay the effect of any order issued under this section for such time as is reasonably necessary for the defendant to come into compliance with the provisions of this article.

Source: L. 71: p. 649, § 1. C.R.S. 1963: § 66-35-4. L. 2008: Entire section amended, p. 57, § 1, effective August 5.

Cross references: For injunctions, see C.R.C.P. 65.

ANNOTATION

Construction and operation of a public highway are not activities which can be abated as a public nuisance. City of Lakewood v. DeRoos, 631 P.2d 1140 (Colo. App. 1981).

Applied in Einarsen v. City of Wheat Ridge, 43 Colo. App. 232, 604 P.2d 691 (1979).

25-12-105. Violation of injunction - penalty. Any violation or disobedience of any injunction or order expressly provided for by section 25-12-104 shall be punished as a contempt of court by a fine of not less than one hundred dollars nor more than two thousand dollars. Each day in which an individual is in violation of the injunction established by the court shall constitute a separate offense. The court shall give consideration in any such case to the practical difficulties involved with respect to effecting compliance with the requirements of any order issued by the court.

Source: L. 71: p. 650, § 1. C.R.S. 1963: § 66-35-5.

25-12-106. Noise restrictions - sale of new vehicles. (1) Except for such vehicles as are designed exclusively for racing purposes, no person shall sell or offer for sale a new motor vehicle that produces a maximum noise exceeding the following noise limits, at a distance of fifty feet from the center of the lane of travel, under test procedures established by the department of revenue:

- (a) Any motorcycle manufactured on or after July 1, 1971, and before January 1, 197388 db(A);
 - (b) Any motorcycle manufactured on or after January 1, 197386 db(A);
 - (c) Any motor vehicle with a gross vehicle weight rating of six thousand pounds or more manufactured on or after July 1, 1971, and before January 1, 197388 db(A);
 - (d) Any motor vehicle with a gross vehicle weight rating of six thousand pounds or more manufactured on or after January 1, 197386 db(A);
 - (e) Any other motor vehicle manufactured on or after January 1, 1968, and before January 1, 197386 db(A);
 - (f) Any other motor vehicle manufactured after January 1, 197384 db(A).
 - (g) (Deleted by amendment, L. 2008, p. 2102, § 2, effective July 1, 2010.)
- (2) Test procedures for compliance with this section shall be established by the department, taking into consideration the test procedures of the society of automotive engineers.

(3) Any person selling or offering for sale a motor vehicle or other vehicle in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars.

Source: L. 71: p. 650, § 1. C.R.S. 1963: § 66-35-6. L. 2008: IP(1) and (1)(g) amended, p. 2102, § 2, effective July 1, 2010. L. 2009: (1)(a) and (1)(b) amended, (HB 09-1026), ch. 281, p. 1259, § 20, effective October 1.

25-12-107. Powers of local authorities. (1) Counties or municipalities may adopt resolutions or ordinances prohibiting the operation of motor vehicles within their respective jurisdictions that produce noise in excess of the sound levels in decibels, measured on the “A” scale on a standard sound level meter having characteristics established by the American national standards institute, publication S1.4 - 1971, and measured at a distance of fifty feet from the center of the lane of travel and within the speed limits specified in this section:

	Speed limit of 35 mph or less	Speed limit of more than 35 mph but less than 55 mph
(a) Any motor vehicle with a manufacturer’s gross vehicle weight rating of six thousand pounds or more, any combination of vehicles towed by such motor vehicle, and any motorcycle other than a low-power scooter:		
(I) Before January 1, 1973	88 db(A)	90 db(A)
(II) On and after January 1, 1973	86 db(A)	90 db(A)

- (b) (Deleted by amendment, L. 2008, p. 2102, § 3, effective July 1, 2010.)
- (2) The governing board shall adopt resolutions establishing any test procedures deemed necessary.
- (3) This section applies to the total noise from a vehicle or combination of vehicles.
- (4) For the purpose of this section, a truck, truck tractor, or bus that is not equipped with an identification plate or marking bearing the manufacturer’s name and manufacturer’s gross vehicle weight rating shall be considered as having a manufacturer’s gross vehicle weight rating of six thousand pounds or more if the unladen weight is more than five thousand pounds.

Source: L. 71: p. 651, § 1. C.R.S. 1963: § 66-35-7. L. 73: p. 1406, § 48. L. 2008: IP(1) and (1)(b) amended, p. 2102, § 3, effective July 1, 2010. L. 2009: IP(1)(a) amended, (HB 09-1026), ch. 281, p. 1259, § 21, effective October 1.

25-12-108. Preemption. Except as provided in sections 25-12-103 (12) and 25-12-110, this article shall not be construed to preempt or limit the authority of any municipality or county to adopt standards that are no less restrictive than the provisions of this article.

Source: L. 71: p. 651, § 1. C.R.S. 1963: § 66-35-8. L. 88: Entire section amended, p. 1116, § 2, effective May 19. L. 2008: Entire section amended, p. 2103, § 4, effective July 1, 2010.

25-12-109. Exception - sport shooting ranges - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that the imposition of inconsistent, outdated, and unnecessary noise restrictions on qualifying sport shooting ranges that meet specific, designated qualifications work to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that a need exists for statewide uniformity with respect to exempting qualifying shooting ranges from the enforcement of laws, ordinances, rules, and orders regulating noise. As the gain associated with having a uniform statewide exemption for qualifying sport shooting ranges outweighs any gains associated with enforcing noise regulations against such ranges, the general assembly further declares that the provisions of this section, as enacted, are a matter of statewide concern and preempt any provisions of any law, ordinance, rule, or order to the contrary.

- (2) As used in this section, unless the context otherwise requires:
 - (a) “Local government” means any county, city, city and county, town, or any governmental entity, board, council, or committee operating under the authority of any county, city, city and county, or town.
 - (b) “Local government official” means any elected, appointed, or employed individual or group of individuals acting on behalf of or exercising the authority of any local government.
 - (c) “Person” means an individual, proprietorship, partnership, corporation, club, or other legal entity.
 - (d) “Qualifying sport shooting range” or “qualifying range” means any public or private establishment, whether operating for profit or not for profit, that operates an area for the discharge or other use of firearms or other equipment for silhouette, skeet, trap, black powder, target, self-defense, recreational or competitive shooting, or professional training.
- (3) Notwithstanding any other law or municipal or county ordinance, rule, or order regulating noise to the contrary:
 - (a) A local governmental official may not commence a civil action nor seek a criminal penalty against a qualifying sport shooting range or its owners or operators on the grounds of noise emanating from such range that results from the normal operation or use of the qualifying shooting range except upon a written complaint from a resident of the jurisdiction in which the range is located. The complaint shall state the name and address of the complainant, how long the complainant has resided at the address indicated, the times and dates on which the alleged excessive noise occurred, and such other information as the local government may require. The local government shall not proceed to seek a criminal penalty or pursue a civil action against a qualifying sport shooting range on the basis of such a noise complaint if the complainant established residence within the jurisdiction after January 1, 1985.
 - (b) No person may bring any suit in law or equity or any other claim for relief against a qualifying sport shooting range located in the vicinity of the person’s property or against the owners or operators of such range on the grounds of noise emanating from the range if:
 - (I) The qualifying range was established before the person acquired the property;
 - (II) The qualifying range complies with all laws, ordinances, rules, or orders regulating noise that applied to the range and its operation at the time of its construction or initial operation;
 - (III) No law, ordinance, rule, or order regulating noise applied to the qualifying range at the time of its construction or initial operation.

Source: L. 98: Entire section added, p. 240, § 1, effective April 13.

25-12-110. Off-highway vehicles. (1) An off-highway vehicle operated within the state shall not emit more than the following level of sound when measured using SAE J1287:

- (a) If manufactured before January 1, 199899 db(A);
- (b) If manufactured on or after January 1, 199896 db(A).
- (2) A snowmobile shall not emit more than the following level of sound when measured using SAE J2567:
 - (a) If manufactured on or after July 1, 1972, and before July 2, 197590 db(A);
 - (b) If manufactured on or after July 2, 197588 db(A).
- (3) (a) A person shall not sell or offer to sell a new off-highway vehicle that emits a level of sound in excess of that prohibited by subsection (1) of this section unless the off-highway vehicle complies with federal noise emission standards. A person shall not sell or offer to sell a new snowmobile that emits a level of sound in excess of that prohibited by subsection (2) of this section unless the snowmobile complies with federal noise emission standards.
- (b) For the purposes of this section, a “new” snowmobile or off-highway vehicle means a snowmobile or off-highway vehicle that has not been transferred on a manufacturer’s statement of origin and for which an ownership registration card has not been submitted by the original owner to the manufacturer.

- (4) This section shall not apply to the following:
 - (a) A vehicle designed or modified for and used in closed-circuit, off-highway vehicle competition facilities;
 - (b) An off-highway vehicle used in an emergency to search for or rescue a person; and
 - (c) An off-highway vehicle while in use for agricultural purposes.
- (5) A person who violates this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.
- (6) No municipality or county may adopt an ordinance or resolution setting noise standards for off-highway vehicles or snowmobiles that are more restrictive than this section.
- (7) (a) Nothing in this section shall be construed to modify the authority granted in section 25-12-103.
 - (b) Nothing in this section shall be construed to authorize the test to produce a less restrictive standard than the J1287 stationary sound test or the J2567 stationary sound test published by SAE international or any successor organization.
- (8) The following shall be an affirmative defense to a violation under this section if the off-highway vehicle or snowmobile:
 - (a) Was manufactured before January 1, 2005;
 - (b) Complied with federal and state law when purchased;
 - (c) Has not been modified from the manufacturer’s original equipment specifications or to exceed the sound limits imposed by subsection (1) or (2) of this section; and
 - (d) Does not have a malfunctioning exhaust system.

Source: L. 2008: Entire section added, p. 2103, § 5, effective July 1, 2010.

ARTICLE 13
Recreation Land Preservation

25-13-101.	Short title.	25-13-108.	Water supplies.
25-13-102.	Legislative declaration.	25-13-109.	Group gatherings.
25-13-103.	Definitions.	25-13-110.	Camping duration.
25-13-104.	Administration.	25-13-111.	Enforcement.
25-13-105.	Unlawful acts.	25-13-112.	Citizen’s complaint.
25-13-106.	Sewage disposal.	25-13-113.	Construction.
25-13-107.	Refuse disposal.	25-13-114.	Penalty for violation.

25-13-101. Short title. This article shall be known and may be cited as the “Recreation Land Preservation Act of 1971”.

Source: L. 71: p. 643, § 1. C.R.S. 1963: § 66-34-1.

25-13-102. Legislative declaration. The purpose of this article is to establish minimum controls to prohibit the pollution of the air, water, and land, to prevent the degradation of the natural environment of recreational and mountain areas in this state in order to preserve and maintain the ecology and environment in its natural condition, to facilitate the enjoyment of the state and its ecology, nature, and scenery by the inhabitants and visitors of the state, and to protect their health, safety, and welfare.

Source: L. 71: p. 643, § 1. C.R.S. 1963: § 66-34-2.

25-13-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Board” means the state board of health.
- (2) “Campsite” means any specific area within organized campgrounds or other recreation areas which is used for overnight stays by an individual, a single camping family, a group, or any other similar entity.
- (3) “Department” means the department of public health and environment.

(4) "Operator" means the person responsible for managing the organized campground or recreation area.

(5) "Organized campgrounds" means all federal, state, municipal, and county owned and designated roadside parks and campgrounds and privately owned campgrounds which are made available, either with or without a fee, to the public.

(6) "Person" means any private or public institution, corporation, individual, partnership, firm, association, or other entity.

(7) "Public accommodation facilities" means all motels, hotels, dude ranches, youth camps, and other similar facilities rented out to the public in areas used predominantly for recreation.

(8) "Recreation areas" means all public lands and surface waters of the state, other than organized campgrounds, used for picnicking, camping, and other recreational activities.

(9) "Refuse" means all combustible or noncombustible solid waste, garbage, rubbish, debris, and litter.

(10) "Sewage" means any liquid or solid waste material which contains human excreta.

(11) "Surface of ground" means any portion of the ground from the surface to a depth of six inches.

(12) "Waters of the state" means all streams, lakes, rivers, ponds, wells, impounding reservoirs, watercourses, springs, drainage systems, and irrigation systems; all sources of water such as snow, ice, and glaciers; and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, located wholly or partly within or bordering upon this state and within the jurisdiction of this state.

Source: L. 71: p. 643, § 1. C.R.S. 1963: § 66-34-3. L. 94: (3) amended, p. 2792, § 529, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

25-13-104. Administration. (1) Except as provided in section 25-13-111, the department shall administer the provisions of this article.

(2) The board shall promulgate reasonable rules and regulations to carry out the purposes of this article.

(3) The department shall furnish consulting services to county commissioners, municipalities, other governmental agencies, and private landowners regarding toilet facilities and procedures for refuse collection and disposal.

Source: L. 71: p. 644, § 1. C.R.S. 1963: § 66-34-4.

25-13-105. Unlawful acts. (1) Except as otherwise provided in this article, it is unlawful for any person:

(a) Within the recreation areas of the state to discharge untreated sewage upon the surface of the ground or in any waters of the state;

(b) To deposit or bury refuse on the public lands or waters within this state, except within areas or receptacles designated by the operator for this purpose;

(c) To deposit refuse on private or public land in such a way that said refuse may be blown, carried, or otherwise transported from its point of deposit;

(d) To willfully mar, mutilate, deface, disfigure, or injure beyond normal use any rocks, trees, shrubbery, wild flowers, or other features of the natural environment in recreation areas of the state;

(e) To willfully cut down, uproot, break, or otherwise destroy any living trees, shrubbery, wild flowers, or natural flora in recreation areas of the state;

(f) To build fires unless in compliance with rules and regulations of the board, to abandon or to leave fires unattended, or to store flammable liquids in a container which is not of a type approved by the department in an organized campground or other recreation area subject to this article;

(g) In organized campgrounds or recreation areas to use any cleansing agents, whether organic or inorganic in nature, in waters of the state for any purpose, including but not limited to bathing, clothes washing, and similar activities, or to dispose of any water containing such agents on the surface of the ground within fifty feet of any waters of the state. Such water shall be disposed of in facilities provided by the operator or in the manner specified by the operator.

Source: L. 71: p. 644, § 1. C.R.S. 1963: § 66-34-5.

Cross references: For leaving campfires unextinguished and causing a fire in woods or prairie, see § 18-13-109; for civil damages from fire set in woods or prairie, see § 13-21-105.

25-13-106. Sewage disposal. (1) In organized campgrounds, all sewage shall be disposed of in facilities provided by the campground operator. The operator shall maintain such facilities in the manner prescribed by rules and regulations of the board.

(2) Sewage in recreation areas may be disposed of by burial at a depth greater than six inches at a distance of more than one hundred feet from any surface waters. Adequate precautions shall be taken to prevent the intrusion of such sewage and wastewater upon the environment in a manner which is unhealthful, injurious to the environment, or otherwise degrading to the environment.

(3) Public accommodation sewage and wastewater disposal facilities shall conform to such reasonable rules and regulations as may be promulgated by the board.

Source: L. 71: p. 645, § 1. C.R.S. 1963: § 66-34-6.

25-13-107. Refuse disposal. (1) All persons shall dispose of refuse in containers which shall be provided for that purpose by operators of organized campgrounds. Organized campground operators shall keep the grounds free of uncontained refuse and shall provide a sufficient number of secure waterproof containers, preferably metal, with flyproof tops for the disposal of refuse. The containers shall be emptied as often as necessary to maintain the organized campground free of uncontained refuse. The presence of uncontained refuse in excess of the capacity of the containers provided shall be prima facie proof that the numbers of containers or frequency of container emptying is inadequate and that the operator is in violation of this subsection (1).

(2) Whenever containers for refuse are filled or are not available in campgrounds or recreation areas, all persons shall dispose of refuse in compliance with rules and regulations adopted by the board or operator or remove the refuse from the area for disposal in a manner not in violation of this article.

(3) Refuse in public accommodation facilities shall be disposed in the manner specified in such reasonable rules and regulations as may be promulgated by the board.

(4) Food wastes normally edible to human beings may be deposited on the surface of the ground if the quantity of such wastes does not result in an unhealthful or unpleasant aesthetic appearance by virtue of an unreasonable time required for decay of the waste or consumption of the waste by fauna of the area.

Source: L. 71: p. 645, § 1. C.R.S. 1963: § 66-34-7.

25-13-108. Water supplies. All water supplied to the public in an organized campground shall conform to the requirements of standards adopted by the board, rules and regulations adopted by the board, or any higher local standards.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-8.

25-13-109. Group gatherings. Any group of twenty-five or more persons assembled for a meeting, festival, social gathering, or other similar purpose in an organized campground or recreation area for a period which reasonably could have been anticipated to

exceed ten hours shall make provision for sewage, wastewater, and refuse disposal in accordance with rules and regulations of the board. The organizers of and performers at any gathering in violation of this section shall be punished as provided in section 25-13-114.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-9.

25-13-110. Camping duration. No person may camp in a campsite within recreation areas for a period exceeding two weeks. Any campsite may be closed by the department or other lawful authority for an indefinite period to permit recovery of the campsite to its natural state following excessive use and resulting environmental deterioration.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-10.

25-13-111. Enforcement. This article shall be enforced by the department, the division of parks and wildlife, all county, district, and municipal public health agencies and boards of health, and any peace officer in this state.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-11. L. 2010: Entire section amended, (HB 10-1422), ch. 419, p. 2105, § 123, effective August 11.

25-13-112. Citizen's complaint. Any person may initiate an action under the provisions of this article by signing a complaint, in accordance with the applicable rules of judicial procedure, that he has observed a violation of this article.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-14.

25-13-113. Construction. No provisions of this article shall be construed to repeal or in any way invalidate more stringent actions, orders, rules, regulations, ordinances, resolutions, or quality standards established by any governmental entity or agency.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-13.

25-13-114. Penalty for violation. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

Source: L. 71: p. 646, § 1. C.R.S. 1963: § 66-34-14.

ARTICLE 14

Control of Smoking

PART 1		25-14-103.7.	Control of smoking in state legislative buildings. (Repealed)
PROHIBITION AGAINST THE USE OF TOBACCO ON SCHOOL PROPERTY		25-14-104.	Optional prohibition. (Repealed)
		25-14-105.	Local regulations. (Repealed)
25-14-101.	Legislative declaration. (Repealed)	PART 2	
25-14-102.	Definitions. (Repealed)	COLORADO CLEAN INDOOR AIR ACT	
25-14-103.	Smoking prohibited in certain public places. (Repealed)	25-14-201.	Short title.
25-14-103.5.	Prohibition against the use of tobacco products on school property - legislative declaration - education program - special account.	25-14-202.	Legislative declaration.
		25-14-203.	Definitions.
		25-14-204.	General smoking restrictions.
		25-14-205.	Exceptions to smoking restric-

	tions.	PART 3	
25-14-206.	Optional prohibitions.		
25-14-207.	Other applicable regulations of smoking - local counterpart regulations authorized.	TOBACCO USE BY MINORS	
25-14-208.	Unlawful acts - penalty - disposition of fines and surcharges.	25-14-301.	Possession of cigarettes or tobacco products by a minor prohibited - definitions.
25-14-209.	Severability.		

PART 1

PROHIBITION AGAINST THE USE OF TOBACCO ON SCHOOL PROPERTY

25-14-101. Legislative declaration. (Repealed)

Source: L. 77: Entire article added, p. 1298, § 1, effective July 1. L. 2006: Entire section repealed, p. 60, § 2, effective July 1.

25-14-102. Definitions. (Repealed)

Source: L. 77: Entire article added, p. 1298, § 1, effective July 1. L. 91: (1) amended, p. 821, § 6, effective June 1. L. 2006: Entire section repealed, p. 60, § 3, effective July 1.

25-14-103. Smoking prohibited in certain public places. (Repealed)

Source: L. 77: Entire article added, p. 1299, § 1, effective July 1. L. 94: (1)(f) repealed, p. 676, § 2, effective April 19; (1)(c) amended, p. 1957, § 2, effective August 1. L. 2003: (1)(b)(IV) amended, p. 711, § 45, effective July 1. L. 2006: Entire section repealed, p. 60, § 4, effective July 1.

25-14-103.5. Prohibition against the use of tobacco products on school property - legislative declaration - education program - special account. (1) The general assembly finds that many of the schools in this state permit the use of tobacco products in and around school property. The general assembly further finds that secondhand smoke generated by such activity and the negative example set and frequently imitated by our school children are detrimental to the health and well-being of such children as well as to school teachers, staff, and visitors. Accordingly, the general assembly finds and declares that it is appropriate to create a safe and healthy school environment by prohibiting the use of tobacco products on all school property.

(2) As used in this section, unless the context otherwise requires:

(a) “School” means a public nursery school, day care center, child care facility, head start program, kindergarten, or elementary or secondary school through grade twelve.

(b) “School property” means all property, whether owned, leased, rented, or otherwise used by a school, including, but not limited to, the following:

(I) All interior portions of any building used for instruction, administration, support services, maintenance, and storage and any other structure used by a school; except that such term shall not apply to a building primarily used as a residence;

(II) All school grounds surrounding any building specified in subparagraph (I) of this paragraph (b) over which the school is authorized to exercise dominion and control. Such grounds shall include any playground, athletic field, recreation area, and parking area; and

(III) All vehicles used by the school for the purpose of transporting students, workers, visitors, or any other persons.

(c) “Tobacco product” shall have the same meaning as set forth in section 18-13-121 (5), C.R.S.

(d) “Use” means the lighting, chewing, smoking, ingestion, or application of any tobacco product.

(3) (a) (I) The board of education of each school district shall adopt appropriate policies and rules which mandate a prohibition against the use of all tobacco products on all school property by students, teachers, staff, and visitors and which provide for the enforcement of such policies and rules.

(II) Repealed.

(b) Signs regarding such prohibition and the consequences of violation shall be displayed prominently on all school property to ensure compliance no later than September 1, 1994.

(4) This section shall not be applicable to the use of a tobacco product in a limited classroom demonstration to show the health hazards of tobacco.

(5) The board of education of each school district is authorized to seek and accept gifts, donations, or grants of any kind from any private or charitable source or from any governmental agency to meet expenses required by this section. Such gifts, donations, and grants shall be accounted for separately, and, to the extent that such moneys are available, the board of education of each school district may maintain and operate an educational program designed to assist students, faculty, and staff to avoid and discontinue the use of tobacco products. Such program shall be offered at each school under the board's direction and control.

(6) This section shall not prohibit any school from enacting more stringent policies or rules than required by this section.

Source: L. 94: Entire section added, p. 674, § 1, effective April 19. **L. 98:** (3)(a)(II) amended, p. 55, § 1, effective August 5. **L. 2008:** (2)(c), (2)(d), and (5) amended, p. 888, § 3, effective July 1. **L. 2011:** (1) amended, (HB 11-1016), ch. 60, p. 158, § 4, effective March 25.

Editor's note: Subsection (3)(a)(II)(C) provided for the repeal of subsection (3)(a)(II), effective January 1, 2000. (See L. 98, p. 55.)

25-14-103.7. Control of smoking in state legislative buildings. (Repealed)

Source: L. 94: Entire section added, p. 1958, § 3, effective August 1. **L. 2006:** Entire section repealed, p. 62, § 5, effective July 1.

25-14-104. Optional prohibition. (Repealed)

Source: L. 77: Entire article added, p. 1300, § 1, effective July 1. **L. 2006:** Entire section repealed, p. 62, § 6, effective July 1.

25-14-105. Local regulations. (Repealed)

Source: L. 77: Entire article added, p. 1300, § 1, effective July 1. **L. 2006:** Entire section repealed, p. 62, § 7, effective July 1.

PART 2

COLORADO CLEAN INDOOR AIR ACT

25-14-201. Short title. This part 2 shall be known and may be cited as the "Colorado Clean Indoor Air Act".

Source: L. 2006: Entire part added, p. 53, § 1, effective July 1.

ANNOTATION

The Colorado Clean Indoor Air Act's (CCIAA) airport smoking concession exemption does not violate the equal protection clause of the fourteenth amendment to the U.S. constitution. The Colorado legislature, by exempting airport smoking concessions from the CCIAA's operation, rationally distinguished those concessions from the majority of other indoor facilities in the state that are open to the public. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The CCIAA does not violate due process by infringing on the use of property of bar and restaurant owners. *Coal. for Equal Rights, Inc. v.*

Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The CCIAA does not consist of more than one subject. On its face, the CCIAA's addresses the health risks of indoor secondhand smoke. Even assuming the CCIAA's exemptions are based in part on economic concerns, it does not violate art. V, § 21, of the constitution. *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

25-14-202. Legislative declaration. The general assembly hereby finds and determines that it is in the best interest of the people of this state to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment. The general assembly further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the general assembly hereby declares that the purpose of this part 2 is to preserve and improve the health, comfort, and environment of the people of this state by limiting exposure to tobacco smoke.

Source: L. 2006: Entire part added, p. 53, § 1, effective July 1.

25-14-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Airport smoking concession" means a bar or restaurant, or both, in a public airport with regularly scheduled domestic and international commercial passenger flights, in which bar or restaurant smoking is allowed in a fully enclosed and independently ventilated area by the terms of the concession.

(2) "Auditorium" means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

(3) "Bar" means any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

(4) "Cigar-tobacco bar" means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

(5) (a) "Employee" means any person who:

(I) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or

(II) Provides uncompensated work or services to a business or nonprofit entity.

(b) "Employee" includes every person described in paragraph (a) of this subsection (5), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

(6) “Employer” means any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. “Employer” includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.

(7) “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from this part 2 under section 25-14-205. “Entryway” also includes the area of public or private property within a specified radius outside of the doorway. The specified radius shall be determined by the local authority or, if the local authority has not acted, the specified radius shall be fifteen feet.

(8) “Environmental tobacco smoke”, “ETS”, or “secondhand smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as “sidestream smoke”, and smoke exhaled by the smoker.

(9) “Food service establishment” means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

(10) “Indoor area” means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

(11) “Local authority” means a county, city and county, city, or town.

(12) “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

(13) “Public building” means any building owned or operated by:

(a) The state, including the legislative, executive, and judicial branches of state government;

(b) Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or

(c) Any other separate corporate instrumentality or unit of state or local government.

(14) “Public meeting” means any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of this state.

(15) “Smoke-free work area” means an indoor area in a place of employment where smoking is prohibited under this part 2.

(16) “Smoking” means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or medical marijuana as defined by section 12-43.3-104 (7), C.R.S.

(17) “Tobacco” means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. “Tobacco” also includes cloves and any other plant matter or product that is packaged for smoking.

(18) “Tobacco business” means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

(19) “Work area” means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

Source: L. 2006: Entire part added, p. 54, § 1, effective July 1. **L. 2010:** (16) amended, (HB 10-1284), ch. 355, p. 1687, § 11, effective July 1.

ANNOTATION

The small business exemption in § 25-14-205 (1)(h) is not unconstitutionally vague nor are the definitions in subsection (5)(a) and (5)(b) of this section. Coal. for Equal Rights v.

Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

25-14-204. General smoking restrictions. (1) Except as provided in section 25-14-205, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

- (a) Public meeting places;
- (b) Elevators;
- (c) Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, and trains;
- (d) Taxicabs and limousines;
- (e) Grocery stores;
- (f) Gymnasiums;
- (g) Jury waiting and deliberation rooms;
- (h) Courtrooms;
- (i) Child day care facilities;
- (j) Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;

(k) (I) Any place of employment that is not exempted.

(II) In the case of employers who own facilities otherwise exempted from this part 2, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.

- (l) Food service establishments;
- (m) Bars;
- (n) Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
- (o) Indoor sports arenas;
- (p) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
- (q) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
- (r) Bowling alleys;
- (s) Billiard or pool halls;
- (t) Facilities in which games of chance are conducted;
- (u) (I) The common areas of retirement facilities, publicly owned housing facilities, and, except as specified in section 25-14-205 (1) (k), nursing homes, but not including any resident's private residential quarters or areas of assisted living facilities specified in section 25-14-205 (1) (k).

(II) Nothing in this part 2 affects the validity or enforceability of a contract, whether entered into before, on, or after July 1, 2006, that specifies that a part or all of a facility or home specified in this paragraph (u) is a smoke-free area.

- (v) Public buildings;
- (w) Auditoria;
- (x) Theaters;
- (y) Museums;
- (z) Libraries;
- (aa) To the extent not otherwise provided in section 25-14-103.5, public and nonpublic schools;
- (bb) Other educational and vocational institutions; and

(cc) The entryways of all buildings and facilities listed in paragraphs (a) to (bb) of this subsection (1).

(2) A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

Source: L. 2006: Entire part added, p. 56, § 1, effective July 1. L. 2007: (1)(u) amended, p. 398, § 1, effective August 3.

ANNOTATION

The Colorado Clean Indoor Air Act's (CCIAA) airport smoking concession exemption does not violate the equal protection clause of the fourteenth amendment to the U.S. constitution. The Colorado legislature, by exempting airport smoking concessions from the CCIAA's operation, rationally distinguished those concessions from the majority of other indoor facilities in the state that are open to the public. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The CCIAA does not violate substantive due process by imposing criminal liability on bar and restaurant owners for the acts of others. The plain language of subsection (1) prohibits both smoking by patrons and the allowing of smoking by bar and restaurant owners. The CCIAA does not criminalize owners for the acts of others. It criminalizes their own actions allowing their patrons to smoke. *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd* sub nom. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The CCIAA does not violate due process by infringing on bar and restaurant owners' use of their property. *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd* sub nom. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The plain language of subsection (2) states that a plaintiff who legally expands his cigar-tobacco bar prior to July 1, 2006 would become subject to penalties as of July 1, 2006 for his pre-enactment expansion. This is impermissible *ex post facto* legislation; however, the challenge to the retroactive law has become moot by the simple passage of time. *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd* sub nom. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The CCIAA does not violate theaters' rights under the first amendment to the U.S. constitution or section 10 of article II of the

Colorado constitution. *Curious Theatre Co. v. Dept. of Pub. Health & Env't*, 216 P.3d 71 (Colo. App. 2008), *aff'd*, 220 P.3d 544 (Colo. 2009).

Smoking on stage during the course of a play is expressive conduct for purposes of the first amendment, and the CCIAA does place an incidental burden on this conduct by prohibiting it in indoor theaters. *Curious Theatre Co. v. Dept. of Pub. Health & Env't*, 216 P.3d 71 (Colo. App. 2008), *aff'd* on other grounds, 220 P.3d 544 (Colo. 2009).

The CCIAA is content neutral, however, because it focuses on the adverse health effects of tobacco smoke, not on expression. *Curious Theatre Co. v. Dept. of Pub. Health & Env't*, 216 P.3d 71 (Colo. App. 2008), *aff'd*, 220 P.3d 544 (Colo. 2009).

Because the CCIAA is content neutral, it is subject to an intermediate level of scrutiny as set forth in *United States v. O'Brien*. The four factors of *O'Brien* are satisfied in this case. First, the statute is within the constitutional power of the government because the legislature has the authority to enact statutes designed to promote the public health. Second, the statute furthers an important or substantial governmental interest by protecting the health of its citizens. Third, the government's interest in establishing the statute is unrelated to the suppression of free expression because it is content neutral and justified by health concerns unrelated to expression. Finally, the incidental restriction is no greater than necessary to further the interest because it is narrowly tailored by focusing on the one form of conduct, smoking, upon which the state's announced interest in protecting the public's health depends. The statute allows alternative channels of expression, such as outdoor theaters and fake and prop cigarettes. The theaters did not demonstrate that the use of the alternatives is so inadequate as to outweigh the state's overriding interest in protecting the health of its citizens. *Curious Theatre Co. v. Dept. of Pub. Health & Env't*, 216 P.3d 71 (Colo. App. 2008), *aff'd*, 220 P.3d 544 (Colo. 2009).

25-14-205. Exceptions to smoking restrictions. (1) This part 2 shall not apply to:

- (a) Private homes, private residences, and private automobiles; except that this part 2 shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- (b) Limousines under private hire;
- (c) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;
- (d) Any retail tobacco business;
- (e) A cigar-tobacco bar;
- (f) An airport smoking concession;
- (g) The outdoor area of any business;
- (h) A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees;
- (i) A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars; or
- (j) Repealed.
- (k) (I) The areas of assisted living facilities:
 - (A) That are designated for smoking for residents;
 - (B) That are fully enclosed and ventilated; and
 - (C) To which access is restricted to the residents or their guests.
- (II) As used in this paragraph (k), "assisted living facility" means a nursing facility, as that term is defined in section 25.5-4-103, C.R.S., and an assisted living residence, as that term is defined in section 25-27-102.

Source: L. 2006: Entire part added, p. 58, § 1, effective July 1. L. 2007: (1)(k) added, p. 398, § 2, effective August 3; (1)(j) repealed, p. 1751, § 1, effective January 1, 2008.

ANNOTATION

The Colorado Clean Indoor Air Act's (CCIAA) airport smoking concession exemption does not violate the equal protection clause of the fourteenth amendment to the U.S. constitution. The Colorado legislature, by exempting airport smoking concessions from the CCIAA's operation, rationally distinguished those concessions from the majority of other indoor facilities in the state that are open to the public. *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The small business exemption in subsection (1)(h) is not unconstitutionally vague nor are

the definitions in § 25-14-203 (5)(a) and (5)(b). *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), *aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

The exemptions for licensed casinos, bars and restaurants within licensed casinos, and cigar-tobacco bars are not special legislation. *Coal. for Equal Rights v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006) (decided prior to 2007 repeal of subsection (1)(j)), *aff'd on other grounds sub nom. Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008).

25-14-206. Optional prohibitions. (1) The owner or manager of any place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this part 2.

(2) If the owner or manager of a place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by section 25-14-204 (1) (k) (II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection (1) of this section.

Source: L. 2006: Entire part added, p. 58, § 1, effective July 1.

25-14-207. Other applicable regulations of smoking - local counterpart regulations authorized. (1) This part 2 shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

(2) (a) A local authority may, pursuant to article 16 of title 31, C.R.S., a municipal home rule charter, or article 15 of title 30, C.R.S., enact, adopt, and enforce smoking regulations that cover the same subject matter as the various provisions of this part 2. No local authority may adopt any local regulation of smoking that is less stringent than the provisions of this part 2; except that a local authority may specify a radius of less than fifteen feet for the area included within an entryway.

(b) The municipal courts or their equivalent in any city, city and county, or town have jurisdiction over violations of smoking regulations enacted by any city, city and county, or town under this section.

Source: L. 2006: Entire part added, p. 59, § 1, effective July 1.

25-14-208. Unlawful acts - penalty - disposition of fines and surcharges. (1) It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises subject to this part 2 to violate any provision of this part 2.

(2) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this part 2.

(3) A person who violates this part 2 is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

(4) All judges, clerks of a court of record, or other officers imposing or receiving fines collected pursuant to or as a result of a conviction of any persons for a violation of any provision of this part 2 shall transmit all such moneys so collected in the following manner:

(a) Seventy-five percent of any such fine for a violation occurring within the corporate limits of a city, town, or city and county shall be transmitted to the treasurer or chief financial officer of said city, town, or city and county, and the remaining twenty-five percent shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(b) Seventy-five percent of any fine for a violation occurring outside the corporate limits of a city or town shall be transmitted to the treasurer of the county in which the city or town is located, and the remaining twenty-five percent shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 2006: Entire part added, p. 59, § 1, effective July 1.

25-14-209. Severability. If any provision of this part 2 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are declared to be severable.

Source: L. 2006: Entire part added, p. 60, § 1, effective July 1.

PART 3

TOBACCO USE BY MINORS

25-14-301. Possession of cigarettes or tobacco products by a minor prohibited - definitions. (1) This section shall be known and may be cited as the "Teen Tobacco Use Prevention Act".

(2) (a) Possession of a cigarette or tobacco product by a person who is under eighteen years of age is prohibited.

(b) It shall not be an offense under paragraph (a) of this subsection (2) if the person under eighteen years of age was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

(3) As used in this section, unless the context otherwise requires:

(a) "Cigarette" shall have the same meaning as set forth in section 39-28-202 (4), C.R.S.

(b) "Possession" means that a person:

(I) Has or holds any amount of cigarettes or tobacco products anywhere on his or her person;

(II) Owns or has custody of cigarettes or tobacco products; or

(III) Has cigarettes or tobacco products within his or her immediate presence and control.

(c) "Tobacco product" shall have the same meaning as set forth in section 18-13-121 (5), C.R.S.

(4) Nothing in this section shall be construed to prohibit any statutory or home rule municipality from enacting an ordinance that prohibits the possession of cigarettes or tobacco products by a person who is under eighteen years of age or imposes requirements more stringent than provided in this section.

(5) A violation of paragraph (a) of subsection (2) of this section is a noncriminal offense.

Source: L. 2008: Entire part added, p. 887, § 2, effective July 1.

ARTICLE 15

Hazardous Waste

Editor's note: This article was added in 1979 and was not amended prior to 1981. The substantive provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For transportation of hazardous materials by motor vehicle, see article 20 of title 42.

Law reviews: For article, "Colorado Municipal Liability after Annexing a Potential Superfund Site", see 16 Colo. Law. 258 (1987).

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PART 1

GENERAL PROVISIONS

25-15-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the solid and hazardous waste commission created in part 3 of this article.

(2) "Department" means the department of public health and environment created by section 25-1-102.

(3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(4.3) "Environmental covenant" means an instrument containing environmental use restrictions created pursuant to section 25-15-321.

(4.5) "Environmental remediation project" means closure of a hazardous waste management unit or solid waste disposal site or any remediation of environmental contamination, including determinations to rely solely or partially on environmental use restrictions to protect human health and the environment but excluding interim measures that are not intended as the final remedial action, that is conducted under any of the following:

(a) Subchapter III or IX of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6921 to 6939e and 6991 to 6991i, as amended;

(b) Section 7002 or 7003 of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6972 and 6973, as amended;

(c) The federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 et seq., as amended;

(d) The federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. sec. 7901 et seq., as amended;

(e) Part 1 of article 11 of this title, including any decommissioning of sites licensed under that part;

(f) Part 3 of article 11 of this title;

(g) Part 3 of article 15 of this title; and

(h) Article 20 of title 30, C.R.S.

(4.7) "Environmental use restriction" means a prohibition of one or more uses of or activities on specified real property, including drilling for or pumping groundwater; a requirement to perform certain acts, including requirements for maintenance, operation, or monitoring necessary to preserve such prohibition of uses or activities; or both, where such prohibitions or requirements are relied upon in the remedial decision for an environmental remediation project for the purpose of protecting human health or the environment.

(5) "Federal act" means the federal "Solid Waste Disposal Act", as amended by the federal "Resource Conservation and Recovery Act of 1976", as amended (42 U.S.C. sec. 6901, et seq.).

(5.5) "Hazardous substance" means any substance that is defined as a hazardous substance, pollutant, or contaminant under the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 et seq., as amended, or its implementing regulations.

(6) (a) “Hazardous waste” means any material, alone or mixed with other materials, which has no commercial use or value, or which is discarded or is to be discarded by the possessor thereof, either of which because its quantity, concentration, or physical or chemical characteristics may:

(I) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(II) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(b) “Hazardous waste” does not include:

(I) Solid or dissolved material in discharges which are point sources subject to permits under section 402 of the “Federal Water Pollution Control Act”, as amended;

(II) Source, special nuclear, or by-product material as defined by the federal “Atomic Energy Act of 1954”, as amended;

(III) (A) Agricultural, horticultural, or floricultural waste from the raising of crops or animals, including animal manures, that are returned to the soil as fertilizers or soil conditioners;

(B) Nothing in sub-subparagraph (A) of this subparagraph (III), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(IV) Solid or dissolved material in domestic sewage;

(V) Irrigation return flows;

(VI) Inert materials deposited for construction fill or topsoil placement in connection with actual or contemplated construction at such location or for changes in land contour for agricultural and mining purposes, if such depositing does not fall within the definition of treatment, storage, or disposal of hazardous waste;

(VII) Any waste or other materials exempted or otherwise not regulated as a hazardous waste under the federal act, except as provided in section 25-15-302 (4);

(VIII) Indigenous waste from prospecting and mining operations which is disposed of in accordance with the requirements of an approved reclamation plan contained in a permit issued pursuant to article 32 of title 34, C.R.S., or article 33 of title 34, C.R.S.;

(IX) Waste from oil and gas activities, including but not limited to drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy, which is disposed of in accordance with the requirements of the oil and gas commission pursuant to article 60 of title 34, C.R.S.

(c) Any material which would be hazardous waste subject to the provisions of this article except for the fact that it has commercial use or value may be subject to regulations promulgated by the commission when it is transported or stored prior to reuse.

(7) “Hazardous waste generation” means the act or process of producing hazardous waste.

(8) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, treatment, recovery, and disposal of hazardous waste.

(9) “Inert material” means non-water-soluble and nondecomposable inert solids together with such minor amounts and types of other materials as will not significantly affect the inert nature of such solids according to rules and regulations of the commission. The term includes but is not limited to earth, sand, gravel, rock, concrete which has been in a hardened state for at least sixty days, masonry, asphalt paving fragments, and other non-water-soluble and nondecomposable inert solids including those the commission may identify by regulation.

(10) “Manifest” means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of storage, treatment, or disposal.

(10.5) “Notice of environmental use restrictions” or “restrictive notice” means an instrument containing environmental use restrictions created pursuant to section 25-15-321.5.

(11) “Operation”, when used in connection with hazardous waste management, means the use of procedures, equipment, personnel, and other resources to provide hazardous waste management.

(12) “Operator” means the person operating a hazardous waste management facility or site either by contract or permit.

(12.5) “Owner”, as used in sections 25-15-317 to 25-15-326, means the record owner of real property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the subject property or placement of encumbrances on the subject property, other than by the exercise of eminent domain.

(13) “Person” means any individual, public or private corporation, partnership, association, firm, trust or estate; the state or any executive department, institution, or agency thereof; any municipal corporation, county, city and county, or other political subdivision of the state; or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(13.5) “Remedial decision” means the administrative determination by the department, the United States environmental protection agency, or other appropriate government entity under the laws cited in subsection (4.5) of this section, that establishes the remedial requirements for the environmental remediation project.

(14) “Resource recovery”, when used in connection with hazardous waste, means the operation of preparing and treating any such material or portion thereof for recycling or reuse or the recovery of material or energy.

(15) “Storage”, when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of hazardous waste. The term “storage” does not apply to any hazardous waste generation if such waste is retained on the site by the generator in quantities or for time periods exempted by rules and regulations promulgated by the commission.

(16) “Transportation”, when used in connection with hazardous waste, means the off-site movement of hazardous waste to any intermediate point or any point of storage, treatment, or disposal.

(17) “Treatment”, when used in connection with an operation involved in hazardous waste management, means any method, technique, or process, including neutralization or incineration, designed to change the physical, chemical, or biological character or composition of a hazardous waste, so as to neutralize such waste or to render such waste less hazardous, safer for transport, amenable for recovery or reuse, amenable for storage, or reduced in volume.

(18) “Treatment, storage, or disposal site or facility” means a location at which hazardous waste is subjected to treatment, storage, or disposal and may include a facility where hazardous waste is generated.

Source: **L. 81:** Entire article R&RE, p. 1343, § 1, effective July 1. **L. 83:** (3.5) added, (4), (6), and (8), (10), (11), and (19) repealed, (9)(b)(I), (9)(b)(IV), and (9)(b)(VI) amended, and (9)(c) added, pp. 1088, 1105, §§ 1, 28(1), 2, effective June 3. **L. 89:** IP(9)(a) amended, p. 1178, § 2, effective April 23. **L. 92:** Entire section R&RE, p. 1255, § 14, effective August 1. **L. 94:** (2) amended, p. 2792, § 530, effective July 1. **L. 2001:** (4.3), (4.5), (4.7), (5.5), (12.5), and (13.5) added, p. 451, § 1, effective July 1. **L. 2005:** (6)(b)(III) amended, p. 350, § 9, effective August 8. **L. 2006:** (1) amended, p. 1131, § 9, effective July 1. **L. 2008:** (10.5) added, p. 169, § 1, effective March 24. **L. 2010:** (4.5)(c) and (5.5) amended, (HB 10-1422), ch. 419, p. 2105, § 124, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

The general assembly did not manifestly indicate its intent to include passive migra-

tion of waste within the meaning of “disposal”; hence, relying on the rule of lenity, a

company's failure to remediate contaminated soil and prevent the passive migration of previously spilled hazardous waste does not constitute a continuing crime that subjects the company to the possibility of criminal charges 12 years after the last affirmative act of disposal. *People v. Thoro Prods. Co., Inc.*, 70 P.3d 1188 (Colo. 2003).

Legal, technical meaning of "hazardous waste". Uranium and vanadium tailings from a

proposed mill are not hazardous waste, the disposal of which is prohibited under a county zoning resolution. By its own terms, the zoning resolution restricts hazardous waste disposal in the specialized context of state solid waste laws. *Sheep Mt. Alliance v. Montrose Bd. of County Comm'rs*, 271 P.3d 597 (Colo. App. 2012).

25-15-102. Effective dates. (1) Parts 1 and 2 of this article shall take effect July 1, 1981.

(2) Section 25-15-302 shall take effect January 1, 1982.

(3) Part 3 of this article, except section 25-15-302, shall take effect November 2, 1984.

Source: **L. 81:** Entire article R&RE, p. 1346, § 1, effective July 1. **L. 92:** (3) amended, p. 1258, § 16, effective August 1.

Editor's note: Subsection (3), as enacted by Senate Bill 81-519, provided that the effective date of part 3 was July 1, 1983, or the date upon which the department of health received final federal authorization to conduct the state hazardous waste program in lieu of the entire federal program under section 3006 of the federal act, whichever was later. The authorization was received on November 2, 1984. Subsection (3) was changed on revision to reflect this date.

25-15-103. Technical assistance. The department may upon request provide technical advice to hazardous waste generators, to owners or operators of treatment plants, storage facilities, or disposal sites, and to counties and municipalities in which such facilities may be located in order to assure that appropriate measures are taken to protect the public health, safety, and welfare and the environment. The department may charge its actual costs of providing compliance assistance; except that, for company-specific compliance assistance, the department shall not charge fees for the first two hours in any given fiscal year.

Source: **L. 81:** Entire article R&RE, p. 1346, § 1, effective July 1. **L. 2000:** Entire section amended, p. 1066, § 1, effective July 1.

25-15-104. Disposal service. In order to encourage proper disposal of small quantities of hazardous wastes by individuals and local governmental agencies when such wastes cannot be reasonably handled by commercial services, the department may receive such hazardous wastes from such individuals or local governmental agencies and arrange for their proper detoxification, storage, reuse, or disposal. The department may impose a reasonable fee for such services to recover the actual costs thereof.

Source: **L. 81:** Entire article R&RE, p. 1346, § 1, effective July 1.

PART 2

HAZARDOUS WASTE DISPOSAL SITES

Law reviews: For article, "Local Governments and the Environment: Part 1 CERCLA", see 17 Colo. Law. 1997 (1988); for article, "Local Governments and the Environment: Part II, RCRA", see 17 Colo. Law. 2159 (1988); for article, "Hazardous Waste Incinerator Siting in Colorado", see 22 Colo. Law. 1267 (1993).

25-15-200.1. Short title. This part 2 shall be known and may be cited as the "State Hazardous Waste Siting Act".

Source: **L. 83:** Entire section added, p. 1089, § 3, effective June 3.

25-15-200.2. Legislative declaration. (1) The general assembly hereby finds that adverse public health and environmental impacts can result from the improper land disposal of hazardous waste and that the need for establishing safe sites with adequate capacity for the disposal of hazardous waste is a matter of statewide concern, and the provisions of this part 2 are therefore enacted to provide an effective method of establishing such sites.

(2) It is the intent of the general assembly that generators of hazardous waste be encouraged to use on-site and off-site alternative treatment methods to reduce the amount of hazardous waste that must be discharged into the environment and the associated hazards to the health and welfare of the citizens of this state. Alternative management technologies which detoxify, stabilize, and reduce the amount of hazardous waste that must be buried are available. For such purpose, the provisions of this part 2 are enacted to allow the development of safe alternative methods for the treatment of hazardous waste and to provide a means for the designation of hazardous waste disposal sites when such methods are unable to obviate the need for hazardous waste disposal on land. Whereas the state of Colorado may be responsible for the perpetual care of hazardous waste land disposal facilities, alternative technologies such as incineration, resource recovery, or physical, chemical, or biological degradation should be implemented to the maximum extent possible.

Source: L. 83: Entire section added, p. 1089, § 3, effective June 3.

ANNOTATION

Preemption. This act preempts all county or other local regulations concerning the construction of a hazardous waste disposal site, and any proceedings conducted or permits issued outside

the ambit of this act are void. U.S. Pollution Control, Inc. v. Bd. of County Comm'rs, 714 P.2d 511 (Colo. App. 1985).

25-15-200.3. Definitions. As used in this part 2, unless the context otherwise requires:

(1) Repealed.

(2) "Existing hazardous waste disposal site" means a hazardous waste disposal site which is in active operation prior to July 1, 1981.

(3) "Governmental unit" means the state of Colorado, every county, city and county, municipality, school district, special district, and authority located in this state, every public body corporate created or established under the constitution or any law of this state, and every board, commission, department, institution, or agency of any of the foregoing or of the United States.

(4) (a) "Hazardous waste disposal" means any final action to abandon, deposit, inter, or otherwise discard hazardous waste after its use has been achieved or a use is no longer intended or any discharging of hazardous waste into the environment.

(b) The term includes the off-site surface impoundment of hazardous waste such as a holding, storage, settling, or aeration pit, pond, or lagoon, except as provided in paragraph (c) of this subsection (4) or section 25-15-201 (4).

(c) The term does not include:

(I) (A) Recycling, reclaiming, incineration, processing, or other treatment of hazardous waste.

(B) For the purposes of this subparagraph (I), the surface impoundment which is part of a sewage treatment works or feedlot operation shall be considered as treatment and not disposal.

(C) Any recycling, reclaiming, incineration, processing, or treatment facility shall be subject to all local land use regulations.

(II) The beneficial use, including use for fertilizer, soil conditioner, fuel, or livestock feed, of sludge from wastewater treatment plants if such sludge meets all applicable standards of the department.

(5) "Hazardous waste disposal site" means all contiguous land, including publicly-owned land, under common ownership which is used for hazardous waste disposal; except that such term shall not include any site which is in compliance with an approved

reclamation plan contained in a permit issued pursuant to article 32 of title 34, C.R.S., or article 33 of title 34, C.R.S.

(6) "Publicly owned land" means any land owned by the federal government or any agency thereof or land owned by the state or any agency or political subdivision thereof.

Source: L. 83: Entire section added, p. 1089, § 3, effective June 3. L. 91: (1) repealed, p. 855, § 8, effective June 5. L. 92: (5) amended, p. 1258, § 17, effective August 1.

25-15-201. Certificate required - disposal prohibited - exceptions. (1) Any person who operates a hazardous waste disposal site shall first obtain a certificate of designation from the board of county commissioners if the site is in the unincorporated portion of any county, or from the governing body of a municipality if the site is in an incorporated area.

(2) Hazardous waste disposal by any person is prohibited except on or at a hazardous waste disposal site for which a certificate of designation has been obtained as provided in this part 2.

(3) Any existing hazardous waste disposal site which has obtained and possesses a certificate of designation pursuant to part 1 of article 20 of title 30, C.R.S., and which meets all applicable requirements and regulations under the federal act shall be deemed to have a certificate of designation issued pursuant to this part 2 and shall be fully subject to the provisions of this part 2 which apply to certificates of designation issued pursuant to this part 2.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, any person other than a governmental unit may dispose of his own hazardous waste on his own property, as long as such hazardous waste disposal site is part of that originally zoned or otherwise approved for the activity that generates the hazardous waste, the owner has notified the local government or the department of the types and methods of hazardous waste disposal, and such disposal complies with the rules and regulations of the commission issued pursuant to this part 2 and does not constitute a public nuisance. For the purposes of this part 2, the site of such hazardous waste disposal shall be an approved site for which obtaining a certificate of designation under the provisions of this part 2 shall be unnecessary. This subsection (4) shall not preclude any person from applying for a certificate of designation for the disposal of his own hazardous waste on his own property.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, any person who is engaged in mining operations pursuant to a permit issued by the mined land reclamation board or office of mined land reclamation which contains an approved plan of reclamation may dispose of hazardous waste generated by such operations within the permitted area for such operations. For the purposes of this part 2, the site of such hazardous waste disposal shall be an approved site for which obtaining a certificate of designation under the provisions of this part 2 shall be unnecessary.

Source: L. 81: Entire article R&RE, p. 1346, § 1, effective July 1. L. 92: (4) amended, p. 1258, § 18, effective August 1; (5) amended, p. 1971, § 76, effective July 1.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

25-15-202. Application for certificate - review by department and Colorado geological survey - hearing. (1) Any person desiring to operate a hazardous waste disposal site shall make application for a certificate of designation to the board of county commissioners of the county or to the governing body of the municipality in which such site is proposed to be located.

(2) The application shall be accompanied by a fee established by the board of county commissioners or the governing body of the municipality by resolution or ordinance, which

fee shall not exceed fifty thousand dollars and which fee may be refunded in whole or in part. Fifty percent of such fee shall be transmitted to the department to offset the costs of the department's review pursuant to subsection (4) of this section, including possible costs of reimbursement to other state agencies which assist in such review. The application shall set forth the following: The location of the site; the types of waste to be accepted or rejected; the types of waste disposal; the method of supervision; and the anticipated access routes in the county in which the site is located. The application shall also contain such data as may reasonably be required by rules of the commission developed pursuant to section 25-15-208 to enable the department and the Colorado geological survey to perform their duties under subsection (4) of this section.

(3) The clerk of the county or municipality shall promptly notify the county commissioners and the governing body of any other county or municipality within twenty miles of a proposed hazardous waste disposal site of the filing of an application for a certificate of designation therefor.

(4) (a) Within ten working days of an application for a certificate of designation and prior to further consideration, the board of county commissioners or the governing body of the municipality, as the case may be, shall forward a copy of the application to the department and to the Colorado geological survey.

(b) The Colorado geological survey shall review each application received by it and make a recommendation to the department on the geological suitability of the proposed hazardous waste disposal site for land disposal of hazardous waste, based upon the geological, hydrological, climatological, geochemical, and geomorphological characteristics of the site. Such recommendation shall be submitted to the department within sixty days of the Colorado geological survey's receipt of the application.

(c) Within ninety days of its receipt of the application, the department shall make findings of fact on the technical merits of the application and provide such findings of fact to the board of county commissioners or the governing body of the municipality. The findings of fact shall at a minimum include:

(I) A determination as to whether the site could be designed and operated in compliance with applicable rules and regulations adopted by the commission pursuant to section 25-15-208;

(II) A determination as to whether the site is located within an area designated to be optimally suitable for hazardous waste disposal by the most recent study of the Colorado geological survey made pursuant to section 25-15-216 and, if not, as to whether the site is suitable for the land disposal of hazardous waste as demonstrated by reliable geologic, hydrologic, and other scientific data;

(III) A recommendation to the board of county commissioners or the governing body of a municipality, as the case may be, as to whether the application for a certificate of designation should be approved. A recommendation for approval may only be made upon affirmative findings of facts under subparagraphs (I) and (II) of this paragraph (c).

(5) The application shall be considered by the board of county commissioners or the governing body of the municipality, as the case may be, at a public hearing to be held after notice. Such notice shall contain the time and place of the hearing and shall state that the matter to be considered is the applicant's proposal for a hazardous waste disposal site. The notice shall be published in a newspaper having general circulation in the region in which the proposed hazardous waste disposal site is located at least ten but no more than thirty days prior to the date of the hearing.

Source: L. 81: Entire article R&RE, p. 1347, § 1, effective July 1. L. 83: (2) amended and (4) R&RE, p. 1090, §§ 4, 5, effective June 3. L. 91: (2) amended, p. 891, § 20, effective June 5. L. 92: (2) and (4)(c)(I) amended, p. 1259, § 19, effective August 1.

ANNOTATION

Preemption. This act preempts all county or other local regulations concerning the construction of a hazardous waste disposal site, and any proceedings conducted or permits issued outside the ambit of this act are void. *U.S. Pollution Control, Inc. v. Bd. of County Comm'rs*, 714 P.2d 511 (Colo. App. 1985).

County's authority under this section is not limited to site or location approval and may include limitations on the types of materials that

may be disposed of at the site. *Adams Bd. of County Comm'rs v. Colo. Dept. of Pub. Health & Env't*, 218 P.3d 336 (Colo. 2009).

No bar from res judicata where substantial changes in fact or circumstances occur subsequent to prior application or when the Board's decision is based on consideration of public need, which is required of the board in § 25-15-203. *Whelden v. Bd. of County Comm'rs*, 782 P.2d 853 (Colo. App. 1989).

25-15-203. Grounds for approval. (1) The board of county commissioners or the governing body of the municipality, as the case may be, may approve an application for a certificate of designation only upon a finding of all of the following factors:

(a) The department has made a recommendation of approval pursuant to section 25-15-202 (4) (c) (III).

(b) The site would not pose a significant threat to the safety of the public, taking into consideration:

(I) The density of population areas neighboring the site;

(II) The density of population areas adjacent to the portion of the delivery roads within a fifty-mile radius of the site;

(III) The risk of accidents during the transportation of waste to or at the site.

(c) The applicant has demonstrated a need for the facility by Colorado hazardous waste generators.

(d) The applicant has documented its financial ability to operate the proposed site.

(e) The applicant, taking into account its prior performance record, if any, in the treatment, storage, or disposal of hazardous waste, has documented sufficient reliability, expertise, and competency to operate and manage the proposed facility.

(f) The site conforms to officially adopted land use plans, policies, regulations, and resolutions.

(2) The board of county commissioners or the governing body of the municipality, as the case may be, shall notify the department of any approval of an application for a certificate of designation within five days after such approval.

Source: L. 81: Entire article R&RE, p. 1348, § 1, effective July 1. **L. 83:** Entire section R&RE, p. 1091, § 6, effective June 3.

25-15-204. Certificate. (1) The certificate of designation shall identify the general types of waste which may be accepted or which shall be rejected.

(2) The certificate of designation shall be displayed in a prominent place at the hazardous waste disposal site.

(3) Repealed.

(4) The certificate of designation may provide such conditions as may reasonably be necessary for the safe operation of such site including but not limited to the provision by the site owner or operator of additional fire protection, security, or trained personnel for monitoring, inspections, and incident responses.

(5) Repealed.

(6) A certificate of designation issued pursuant to this part 2 shall be deemed to satisfy any requirement imposed by part 1 of article 20 of title 30, C.R.S., for a certificate of designation as a solid wastes disposal site and facility.

Source: L. 81: Entire article R&RE, p. 1348, § 1, effective July 1. **L. 83:** (1) amended and (3) and (5) repealed, pp. 1092, 1105, §§ 7, 28(1), effective June 3.

ANNOTATION

Conditions may be provided in the certificate of designation without another public hearing where such conditions are related to the

safe operation of the site. *Whelden v. Bd. of County Comm'rs*, 782 P.2d 853 (Colo. App. 1989).

25-15-205. Permit required for operation - burial of liquids prohibited. (1) Operation of a hazardous waste disposal site for which a certificate of designation has been issued shall not begin until the applicant obtains for such operation a federal permit issued under the federal act or a state permit issued under part 3 of this article.

(2) A certificate of designation for a hazardous waste disposal site shall not become effective until such time as the certificated facility has received a permit under section 3005 (c) of the federal act or the equivalent state permit.

(3) The burial of liquid hazardous waste both on-site and off-site is prohibited in this state. The commission may develop rules and regulations which phase out the land disposal of highly mobile, toxic, and persistent waste.

Source: **L. 81:** Entire article R&RE, p. 1349, § 1, effective July 1. **L. 83:** Entire section amended, p. 1092, § 8, effective June 3. **L. 92:** (3) amended, p. 1259, § 20, effective August 1.

25-15-206. Substantial change in ownership, design, or operation. (1) A substantial change in the ownership of a hazardous waste disposal site, including an assignment or a transfer of the certificate of designation therefor, or in the design or operation of a hazardous waste disposal site, as "substantial change" is defined in rules and regulations of the commission, shall be submitted to the board of county commissioners or the governing body of the municipality for its approval before such change shall become effective; except that, in the case of a hazardous waste disposal site which was designated by the council pursuant to section 25-15-217, as said section existed upon its repeal, such change shall be subject to approval by the department.

(2) Any approval of a substantial change under this section shall be made only upon the finding of all of the factors required in section 25-15-203.

(3) The application for approval of a substantial change under this section shall be accompanied by a fee established by the jurisdiction whose approval is required for such substantial change, which fee shall not exceed ten thousand dollars and which fee may be refunded in whole or in part. If the department is not the approving jurisdiction, up to fifty percent of such fee shall be transmitted to the department to offset the costs of the department's review pursuant to section 25-15-202 (4), including possible costs of reimbursement to other state agencies which assist in such review.

Source: **L. 81:** Entire article R&RE, p. 1349, § 1, effective July 1. **L. 83:** Entire section amended, p. 1092, § 9, effective June 3. **L. 92:** (1) amended, p. 1259, § 21, effective August 1. **L. 2005:** (1) amended, p. 285, § 28, effective August 8.

ANNOTATION

Applied in *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

25-15-206.5. Revocation or suspension of certificate. (1) The jurisdiction which granted the certificate of designation may revoke or suspend the certificate of designation of any hazardous waste disposal site if it finds that:

(a) There was a material misrepresentation or misstatement of fact in the application for the certificate of designation;

(b) The hazardous waste disposal site is not being operated in substantial compliance

with any term, condition, or limitation of its certificate of designation or any applicable rule or regulation adopted pursuant to this part 2; or

(c) The owner or operator of the site has failed to pay the annual fee to the county or municipality as required by section 25-15-214 (1).

(2) The revocation or suspension of a certificate of designation shall not relieve the owner or operator of the hazardous waste disposal site from any legal liability.

Source: L. 83: Entire section added, p. 1093, § 10, effective June 3.

25-15-207. Judicial review. (1) The award, denial, revocation, or suspension of a certificate of designation by the board of county commissioners or by the governing body of the municipality shall be subject to judicial review in the district court for the judicial district in which the hazardous waste disposal site is located or is proposed to be located. Any request for such judicial review must be made within thirty days of such award, denial, revocation, or suspension. If the court finds no error, it shall affirm the action. If the court finds that the action is arbitrary and capricious, not in accord with the procedures or procedural limitations of this part 2, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the action and remand the case to the board of county commissioners or to the governing body of the municipality for further proceedings as may be appropriate.

(2) In the case of any action or decision of the council or department pursuant to section 25-15-206, judicial review shall be in the district court for the judicial district within which the hazardous waste disposal site is or may be located and shall be in accordance with section 24-4-106, C.R.S.

Source: L. 81: Entire article R&RE, p. 1349, § 1, effective July 1. **L. 83:** Entire section amended, p. 1093, § 11, effective June 3. **L. 2005:** (2) amended, p. 285, § 29, effective August 8.

ANNOTATION

Substantial evidence standard. Judicial review pursuant to the Hazardous Waste Siting Act, when pursuant to the "substantial evidence" standard, requires more than merely

some evidence in some particulars to affirm the board's decision. *Whelden v. Bd. of County Comm'rs.*, 782 P.2d 853 (Colo. App. 1989).

25-15-208. Commission to promulgate rules and regulations - limitations. (1) The commission may promulgate rules and regulations establishing criteria for the engineering design of hazardous waste disposal sites and for the location of such sites to the extent that site characteristics are integrally related to the safe engineering design of such sites. Such rules and regulations shall take into account at least the following: Protection of surface and subsurface waters, suitable physical characteristics, distance from waste generation centers, access routes, distance from water wells, and final closure.

(2) The commission may also promulgate rules and regulations establishing what constitutes a substantial change in ownership, design, or operation of a hazardous waste disposal site under section 25-15-206.

(3) The rules and regulations promulgated by the commission pursuant to this section shall be based upon generally accepted scientific data.

Source: L. 81: Entire article R&RE, p. 1349, § 1, effective July 1. **L. 83:** Entire section R&RE, p. 1094, § 12, effective June 3. **L. 92:** Entire section amended, p. 1260, § 22, effective August 1.

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

25-15-209. Inventory required. The operator of every hazardous waste disposal site shall maintain an inventory of the types of hazardous wastes accepted for disposal at such site, and a copy of such inventory shall be provided to any person upon request and upon payment of a reasonable charge for the costs of the reproduction. Upon a closure of the site, a final inventory shall be prepared and filed with the department where it shall remain available for public inspection and copying at a reasonable cost.

Source: L. 81: Entire article R&RE, p. 1350, § 1, effective July 1.

25-15-209.5. Inspection required. A department employee shall inspect each off-site hazardous waste disposal site during times when hazardous wastes are ordinarily received. Such inspection shall be conducted at intervals determined by rule and regulation of the commission based on the volume and toxicity of the wastes being received. Such department employee shall be permitted reasonable access to disposal operations for the purpose of monitoring and inspecting such operations. Such department employee, whose salary and benefits shall be paid out of the department's share of the annual fee collected by the county or municipality pursuant to section 25-15-214 (1), shall have training and experience in relevant aspects of hazardous waste management.

Source: L. 83: Entire section added, p. 1094, § 13, effective June 3. **L. 92:** Entire section amended, p. 1260, § 23, effective August 1.

25-15-209.6. Performance audits. Each designated and permitted hazardous waste disposal site shall be subject to a performance audit at least once every five years, for the purpose of reviewing the systems that provide assurance the site is protecting human health and the environment. Such performance audit shall be conducted by the department.

Source: L. 83: Entire section added, p. 1094, § 13, effective June 3. **L. 94:** Entire section amended, p. 633, § 1, effective April 14.

25-15-210. Sites deemed public nuisance - when. Any hazardous waste disposal site that is found to be abandoned or that is operated or maintained in a manner so as to violate any of the provisions of this part 2 or any rule or regulation adopted pursuant thereto shall be deemed a public nuisance, and such violation may be enjoined by the district court for the judicial district wherein the violation occurred in an action brought by the department, the board of county commissioners of the county wherein the violation occurred, or the governing body of the municipality wherein the violation occurred.

Source: L. 81: Entire article R&RE, p. 1350, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Colorado Municipal Liability after Annexing a Potential Superfund Site", see 16 Colo. Law. 258 (1987).

25-15-211. Violation - criminal penalty. Any person who violates any provision of this part 2 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Each day of violation shall be deemed a separate offense under this section. Except in regard to matters of statewide concern as expressed in section 25-15-

200.2 (1), nothing in this part 2 shall preclude or preempt a county, a city, a city and county, or an incorporated town from the enforcement of its local resolutions or ordinances or of its land use plans, policies, or regulations.

Source: **L. 81:** Entire article R&RE, p. 1350, § 1, effective July 1. **L. 83:** Entire section amended, p. 1095, § 14, effective June 3. **L. 2002:** Entire section amended, p. 1537, § 270, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-15-212. Violation - civil penalty - reimbursement of costs. (1) Any person who violates any provision of this part 2 shall be subject to a civil penalty of not more than ten thousand dollars per day of violation. Such penalty shall be determined and collected by the district court for the judicial district in which such violation occurs upon action instituted by the department, the board of county commissioners of the county in which the violation occurs, or the governing body of the municipality in which the violation occurs. In determining the amount of any such penalty, the court shall take into account the seriousness of the violation, whether the violation was willful or due to mistake, the economic impact of the penalty on the violator, and any other relevant factors. All penalties collected pursuant to this section shall be transmitted to the state treasurer and credited to the general fund. Except in regard to matters of statewide concern as expressed in section 25-15-200.2 (1), nothing in this part 2 shall preclude or preempt a county, city, city and county, or an incorporated town from enforcement of its local resolutions or ordinances or of its land use plans, policies, or regulations.

(2) If the violation for which a penalty has been assessed and paid into the general fund pursuant to this section results in a county, city, municipality, or town incurring costs to remove, contain, or otherwise mitigate the effects of the hazardous waste which was involved in the court action, such entity shall be entitled to reimbursement for its costs, which reimbursement shall not exceed the amount of the penalty collected. A claim for reimbursement shall be filed with the state treasurer. Reimbursement shall be paid by the state treasurer out of those funds attributable to such penalty.

Source: **L. 81:** Entire article R&RE, p. 1350, § 1, effective July 1. **L. 83:** (1) amended, p. 1095, § 15, effective June 3.

25-15-213. County or municipal hazardous waste disposal site fund - tax - fees. Any county or municipality that operates a county or municipal hazardous waste disposal site or sites is authorized to establish a county or municipal hazardous waste disposal site fund. The board of county commissioners of such county or the governing body of the municipality may levy a hazardous waste disposal site tax in addition to any other tax authorized by law, on the taxable property within said county or municipality, the proceeds of which shall be deposited to the credit of said fund and appropriated to pay the cost of land, labor, equipment, and services needed in the operation of county or municipal hazardous waste disposal sites. Any such county or municipality is also authorized, after a public hearing, to fix, modify, and collect service charges from users of county or municipal hazardous waste disposal sites for the purpose of financing the operations at those sites.

Source: **L. 81:** Entire article R&RE, p. 1351, § 1, effective July 1.

25-15-214. Hazardous waste disposal site fund - fees. (1) Any hazardous waste disposal site which is issued a certificate of designation on or after July 1, 1981, or which receives approval for a substantial change in ownership as required in section 25-15-206 (1) on or after said date shall be required, contingent upon the issuance of a federal or state permit by the county or municipality in which it is located, to pay to the county or municipality in which it is located an annual fee for the purpose of offsetting the estimated

direct costs of increased state, county, and municipal services created by the hazardous waste disposal site, including, but not limited to, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by county or municipal health officials, and emergency preparation and response. The amount of the fee shall be two percent of the annual estimated gross revenue received by the hazardous waste disposal site. Out of the annual fee, the board of county commissioners or the governing body of the municipality shall provide for the reimbursement of governmental units for their estimated direct costs of increased services created by the hazardous waste disposal site. In the event that the site owner or operator fails to pay the annual fee, the board of county commissioners or the governing body of the municipality may suspend the site's certificate of designation until the annual fee has been paid.

(2) Any county or municipality is authorized to establish a hazardous waste disposal site fund. All fees collected pursuant to subsection (1) of this section shall be deposited to the credit of said fund and appropriated for the purposes for which collected.

Source: L. 81: Entire article R&RE, p. 1351, § 1, effective July 1. L. 83: (1) amended, p. 1095, § 16, effective June 3.

25-15-215. Contracts with governmental units authorized. (1) Any governmental unit may contract for the operation of a hazardous waste disposal site.

(2) Any city, city and county, county, or incorporated town acting by itself or in association with any other such governmental unit may establish and operate a hazardous waste disposal site under such terms and conditions as may be approved by the governing bodies of the governmental units involved. In the event such site is not operated by the governmental unit involved, any contract to operate such a site shall be awarded on a competitive bid basis if there is more than one applicant for a contract to operate such site.

(3) Any hazardous waste disposal site established in accordance with this section shall be required to obtain a certificate of designation pursuant to this part 2.

Source: L. 81: Entire article R&RE, p. 1351, § 1, effective July 1. L. 83: (3) added, p. 1096, § 17, effective June 3.

25-15-216. Colorado geological survey to designate optimally suitable areas. Subject to available appropriations, the Colorado geological survey shall conduct a study of the geological suitability of areas of the state for hazardous waste disposal sites. Such study shall designate those areas of the state which the Colorado geological survey finds to be optimally suitable for hazardous waste disposal based upon detailed criteria relating to hydrology, geology, geochemistry, structural geology, geomorphology, climatology, and mineral resources. The designation of optimally suitable areas and the criteria utilized shall be produced in a publication available to the public at a reasonable cost.

Source: L. 83: Entire section added, p. 1096, § 18, effective June 3. L. 2012: Entire section amended, (HB 12-1355), ch. 247, p. 1197, § 5, effective June 4.

25-15-217. Circumstances allowing state designation of a hazardous waste disposal site - conditions and limitations. (Repealed)

Source: L. 83: Entire section added, p. 1096, § 18, effective June 3. L. 91: (2) and (6) amended and (8) to (11) repealed, pp. 892, 883, §§ 21, 1, effective June 5. L. 2005: Entire section repealed, p. 285, § 30, effective August 8.

25-15-218. State hazardous waste siting council - composition. (Repealed)

Source: L. 83: Entire section added, p. 1099, § 18, effective June 3. L. 91: Entire section repealed, p. 883, § 1, effective June 5.

25-15-219. Department to study need for disposal sites and feasibility of alternative technologies. (1) The department shall conduct a study assessing the need for hazardous waste disposal sites in this state. Such study shall identify the volumes and types of hazardous wastes generated in this state and the appropriateness and feasibility of treatment and disposal technologies as alternatives to land disposal. To offset the cost of such study, the department is authorized to expend a maximum of sixty thousand dollars out of the annual appropriation to the department from the hazardous waste service fund pursuant to section 25-15-304.

(2) The department may also develop and submit to the general assembly proposed legislation to encourage the development and utilization of alternative technologies for hazardous waste management, which may include, by way of example, tax incentives for the purchase of equipment to implement alternative technologies.

Source: L. 83: Entire section added, p. 1100, § 18, effective June 3.

25-15-220. Effect of 1983 amendments. (Repealed)

Source: L. 83: Entire section added, p. 1100, § 18, effective June 3. **L. 2005:** Entire section repealed, p. 286, § 31, effective August 8.

PART 3

STATE HAZARDOUS WASTE MANAGEMENT PROGRAM

Cross references: For the effective date of this part 3, see § 25-15-102 (2) and (3) in accordance with Senate Bill 81-519. For the effective date of this part 3 as amended by Senate Bill 83-282, see section 29(1) of chapter 322, Session Laws of Colorado 1983.

Law reviews: For comment, "Clean Up Your Federal Mess in My State: Colorado Has A State RCRA-Voice At The Rocky Mountain Arsenal", see 71 Den. U. L. Rev. 257 (1993).

25-15-301. Powers and duties of department. (1) The department shall be the entity in the state responsible for the regulation of hazardous waste management; however, the department may, in accordance with section 25-15-306, enter into agreements with local governments to conduct specified activities involving monitoring, inspections, and technical services but not permit issuance or enforcement.

(2) Pursuant to rules and regulations as provided for in section 25-15-302, the department shall:

(a) Issue permits for treatment, storage, and disposal facilities, provide for the inspection of such operations, and enforce the limitations and conditions of such permits, including any conditions and schedules established to correct noncompliance; and

(b) Assure that all generators, transporters, storers, treaters, and disposers of hazardous waste have received appropriate identification by the department, use a manifest system, and provide periodic reports on wastes manifested.

(3) The department, by its duly authorized representatives, shall have the power to enter and inspect any property, premises, or place in which hazardous waste is reasonably believed to be located or in which relevant records may be located for the purpose of determining the compliance or noncompliance with any provision of this part 3, any rules and regulations promulgated pursuant to this part 3, or any order or permit, or term or condition thereof, issued pursuant to this part 3. Unless an emergency exists or the department has reason to believe that any unlawful activity is being conducted or will be conducted, the department shall provide prior notification of such inspection, which inspection shall be during normal business hours. If such entry or inspection is denied or not consented to and no emergency exists, the department is empowered to and shall obtain from the district court for the judicial district in which such property, premises, or place is located a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The district courts of this state are empowered to issue such warrants upon

a showing that such entry and inspection is required to verify that the purposes of this part 3 are being carried out. Any information relating to proprietary processes or methods of manufacture or production obtained in the course of the inspection shall be kept confidential in accordance with section 24-72-204 (3) (a) (IV), C.R.S., of the open records law. If samples are taken, the owner and operator of the premises from which such samples are taken shall be entitled to a receipt for such samples and, upon request, a sufficient portion to perform an analysis equivalent to that which the department may perform.

(4) (a) In the event of an emergency involving hazardous waste which presents an immediate and substantial threat to the public health and safety or the environment, the department shall have the authority to issue such orders as may be appropriate to protect the public health and safety or the environment, including emergency authorization to transport, treat, store, or dispose of hazardous waste.

(b) Any person against whom an emergency order is issued pursuant to this subsection (4) shall be entitled to an immediate hearing as provided in section 24-4-105 (12), C.R.S.

(5) In order to provide for the essential long-term care of hazardous waste consistent with adequate protection of the public health and safety and the environment, the department may acquire by gift, purchase, transfer from another state department or agency, or other transfer any and all lands, buildings, and grounds that have been designated as a hazardous waste site and may lease such properties to others for hazardous waste management. Any such acquisition shall be subject to the provisions of section 25-15-303 (4).

Source: L. 81: Entire article R&RE, p. 1352, § 1, effective July 1. L. 83: (3) amended, p. 1101, § 19, effective November 2, 1984. L. 92: (3) amended, p. 1236, § 4, effective August 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

County exercises a separate power from that of the department of public health and environment in the issuance of permits under this section, and therefore has standing to challenge the department's permitting decisions. *Adams Bd. of County Comm'rs v. Colo. Dept.*

of Pub. Health & Env't, 218 P.3d 336 (Colo. 2009).

Exclusive authority for enforcement of § 25-15-301 et seq. is the department of health, and attorney general has no authority to bring suit for violations except upon request of the department. *Harris v. Jefferson County Court*, 808 P.2d 364 (Colo. App. 1991).

25-15-301.5. Additional powers of department - legislative declaration - report.

(1) The general assembly hereby finds, determines, and declares that the hazardous waste control program shall be implemented to protect human health and the environment in a manner that:

- (a) Maintains program authorization by the federal government;
- (b) Promotes a community ethic to reduce or eliminate waste problems;
- (c) Is credible and accountable to industry and the public;
- (d) Is innovative and cost-effective; and
- (e) Protects the environmental quality of life for impacted residents as required by other provisions of this part 3 and rules promulgated in connection therewith.

(2) The department shall develop, implement, and continuously improve policies and procedures for carrying out its statutory responsibilities at the lowest possible cost without jeopardizing the intent stated in subsection (1) of this section. At a minimum, these policies and procedures shall, to the extent practicable, include the following:

- (a) Establish cost-effective level-of-effort guidelines for reviewing submittals including, but not limited to, permit applications and corrective action plans, to assure conformity with regulatory requirements, taking into consideration the degree of risk addressed and the complexity of the issues raised;

(b) Establish cost-effective level-of-effort guidelines for performing inspections that focus on major violations of regulatory requirements that pose an immediate and significant threat to human health and the environment;

(c) Streamline the corrective action process with features that include, without limitation, the following:

(I) Cost-effective level-of-effort guidelines for site investigations and remediation that focus on result-based outcomes and performance-based oversight by the department;

(II) Cost-effective level-of-effort guidelines for reviewing site investigation reports and corrective action plans;

(III) The use of enforceable institutional controls to avoid unnecessary cleanup costs; and

(IV) Realistic cleanup standards that address actual risk to human health and the environment on a site-specific basis and that take into account any applicable institutional controls.

(d) Establish cost-effective level-of-effort guidelines for enforcement activities;

(e) Establish schedules for timely completion of department activities including, but not limited to, submittal reviews, inspections and inspection reports, and corrective action activities;

(f) Establish a prioritization methodology for completing activities that focuses on actual risk to human health and the environment;

(g) Establish a preference for compliance assistance with at least ten percent of the annual budget amount being allocated to compliance assistance efforts;

(h) Establish a preference for alternative dispute resolution mechanisms to timely resolve disputed issues; and

(i) Establish a mechanism that continually values and provides incentives for further improvements in the policies and procedures of the department.

(3) The department is directed to submit a report to the general assembly on or before February 1, 2002, and annually on or before each February 1 thereafter that describes the status of the hazardous waste control program, the department's efforts to carry out its statutory responsibilities at the lowest possible cost without jeopardizing the intent stated in subsection (1) of this section, and the department's implementation of the authority to accept environmental covenants created pursuant to section 25-15-321.

Source: L. 2000: Entire section added, p. 1066, § 2, effective July 1. **L. 2001:** (3) amended, p. 459, § 3, effective July 1.

25-15-302. Solid and hazardous waste commission - creation - membership - rules - fees - administration. (1) (a) There is hereby created in the department of public health and environment a solid and hazardous waste commission, referred to in this part 3 as the "commission", which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a **type 1** transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of three years each; except that, of the members appointed to take office initially, three shall be appointed for one-year terms, three shall be appointed for two-year terms, and three shall be appointed for three-year terms. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in waste management in the state.

(b) Appointments to the commission shall be made so that all persons shall have appropriate scientific, technical, industrial, legal, public health, or environmental training or experience. Three members shall be from the regulated community. Three members shall be from the public at large. Three members shall be from government or the academic community; except that no member shall be an employee of the department. No more than five members of the commission shall be members of the same political party.

(c) The members of the commission shall disclose any potential conflicts of interest to the governor and the committee of reference of the general assembly prior to confirmation and shall disclose any potential conflicts of interest which arise during their terms of membership to the other commission members in a public meeting of the commission.

(d) Whenever a vacancy exists on the commission, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy, subject to confirmation by the senate.

(e) The governor may remove any appointed member of the commission for malfeasance in office, for failure to attend meetings regularly, or for any cause that renders such member incapable or unfit to discharge the duties of such member's office.

(f) If any member of the commission is absent from two consecutive meetings or fails to attend at least seventy-five percent of the regularly scheduled meetings of the commission held in any one year and such absences were without sufficient cause as determined by the commission, the chairman of the commission shall notify the governor, who may remove such member and appoint a qualified person for the remaining portion of such member's term, subject to confirmation by the senate.

(g) Each member of the commission shall receive traveling and other necessary expenses actually incurred in the performance of such member's official duties as a member of the commission.

(h) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The commission shall keep a record of its proceedings.

(i) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least twenty days in advance of such meeting.

(j) (I) The commission shall hold an annual public meeting to hear public comment on hazardous waste issues within the state. At such meeting, the commission shall answer reasonable questions from the public concerning rules, regulations, appeals of penalties, and any other commission activities under the authority of this part 3 occurring during the previous year.

(II) Prior to the meeting required under subparagraph (I) of this paragraph (j), the commission shall prepare and make available to the public a report which shall contain the following specific information:

(A) All rules and regulations promulgated by the commission during the previous year;

(B) All interpretive rules issued by the commission during the previous year;

(C) All appeals of penalties heard before the commission and the commission's determinations in such appeals; and

(D) Any other commission activities as appropriate.

(k) Each member of the commission shall have a vote. Two-thirds of the members of the commission shall constitute a quorum, and, except as otherwise provided in subsection (4) of this section, the concurrence of a majority of the members present at any meeting at which a quorum is present on any matter within its powers and duties shall be required for any determination made by the commission.

(2) The commission shall promulgate rules pertaining to hazardous waste in accordance with this part 3 and in accordance with the procedures and other provisions of article 4 of title 24, C.R.S. Such rules shall provide protection of public health and the environment and shall include:

(a) Criteria for establishing characteristics and listings of hazardous wastes, including mechanisms for determining whether any waste is hazardous for the purpose of this part 3;

(b) Regulations governing those wastes or combinations of wastes which are not compatible and which may not be stored, treated, or disposed of together;

(c) Regulations for the storage, treatment, and disposal of hazardous wastes, including regulations for the issuance of permits based on best engineering judgment, including but not limited to interim status, regulations concerning information required to be submitted to obtain such permits, and regulations concerning the requirement of a permit prior to the construction of a treatment, storage, or disposal facility;

(d) Regulations for the operation and maintenance of hazardous waste treatment, storage, and disposal facilities, including such qualifications and requirements as to ownership, continuity of operation, training of personnel, and closure and postclosure care, as may be necessary or desirable;

(e) Regulations for the design and construction of treatment, storage, and disposal facilities;

(f) Regulations, promulgated in accordance with article 20 of title 42, C.R.S., providing procedures and requirements for:

(I) The use of a manifest during transportation of hazardous waste, applying equally to those persons transporting hazardous waste they have generated themselves and to persons who have contracted to transport hazardous waste for other parties, consistent with federal and state regulations on the transportation of hazardous wastes;

(II) Record-keeping concerning the transportation of hazardous waste, including its source and destination;

(III) Notification and cleanup of spills or discharges during the transportation of hazardous waste;

(IV) Transportation of hazardous wastes only if such hazardous wastes are properly labeled and for restricting the transportation of all hazardous wastes only to permitted hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form;

(g) Regulations requiring reports and record-keeping requirements for hazardous waste management, including notification of accidents;

(h) Regulations establishing procedures for maintaining confidentiality relating to methods of manufacture or secret processes and establishing fees and financial assurance and ownership requirements, including bonds, required by this part 3;

(i) Regulations for issuing compliance orders and administrative penalties, for establishing compliance conditions and schedules, and for issuing, modifying, revoking and reissuing, or terminating permits; except that nothing in this paragraph (i) shall be interpreted to impair the department's authority to take such actions pending promulgation of such regulations;

(j) Regulations for the classification of sites in terms of wastes that can be received and managed thereon and hydrological, soil, and other siting characteristics for assuring long-term isolation of designated wastes from the environment;

(k) Regulations establishing standards applicable to generators of hazardous waste, including requirements for:

(I) Record-keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of such hazardous waste which are significant in quantity or of potential harm to human health or the environment, and the disposition of such hazardous waste;

(II) Labeling practices for any container that is used for the storage, transportation, or disposal of hazardous waste so as to identify accurately such waste;

(III) The use of appropriate containers for hazardous waste;

(IV) The furnishing of information on the general chemical composition of hazardous waste to persons transporting, treating, storing, or disposing of such waste;

(V) The use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage, or disposal at a permitted facility;

(VI) The submission of reports;

(I) Regulations requiring contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any hazardous waste.

(3) The commission shall promulgate rules establishing categories of hazardous wastes and hazardous waste management practices based on degree of hazard considerations. Such rules may vary from category to category to reflect the degree of hazard involved in each such category. The commission's rules may also provide for general permits to be issued based on degree of hazard considerations.

(3.5) The commission shall promulgate rules pertaining to the assessment of fees to offset program costs from facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status and from generators of hazardous waste in accordance with the following:

(a) On or after July 1, 2000, to July 1, 2002, the fees shall be as follows:

(I) The annual fees for facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status shall be as set forth in 6 CCR 1007-3, section 100.31;

(II) The annual fee shall be one thousand nine hundred dollars for generators of hazardous waste who are subject to regulation under this part 3 during any calendar month of the year for which the annual fee is being assessed and who generate in each of any four calendar months in that year an amount greater than one thousand kilograms of hazardous wastes, one kilogram of acute hazardous wastes, or one hundred kilograms of any residue, contaminated soil, waste, or debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes;

(III) The annual fee shall be three hundred dollars for all other generators of hazardous waste that are subject to this part 3 during any calendar month of the year for which the annual fee is being assessed; except that no annual fee shall be assessed against those generators of hazardous waste who generate in every month of that year no more than one hundred kilograms of hazardous wastes, one kilogram of acute hazardous wastes, or one hundred kilograms of any residue, contaminated soil, waste, or debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes;

(IV) The document review and activity fee charged by the department shall be in accordance with 6 CCR 1007-3, section 100.32; except that the hourly charge shall be increased from eighty-five dollars to one hundred dollars;

(V) The document review and activity fee ceiling shall be in accordance with 6 CCR 1007-3, section 100.32; except that the department may, on a case-by-case basis and upon demonstration of need consistent with section 25-15-301.5, request a waiver of the ceiling from a facility subject to the document review and activity fee.

(b) On or after July 1, 2002, the commission may adjust the fees then in effect if the department has demonstrated that it has developed, implemented, and is continuing to improve policies and procedures for carrying out its statutory responsibilities at the lowest possible cost without jeopardizing the intent set out in section 25-15-301.5 (1), and that, despite these efforts or as a result of these efforts, the fee adjustments are necessary; except that the adjusted fees shall be subject to the following limitations:

(I) Annual fees for facilities that treat, store, or dispose of hazardous waste pursuant to a permit or interim status shall be established at a level that will, when combined with an appropriate share of available federal grant moneys, generate revenues approximating the actual, reasonable program costs attributable to such facilities. Such annual fees shall take into account equitable factors including, without limitation, the quantity and degree of hazard of the hazardous waste involved and whether the hazardous waste is to be disposed of, stored, or treated.

(II) Annual fees for generators of hazardous waste who are subject to regulation under this part 3 during any calendar month of the year for which the annual fee is being assessed shall be established at a level that will, when combined with an appropriate share of available federal grant moneys, generate revenues approximating the actual, reasonable program costs attributable to generators with an appropriate differentiation between generators described in subparagraphs (II) and (III) of paragraph (a) of this subsection (3.5);

(III) The hourly charge for the document review and activity fees shall be established at a rate comparable to industry rates for performing similar tasks with maximum levels on document review and activity fees that reflect timely and cost-effective reviews; and

(IV) The overall fee structure shall be consistent with the trend in hazardous waste generation, treatment, storage, disposal, and corrective action in the state and with the authorized funding for the program.

(c) In addition to any other review provided in law, any rule adopted, or fee modified, by the commission pursuant to paragraph (b) of this subsection (3.5) may be reviewed by the joint budget committee of the general assembly upon its own motion or upon written request submitted within thirty days after the adoption of the rule by the commission. The joint budget committee shall review such rule for accuracy and compliance with the statutory provision set forth in this subsection (3.5). Request may be made by any person regulated under this part 3. Any review by the joint budget committee shall be completed within ninety days after the date requested. Such rule shall not become effective until approved by the joint budget committee or upon the failure of the joint budget committee

to take action within ninety days after the day of the request for review. Such rule may not result in a level of funding for the program that exceeds amounts appropriated or that will be appropriated by the general assembly.

(d) The department shall provide a receipt for the fees paid pursuant to this subsection (3.5) and shall transmit such payments to the state treasurer and take the treasurer's receipt therefor. The state treasurer shall credit all fees received to the hazardous waste service fund as provided in section 25-15-304.

(3.7) If the department determines that a facility is, and has been, treating, storing, or disposing of hazardous wastes without a permit or interim status, and that facility legally should have been operating pursuant to a permit or interim status, then, in addition to any other remedies the department may have, the department may assess a fee to offset program costs from that facility that is equivalent to the estimated annual fees, without interest, that such facility should have paid the department if the facility had been operating pursuant to a permit or interim status; except that such fee shall not be assessed under any one the following circumstances:

(a) The only hazardous waste being treated, stored, or disposed of is in-place contaminated media or debris, or contaminated structures;

(b) The treatment, storage, and disposal is part of a corrective action plan approved by the department; or

(c) The facility modified the facility's operations within one month after being notified in writing that the facility should be operating pursuant to a permit or interim status so that any treatment, storage, or disposal of hazardous wastes at the facility is no longer subject to a permit or interim status.

(4) (a) Except as provided in paragraph (b) of this subsection (4), the rules promulgated by the commission pursuant to the provisions of this part 3 may be more stringent than the corresponding rules of the federal environmental protection agency promulgated pursuant to the federal act; however, more stringent rules including, without limitation, rules that list or define as a hazardous waste any waste or other material exempted or otherwise not regulated as a hazardous waste under the federal act may only be adopted if the commission makes a written finding, after a public hearing and based upon substantial evidence in the record that such rules are necessary to protect the public health and the environment of the state, and such findings and rules are approved by an affirmative vote of at least six members of the commission. Such findings and rules shall be accompanied by a commission opinion referring to and evaluating the public health and environmental information and studies contained in the record that form the basis for such findings and rules.

(b) The rules promulgated by the commission pursuant to the provisions of this part 3 concerning the regulation of mining and mineral processing wastes, including exploration, mining, milling, and smelting and the refining of waste, shall be identical to and no more inclusive than the regulations of the federal environmental protection agency promulgated pursuant to the federal act.

(c) (Deleted by amendment, L. 2000, p. 1068, § 3, effective July 1, 2000.)

(4.5) The commission shall adopt rules concerning solid waste disposal sites and facilities in accordance with part 1 of article 20 of title 30, C.R.S.

(4.6) The commission may adopt rules that specify types of composting facilities, by size, volume, or other suitable criteria that provide equivalent protection of public health and the environment that would not be required to obtain a certificate of designation in accordance with section 30-20-102, C.R.S.

(4.7) The commission shall adopt rules pertaining to waste tire haulers pursuant to section 25-17-204.

(5) The rules and regulations promulgated by the commission shall be subject to expiration in accordance with sections 24-4-103 (8) (c) and 24-4-108, C.R.S.

(6) The commission may advise and consult and cooperate with other agencies of the state, the federal government, and other states and with groups, political subdivisions, and industries affected by the provisions of this article or by the policies or rules of the commission.

(7) (a) The commission may hold hearings. Such hearings shall be held pursuant to and in conformity with article 4 of title 24, C.R.S., and with this article.

(b) The commission shall adopt such rules governing procedures and hearings before the commission as may be necessary to assure that such procedures and hearings will be fair and impartial. Such rules shall be consistent with the pertinent provisions of article 4 of title 24, C.R.S. Such rules shall include a voting rule that excludes a member from voting on any matter arising under section 25-15-305, 25-15-308, or 25-15-309 if such member has a conflict of interest with respect to such matter.

(c) The disclosure of any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered by the commission shall be governed by the provisions of part 2 of article 72 of title 24, C.R.S.

(8) (a) Prior to promulgating any rule authorized by this article, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S.; except that such notice shall include a summary or the text of each proposed rule or rule revision. The commission may, if requested or when otherwise appropriate, lengthen the notice period to provide sufficient time for public review of a proposed rule or revision.

(b) Rules promulgated pursuant to this article shall take effect as provided in section 24-4-103 (5) or (6), C.R.S.

(9) (a) The commission shall employ an administrator and shall delegate to such administrator such duties and responsibilities as it may deem necessary; except that no authority shall be delegated to such administrator to promulgate rules or to make determinations as provided in this part 3. Such administrator shall have appropriate practical, educational, technical, and administrative training or experience related to solid and hazardous waste management and shall be employed pursuant to section 13 of article XII of the Colorado constitution.

(b) Notice of meetings of the commission shall be published in the Colorado register at least twenty days prior to the date of such meeting and shall state the time, place, and nature of the subject matter to be considered at such meeting. The administrator shall maintain a mailing list of persons requesting to be included thereon and shall mail notice of any meeting of the commission to such persons at least twenty days prior to such meeting. Opportunity shall be afforded to interested persons to submit views orally or in writing on the proposals under consideration or to otherwise participate informally in a commission proceeding. For commission proceedings under this part 3 other than the review of administrative penalties pursuant to section 25-15-309, the department shall furnish such personnel to the commission as the commission may reasonably require.

Source: L. 81: Entire article R&RE, p. 1353, § 1, effective July 1. L. 83: (2)(c) to (2)(f), (2)(i), and (3) amended, (2)(k) and (2)(l) added, and (4) R&RE, pp. 1101, 1103, §§ 20, 21, effective June 3. L. 92: (2.5) added, p. 1237, § 5, effective June 1; entire section R&RE, p. 1237, § 6, effective August 1. L. 94: IP(2)(f) amended, p. 2563, § 71, effective January 1, 1995. L. 2000: (3.5) and (3.7) added and (4)(a) and (4)(c) amended, p. 1068, § 3, effective July 1. L. 2006: (1)(a) and (9)(a) amended and (4.5) and (4.6) added, p. 1131, § 10, effective July 1. L. 2008: (3.5)(b)(I) and (3.5)(b)(II) amended, p. 176, § 13, effective March 24; (4.7) added, p. 432, § 4, effective August 5.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until January 1, 1982. (See § 25-15-102 (2).)

Cross references: For the authority of the committee on hazardous waste regulation to develop rules and regulations to phase out land disposal of highly mobile, toxic, and persistent waste, see § 25-15-205 (3).

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983).

25-15-303. Requirements for hazardous waste treatment, storage, and disposal sites and facilities - permits. (1) Any site or facility for the treatment, storage, or disposal of hazardous waste shall be unlawful unless a permit is granted by the department for such site or facility. Each permit shall provide for a specified term and conditions for renewal and shall provide for modification upon the permittee's request or upon a finding that a substantial threat to the public health or safety or the environment exists at the site or facility. In issuing permits for disposal facilities the department shall consider the variations within this state in climate, geology, and such other factors as may be relevant to the management of hazardous wastes.

(2) A separate permit shall not be required, unless the permittee so requests, of a person otherwise subject to the requirements of this part 3 who is engaged in mining operations pursuant to a permit issued under the "Colorado Surface Coal Mining Reclamation Act", article 33 of title 34, C.R.S.

(3) Any person who possesses a federal permit or has federal interim status under section 3005 (c) of the federal act for the treatment, storage, or disposal of hazardous waste shall be deemed to possess an identical permit or status with the department. Any such permit shall remain in effect until it expires or is suspended or revoked for failure to meet conditions in the permit or the requirements of this part 3.

(4) (a) Any deed for property which has been utilized for the disposal of hazardous waste and has received interim status or a permit under the federal act or a permit under this part 3 or has received a certificate of designation under part 2 of this article shall contain a notation that such property has been utilized for the disposal of hazardous waste.

(b) and (c) (Deleted by amendment, L. 92, p. 1244, § 7, effective August 1, 1992.)

(5) Repealed.

(6) Any operation conducted at sites acquired by the state for the express purpose of hazardous waste treatment, storage, or disposal shall be in accordance with a lease which shall provide for payments to the state based on the quantity of waste managed, and shall also require, in lieu of taxes, payments to be transferred to the local government having jurisdiction as compensation for loss of valuation and which shall be adjusted annually to conform with current mill levies, assessment practices, and value of land improvements.

(7) As a condition to the issuance of any permit under subsection (1) of this section, the department may require, in accordance with rules and regulations, that the permittee post a bond or provide other evidence of financial assurance so that the department may, if the permittee is unable or unwilling to do so, arrange to rectify any improper hazardous waste management technique committed during the term of the permit. If a bond is posted, a portion of the bond shall be refunded to the permittee upon proper closure of the permitted hazardous waste management activity if use of such portion of the bond is not required.

(8) Prior to the issuance of any permit under subsection (1) of this section, the department shall, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., give reasonable public notice and shall, upon sufficient interest, hold a public hearing on the application in the locality of the proposed site or facility.

Source: L. 81: Entire article R&RE, p. 1355, § 1, effective July 1. L. 83: (2), (3), and (4)(a) amended, p. 1103, §§ 22, 23, effective November 2, 1984; (4)(a) amended, p. 2070, § 1, effective October 13. L. 92: (1), (3), (4), and (5)(a) amended, p. 1244, § 7, effective August 1. L. 2000: (5) repealed, p. 1071, § 4, effective July 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

ANNOTATION

Law reviews. For article, "Regulation of Spills of Hazardous Materials", see 12 Colo. Law. 277 (1983). For article, "Hazardous Waste

Regulation: Issues for the Real Estate Practitioner", see 13 Colo. Law. 48 (1984).

25-15-304. Hazardous waste service fund created. There is created in the state treasury a hazardous waste service fund, which shall consist of fees collected pursuant to section 25-15-302 (3.5) to reimburse the state for its annual program expenses incurred in the maintenance, monitoring, and other supervision of the lands and facilities used for the storage, treatment, and disposal of hazardous waste. Such moneys shall be appropriated annually to the department by the general assembly which shall review such expenditures to assure that they are used to accomplish the purposes of this section. All unappropriated balances in the hazardous waste service fund shall remain therein and shall not revert to the general fund.

Source: L. 81: Entire article R&RE, p. 1357, § 1, effective July 1. L. 2000: Entire section amended, p. 1071, § 5, effective July 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

25-15-305. Judicial review. (1) (a) Any final rule issued by the commission shall be subject to judicial review in accordance with the provisions of this article and article 4 of title 24, C.R.S.

(b) Judicial review of any rules promulgated by the commission shall be filed in the district court for the second judicial district.

(2) (a) Except as provided in section 25-15-308, any final determination issued by the department pursuant to this part 3, including but not limited to, permit determinations, permit terms or conditions, determinations regarding closure plans, or determinations regarding permits, closure plans, or corrective action plans required by a compliance order, shall be subject to review in accordance with the provisions of this section and section 24-4-106, C.R.S. A hearing pursuant to section 24-4-105, C.R.S., shall not be required prior to the issuance of any final determination described in this paragraph (a).

(b) Any proceeding for judicial review of any final determination of the department shall be filed in the district court for the district in which the site or facility is or may be located.

(c) Any proceeding for judicial review of any final determination of the department described in paragraph (a) of this subsection (2) shall be filed within thirty days after said determination has become effective. Such determination shall become effective upon issuance or upon such later date as is specified in such determination.

(d) The contested provisions of a determination under review and the uncontested provisions that are not severable from such contested provisions, as determined by the department, shall be stayed during the pendency of the judicial review of such determination. All other provisions of the department's determination under review shall be fully effective unless, upon application and a showing of good cause by a party to the judicial review, the court stays such other provisions. The stay of any portion of a determination pursuant to this paragraph (d) shall have no effect on the obligations of the person to whom such determination applies to comply with applicable laws, regulations, and valid existing orders. The commission shall promulgate regulations governing the continuance of existing, expiring, or superseded permits, closure plans, or corrective action plans during the time period of any appeal of such determination pursuant to this section.

(e) Upon motion of a party to the judicial review, and in the discretion of the court, the court may request an interpretive rule from the commission pertaining to any rule adopted pursuant to this part 3 which is at issue in the judicial review only in the event that there is no genuine issue of material fact, or in the event that the parties have stipulated to the material facts for the purposes of such interpretive rule. The court may adjust the schedule of the judicial review to accommodate the receipt of such information. Notwithstanding the provisions of section 24-4-103 (1), C.R.S., in the event that an interpretive rule is requested by the court and the commission agrees to issue such an interpretation, notice to the public of the interpretive rule-making proceeding shall be given in accordance with the provisions of section 24-4-103, C.R.S. Such notice shall be provided within forty-five days following the receipt of the request. The commission shall receive written material, not to exceed

fifteen pages in length, from any interested person no later than fifteen days following the date that notification is given. The commission shall issue the written interpretive rule no later than thirty days following the deadline for the receipt of any such written material. The legal effect of any such interpretive rule shall be determined in accordance with applicable law and is not presumed to be binding on any party to the judicial review.

Source: **L. 81:** Entire article R&RE, p. 1357, § 1, effective July 1. **L. 92:** Entire section R&RE, p. 1245, § 8, effective August 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

25-15-306. Local control of facilities - authorization by department - allocation of fees. The department may enter into an agreement with a county, a city and county, or a municipality within whose jurisdiction is located one or more hazardous waste treatment, storage, or disposal sites or facilities for such local government to provide inspection, monitoring, and emergency response for such sites and facilities. The department shall make available to any such local government a reasonable portion of the fees appropriated from the hazardous waste service fund for conducting such functions. The department shall have the power to reassume any such function granted a local government if it appears to the department that the appropriate expertise is unavailable or that the resources provided are not appropriately applied for the agreed purpose, or if the department and the local government mutually so agree.

Source: **L. 81:** Entire article R&RE, p. 1357, § 1, effective July 1.

Editor's note: Although the act repealing and reenacting was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

25-15-307. Coordination with other programs. (1) The department shall coordinate the hazardous waste program with all other programs within the department and with other agencies of federal, state, or local government which are related to hazardous waste.

(2) For the purposes of the administration and enforcement of this part 3, the department shall coordinate its activities with those of the Colorado state patrol relating to the transportation of hazardous materials. Rules and regulations of the commission relating to the transportation of hazardous waste shall be consistent with the rules and regulations of the Colorado state patrol on the transportation of hazardous materials promulgated pursuant to article 20 of title 42, C.R.S.

Source: **L. 81:** Entire article R&RE, p. 1357, § 1, effective July 1. **L. 87:** (2) amended, p. 1570, § 4, effective July 1. **L. 92:** (2) amended, pp. 1246, 1260, §§ 9, 24, effective August 1. **L. 94:** (2) amended, p. 2563, § 72, effective January 1, 1995.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

25-15-308. Prohibited acts - enforcement. (1) On or after the date specified in section 25-15-102 (3), no person shall:

(a) Dispose of any hazardous waste off-site at any facility that does not have state or federal interim status, a federal permit, or a permit granted by the department pursuant to section 25-15-303;

(b) Dispose of on-site, treat, or store any hazardous waste without having therefor either state or federal interim status, a federal permit, or a permit granted by the department pursuant to section 25-15-303;

(c) Substantially alter any hazardous waste treatment, storage, or disposal facility or site without first obtaining from the department a modification of an existing permit or a new permit.

(2) (a) Whenever the department finds that any person is or has been in violation of any permit, rule, regulation, or requirement of this part 3, the department may issue an order identifying the factual and legal elements of such violation with particularity and requiring such person to comply with any such permit, rule, regulation, or requirement and may request the attorney general to bring suit for injunctive relief or for penalties pursuant to section 25-15-309 or 25-15-310.

(b) Such orders may contain an administrative penalty assessment as provided in section 25-15-309. Issuance of an administrative order without a penalty assessment shall not preclude the department from subsequently seeking an administrative or civil penalty for the violations detailed in the order. A hearing pursuant to section 24-4-105, C.R.S., shall not be required prior to the issuance of an order pursuant to this section.

(c) Any order issued pursuant to this section shall be served upon the person who is the subject of such order by personal service or by registered mail, return receipt requested. Any such order may be prohibitory or mandatory in effect. Unless provided otherwise in such order, the order shall be effective immediately upon issuance.

(3) (a) Any appeal of an order issued by the department pursuant to this section shall be taken in accordance with the provisions of this section. Notice of appeal shall be filed by personal service or by registered mail, return receipt requested, with the office of administrative courts in the department of personnel, with the executive director of the department or the executive director's designee, and with the commission in the case of an appeal of an administrative law judge's determination concerning an administrative penalty assessment. Notice of appeal shall be filed no later than thirty calendar days after the effective date of the order which is the subject of the appeal.

(b) The filing of an appeal of any order shall stay the obligation to submit payment of any monetary penalty pursuant to such order. Such filing shall not negate the appellant's obligation to otherwise comply with the order. An appellant may seek a stay of any other provision of an order in accordance with this section. The issuance of a stay shall not prevent the department from subsequently imposing a penalty for any subsequent violation by an appellant.

(c) Any person appealing an order may make a motion that the administrative law judge stay the enforcement of such order. The administrative law judge may stay the enforcement of any portion of an order if the administrative law judge determines that the balance of equities favors the moving party. An administrative law judge shall consider the following factors in considering a request for a stay of an order:

(I) The probability of serious harm to the moving party if the motion for a stay is denied;

(II) The probability that no serious harm to the public health or the environment will occur if the motion for a stay is granted;

(III) The merits of the moving party's case on appeal; and

(IV) The public interest.

(d) The stay of any portion of an order shall have no effect on the recipient's obligations under applicable statutes, regulations, permits, and valid, existing orders.

(e) The administrative law judge shall expedite hearing and determinations in regards to a motion for a stay pursuant to this subsection (3). The moving party shall have the burden of proof in any hearing regarding a motion for a stay.

(f) Any hearing held by an administrative law judge pursuant to this section shall be conducted in accordance with section 24-4-105, C.R.S., except as otherwise provided in this section. Except as provided in paragraph (e) of this subsection (3), the department shall bear the burden of proof by a preponderance of the evidence in any hearing before an administrative law judge pursuant to this section.

(g) Upon motion of a party to the appeal, and in the discretion of the administrative law judge, an administrative law judge may request an interpretive rule from the commission pertaining to any rule which is at issue in the appeal only in the event that there is no genuine issue of material fact or in the event that the parties have stipulated to the material facts for the purposes of such interpretive rule. The administrative law judge may adjust the schedule of the appeal to accommodate the receipt of such information. Notwithstanding the provisions of section 24-4-103 (1), C.R.S., in the event that an interpretive rule is requested

by an administrative law judge and the commission agrees to issue such an interpretation, notice to the public of the interpretive rule-making proceeding shall be given in accordance with the provisions of section 24-4-103, C.R.S. Such notice shall be provided within forty-five days following the receipt of the request. The commission shall accept written material, not to exceed fifteen pages in length, that is received from any interested person no later than fifteen days following the date that notification is given. The commission shall issue the written interpretive rule no later than thirty days following the deadline for the receipt of any such written material. The legal effect of any such interpretive rule shall be determined in accordance with applicable law and is not presumed to be binding on any party to the appeal.

(h) Except as provided in paragraph (i) of this subsection (3) and notwithstanding the provisions of section 24-4-105 (15), C.R.S., any appeal of the determination of the administrative law judge pursuant to this section or section 25-15-301 (4) (b) shall be taken to the district court in accordance with section 24-4-106, C.R.S.

(i) Questions raised upon appeal of the determination of an administrative law judge as to the amount of penalty assessed by an order issued pursuant to this section shall be heard by the commission based upon the record developed by the administrative law judge. Notwithstanding the provisions of section 24-4-103 (1), C.R.S., in the event that the commission is requested to review the amount of a penalty, notice to the public of such penalty review shall be given in accordance with the provisions of section 24-4-103, C.R.S. Such notice shall be provided within forty-five days following receipt of such request for review of a penalty.

(4) (a) Any action pursuant to this part 3 shall commence within two years after the date upon which the department discovers an alleged violation of this part 3 or within five years after the date upon which the alleged violation occurred, whichever date occurs earlier; except that such limitation period is tolled during any period that the alleged violation is intentionally concealed. For the purposes of this section, "intentionally" shall have the meaning provided for such term in section 18-1-501 (5), C.R.S.

(b) If any action has not been commenced within the limitation period provided by paragraph (a) of this subsection (4) in connection with any disposal of hazardous waste without either state or federal interim status, a federal permit, or a permit granted by the department pursuant to section 25-15-303, the department, within two years after the date upon which the department discovers such disposal, may issue an order pursuant to this section requiring action to remediate such disposal. The department is not authorized under these circumstances to seek any administrative, civil, or criminal penalties for such disposal of hazardous waste.

Source: **L. 81:** Entire article R&RE, p. 1357, § 1, effective July 1. **L. 83:** (1) amended, p. 1104, § 24, effective November 2, 1984. **L. 92:** (1)(a), (1)(b), and (2) amended and (3) and (4) added, p. 1247, § 10, effective August 1. **L. 95:** (3)(a) amended, p. 664, § 99, effective July 1. **L. 2005:** (3)(a) amended, p. 858, § 24, effective June 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

ANNOTATION

Exclusive authority for enforcement of § 25-15-301 et seq. is the department of health, and attorney general has no authority to bring suit for violations except upon request of the department. *Harris v. Jefferson County Court*, 808 P.2d 364 (Colo. App. 1991).

Citizen suit provision of the Resource Conservation and Recovery Act (RCRA) may be employed to allege violations of Colorado's hazardous waste program. *Sierra Club v.*

Chemical Handling Corp., 824 F. Supp. 195 (D. Colo. 1993).

"Disposal" must be construed to require a discrete act of disposal actuated by human conduct; otherwise, the statute of limitations might not run until a remote moment in time that could seldom if ever be conclusively pinpointed. *People v. Thoro Prods. Co., Inc.*, 45 P.3d 737 (Colo. App. 2001), *aff'd*, 70 P.3d 1188 (Colo. 2003).

25-15-309. Administrative and civil penalties. (1) Any person who violates the provisions of section 25-15-308 or who violates any compliance order of the department which is not subject to a stay pending judicial review and which has been issued pursuant to this part 3 shall, for each such violation, be subject to a penalty for each day during which such violation occurs or continues. The department may impose an administrative penalty of no more than fifteen thousand dollars per day per violation. In lieu of imposing an administrative penalty pursuant to this section, the department may seek a civil penalty for violation of state environmental law in the district court of the judicial district in which the violation occurs. The district court may impose a civil penalty of no more than twenty-five thousand dollars per day per violation.

(2) The department shall not be precluded from referring a matter for criminal prosecution regardless of whether an order is issued pursuant to section 25-15-301 (4) (a) or 25-15-308. The department shall not impose both a civil penalty and an administrative penalty for any particular instance of a violation of this part 3.

(3) The department, the administrative law judge, the commission, or the court shall consider the factors contained in paragraphs (a) to (i) of this subsection (3) in determining the amount of any administrative or civil penalty for a violation of this part 3. The factors contained in paragraphs (f), (g), and (h) of this subsection (3) shall be mitigating factors and may be applied, together with other factors, to reduce penalties. Such factors are:

- (a) The seriousness of the violation;
- (b) Whether the violation was intentional, reckless, or negligent;
- (c) The impact upon or the threat to the public health or the environment as a result of the violation;
- (d) The degree, if any, of recalcitrance or recidivism upon the part of the violator;
- (e) The economic benefit realized by the violator as a result of the violation;
- (f) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery and prior to the department's knowledge of the violation, provided that all reports required pursuant to state environmental law have been submitted as and when otherwise required;
- (g) Full and prompt cooperation by the violator following disclosure of a violation, including, when appropriate, entering into in good faith and implementing a legally enforceable agreement to undertake compliance and remedial efforts;
- (h) The existence of a regularized and comprehensive environmental compliance program or an environmental audit program that was adopted in a timely and good faith manner and that includes sufficient measures to identify and prevent future noncompliance; and
- (i) Any other aggravating or mitigating circumstances.

(4) Notwithstanding the provisions of subsection (3) of this section, the department may enter into settlement agreements regarding any penalty or claim resolved pursuant to this part 3. Any settlement agreement may include but is not necessarily limited to the payment or contribution of moneys to state or local agencies or for other environmentally beneficial purposes.

Source: **L. 81:** Entire article R&RE, p. 1358, § 1, effective July 1, 1981. **L. 92:** Entire section R&RE, p. 1250, § 11, effective August 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

ANNOTATION

Before imposing a civil penalty under subsection (3), court must hold a hearing on the amount of the civil penalties and give the

defendant an opportunity to present evidence on mitigating factors. *Colo. Dept. of Pub. Health v. Caulk*, 969 P.2d 804 (Colo. App. 1998).

25-15-310. Criminal offenses - penalties. (1) On or after the date specified in section 25-15-102 (3), no person shall:

(a) Transport or cause to be transported any hazardous waste identified or listed pursuant to this article to a facility which does not have a permit under this article or the federal act;

(b) Treat, store, or dispose of any hazardous waste identified or listed pursuant to this article either without having obtained a permit as required by this article or the federal act or in knowing violation of any material condition or requirement of a permit or interim status requirement;

(c) Omit any material information or make any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this article or with the federal act or regulations promulgated under this article or the federal act;

(d) Destroy, alter, or conceal any record required to be maintained or fail to file any record required to be filed under regulations promulgated by the commission under this part 3 or pursuant to the federal act; or

(e) Treat, store, or dispose of any hazardous waste identified or listed pursuant to this article in violation of any material condition or requirement of a permit or interim status requirement.

(2) Except as provided in section 18-13-112, 29-22-108, or 42-20-113, C.R.S., any person acting with criminal negligence as defined in section 18-1-501 (3), C.R.S., who violates any of the provisions of paragraph (a), (c), (d), or (e) of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation. If such conviction is for a violation committed after a previous conviction under this subsection (2), the maximum fine shall be doubled.

(3) Any person who knowingly, as defined in section 18-1-501 (6), C.R.S., violates any of the provisions of paragraph (a), (b), (c), or (d) of subsection (1) of this section is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than fifty thousand dollars for each day of violation, or by imprisonment not to exceed four years, or by both such fine and imprisonment. If said conviction is for a violation committed after a previous conviction of such person under this subsection (3), the maximum punishment shall be doubled with respect to both fine and imprisonment.

(4) (a) (Deleted by amendment, L. 92, p. 1252, § 12, effective August 1, 1992.)

(b) Any generator who otherwise stores waste on-site in compliance with the requirements of 6 CCR 1007-3, section 262.34 (a), as those requirements exist on July 1, 1988, but who knowingly exceeds the ninety-day storage period or any extension thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in subsection (2) of this section.

(5) The court shall consider the factors contained in paragraphs (a) to (i) of this subsection (5) in determining the amount of any criminal sanction to be imposed pursuant to this article. The factors contained in paragraphs (f), (g), and (h) of this subsection (5) shall be mitigating factors and may be applied, together with other factors, to reduce or eliminate sanctions or penalties. Such factors are:

(a) The seriousness of the violation;

(b) Whether the violation was intentional, reckless, or negligent;

(c) The impact upon or the threat to the public health or the environment as a result of the violation;

(d) The degree, if any, of recalcitrance or recidivism upon the part of the violator;

(e) The economic benefit realized by the violator as a result of the violation;

(f) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery and prior to the department's knowledge of the violation, provided that all reports required pursuant to state environmental law have been submitted as and when otherwise required;

(g) Full and prompt cooperation by the violator following disclosure of a violation, including, when appropriate, entering into in good faith and implementing a legally enforceable agreement to undertake compliance and remedial efforts;

(h) The existence of a regularized and comprehensive environmental compliance program or an environmental audit program that was adopted in a timely and good faith manner and that includes sufficient measures to identify and prevent future noncompliance; and

(i) Any other aggravating or mitigating circumstances.

Source: **L. 81:** Entire article R&RE, p. 1358, § 1, effective July 1. **L. 83:** Entire section amended, p. 1104, § 25, effective November 2, 1984; (2) amended, p. 2055, § 34, effective November 2, 1984. **L. 88:** (1)(a), (1)(b), and (2) amended, (1)(e) and (4) added, and (3) R&RE, pp. 1048, 1049, §§ 1-3, effective July 1. **L. 92:** IP(1), (1)(c), (1)(d), (2), (3), and (4)(a) amended and (5) added, p. 1252, § 12, effective August 1. **L. 94:** (2) amended, p. 1641, § 62, effective May 31. **L. 96:** (2) amended, p. 1473, § 23, effective June 1.

Editor's note: (1) Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

(2) Amendments to this section by Senate Bill 83-282 and Senate Bill 83-414 were harmonized.

Cross references: For the penalty for abandonment of a vehicle containing hazardous waste or the intentional spilling of hazardous waste on streets or highways, see § 18-13-112; for the penalty for causing or contributing to the occurrence of a hazardous substance incident, see § 29-22-108; for the penalties for violations of the "Hazardous Materials Transportation Act of 1987", see §§ 42-20-109, 42-20-111, 42-20-204, and 42-20-305.

ANNOTATION

Exclusive authority for enforcement of § 25-15-301 et seq. is the department of health, and attorney general has no authority to bring suit for violations except upon request of

the department. *Harris v. Jefferson County Court*, 808 P.2d 364 (Colo. App. 1991).

Applied in *People v. Inman*, 950 P.2d 640 (Colo. App. 1997).

25-15-311. Disposition of fines and penalties. All receipts from penalties or fines collected under the provisions of sections 25-15-309 and 25-15-310 shall be credited to the general fund of the state.

Source: **L. 81:** Entire article R&RE, p. 1358, § 1, effective July 1.

Editor's note: Although the act repealing and reenacting this article was effective July 1, 1981, this section was not effective until November 2, 1984. (See § 25-15-102 (3).)

25-15-312. Repeal. (Repealed)

Source: **L. 81:** Entire article R&RE, p. 1358, § 1, effective July 1. **L. 83:** Entire section repealed, p. 1105, § 28(2), effective November 2, 1984.

25-15-313. Right to claim reimbursement. (1) A public entity, political subdivision of the state, or unit of local government is hereby given the right to claim reimbursement from the parties or persons responsible for the hazardous waste abandonment or hazardous waste spill for costs resulting from action taken to remove, contain, or otherwise mitigate the effects of a hazardous waste abandonment or hazardous waste spill.

(2) As used in this section, "abandonment" means the act of leaving a thing with the intent not to retain possession of or assert ownership or control over it. The intent need not coincide with the act of leaving.

(3) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

(4) Claims for reimbursement made pursuant to this section shall be in accordance with article 22 of title 29, C.R.S.

Source: **L. 83:** Entire section added, p. 1106, § 1, effective June 3.

25-15-314. Solid and hazardous waste commission funding. (1) The commission is hereby authorized to promulgate rules regarding the following:

(a) (I) The establishment of fees to offset the reasonable costs actually associated with the operations of the commission. Such fees may be imposed upon generators and transporters of hazardous wastes and upon facilities that treat, store, or dispose of hazardous wastes. Such fees may be based upon a consideration of the quantity of hazardous wastes that is generated, transported, treated, stored, or disposed and the impact on small businesses. The fees imposed by this subparagraph (I) shall not exceed an amount equal to one-half of the appropriation made by the general assembly annually pursuant to section 25-15-315.

(II) In addition to the fees imposed pursuant to subparagraph (I) of this paragraph (a), an amount equal to one-half of the appropriation made by the general assembly annually pursuant to section 25-15-315 shall be appropriated from the solid waste management fund created in section 30-20-118, C.R.S., to be expended for the commission's direct and indirect costs pursuant to this article.

(b) The establishment of a nominal filing fee to help defray reasonable administrative costs actually associated with processing petitions for interpretive rulings pursuant to sections 25-15-305 and 25-15-308. No filing fee established pursuant to the provisions of this paragraph (b) shall exceed one hundred dollars.

(2) All moneys collected pursuant to this section by the commission shall be transmitted to the state treasurer, who shall credit the same to the solid and hazardous waste commission fund created pursuant to section 25-15-315.

Source: L. 92: Entire section added, p. 1253, § 13, effective August 1. **L. 2006:** (1)(a) and (2) amended, p. 1132, § 11, effective July 1.

25-15-315. Solid and hazardous waste commission fund - creation. There is hereby established in the state treasury a fund to be known as the solid and hazardous waste commission fund, which shall consist of moneys collected pursuant to section 25-15-314. All moneys in such fund shall be subject to annual appropriation by the general assembly to the department for the purpose of covering the reasonable costs actually associated with the operation of the solid and hazardous waste commission. All moneys in the solid and hazardous waste commission fund that are not appropriated shall remain in such fund and shall not be transferred or revert to the general fund at the end of any fiscal year. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the solid and hazardous waste commission fund shall be credited to the general fund.

Source: L. 92: Entire section added, p. 1254, § 13, effective August 1. **L. 2005:** Entire section amended, p. 287, § 32, effective August 8. **L. 2006:** Entire section amended, p. 1132, § 12, effective July 1.

25-15-316. Prior acts validated and rules continued. (1) All acts, orders, and rules adopted by the state board of health under the authority of this article prior to August 1, 1992, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with this article, be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article. No provision of this part 3 shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

(2) All acts, orders, and rules adopted by the state board of health under the authority of part 1 of article 20 of title 30, C.R.S., prior to July 1, 2006, that were valid prior to said date and not otherwise subject to judicial review shall, to the extent that they are not inconsistent with said provisions, be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of said provisions. No provision of this part 3 shall be construed to validate any actions, orders, or rules that were not valid when adopted by the board of health prior to such date.

Source: L. 92: Entire section added, p. 1254, § 13, effective August 1. L. 2006: Entire section amended, p. 1132, § 13, effective July 1.

25-15-317. Legislative declaration. The general assembly declares that it is in the public interest to ensure that environmental remediation projects protect human health and the environment. The general assembly finds that environmental remediation projects may leave residual contamination at levels that have been determined to be safe for a specific use, but not all uses, and may incorporate engineered structures that must be maintained or protected against damage to remain effective. The general assembly finds that in such cases, it is necessary to provide an effective and enforceable means of ensuring the conduct of any required maintenance, monitoring, or operation, and of restricting future uses of the land, including placing restrictions on drilling for or pumping groundwater for as long as any residual contamination remains hazardous. The general assembly, therefore, declares that it is in the public interest to create environmental covenants and notices of environmental use restrictions because such covenants and restrictive notices are necessary for the protection of human health and the environment.

Source: L. 2001: Entire section added, p. 452, § 2, effective July 1. L. 2008: Entire section amended, p. 169, § 2, effective March 24.

25-15-318. Nature of environmental covenants. (1) An environmental covenant shall be perpetual unless by its terms it is limited to a specific duration, unless the department approves a request to terminate or modify it pursuant to section 25-15-319 (1) (h), or unless it is terminated by a court of competent jurisdiction. An environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed or through adverse possession, nor may an environmental covenant be extinguished, limited, or impaired by reason of the doctrines of abandonment, waiver, lack of enforcement, or other common law principles relating to covenants, or by the exercise of eminent domain.

(2) Notwithstanding any other provision of law, including any common-law requirement for privity of estate, an environmental covenant shall run with the land and shall bind the owner of the land, the owner's successors and assigns, and any person using the land. An environmental covenant shall not be deemed unenforceable on the basis of:

- (a) A lack of privity of contract;
 - (b) A lack of benefit to a particular parcel of land;
 - (c) Failure of the environmental covenant to expressly state that it runs with the land;
- or
- (d) Any other inconsistency with common-law requirements applicable to common-law covenants.

(3) The requirements and restrictions of an environmental covenant are requirements under this part 3 but may only be enforced as provided in section 25-15-322. The creation of an environmental covenant does not trigger the application of any other requirement of this part 3.

(4) The department shall not acquire any liability under state law by virtue of accepting an environmental covenant, nor shall any named beneficiary of an environmental covenant acquire any liability under state law by virtue of being such a beneficiary.

Source: L. 2001: Entire section added, p. 453, § 2, effective July 1. L. 2008: (2) amended, p. 170, § 3, effective March 24.

25-15-318.5. Nature of a notice of environmental use restrictions. (1) A notice of environmental use restrictions is an agency action based on the state's police power.

(2) A notice of environmental use restrictions is binding on current and subsequent owners of the affected land and any person using or possessing an interest in the land.

(3) The requirements and restrictions contained in a notice of environmental use restrictions are requirements under this part 3, but may be enforced only as provided in section 25-15-322. The creation of a notice of environmental use restrictions does not trigger the application of any other requirement of this part 3.

Source: L. 2008: Entire section added, p. 170, § 4, effective March 24.

25-15-319. Contents of environmental covenants and notices of environmental use restrictions. (1) Environmental covenants and notices of environmental use restrictions shall include provisions regarding:

(a) Duration and any conditions under which the environmental covenant or restrictive notice may be modified or terminated;

(b) Any environmental use restrictions relied on in the remediation decision for the environmental remediation project for the subject property;

(c) A requirement that the owner of the property subject to the environmental covenant or restrictive notice notify the department at least fifteen days in advance of any transfer of ownership of some or all of the real property subject to the environmental covenant or restrictive notice;

(d) A requirement that the owner of the property notify the department simultaneously with submitting any application to a local government for a building permit or change in land use;

(e) A requirement to allow the department right of entry at reasonable times with prior notice for the purpose of determining compliance with the terms of the environmental covenant or restrictive notice. Nothing in this section shall impair any other authority the department may otherwise have to enter and inspect property subject to the environmental covenant or restrictive notice.

(f) (I) For environmental covenants, inclusion of the following statement on the first page of the instrument creating the environmental covenant in fifteen-point, bold-faced type: "This property is subject to an environmental covenant held by the Colorado department of public health and environment pursuant to section 25-15-321, Colorado Revised Statutes."

(II) For restrictive notices, inclusion of the following statement on the first page of the restrictive notice in fifteen-point, bold-faced type: "This property is subject to a notice of environmental use restrictions imposed by the Colorado department of public health and environment pursuant to section 25-15-321.5, Colorado Revised Statutes."

(g) A requirement to incorporate, either in full or by reference, the environmental covenant or restrictive notice in any leases, licenses, or other instruments granting a right to use the property that may be affected by the environmental covenant or restrictive notice;

(h) Modification or termination of the environmental covenant or restrictive notice consistent with this subsection (1). The owner of land subject to an environmental covenant or restrictive notice may request that the department approve modification or termination of the covenant or restrictive notice. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The department shall review any submitted information and may request additional information. If the department determines that the proposal to modify or terminate the environmental covenant or restrictive notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of an environmental covenant or restrictive notice shall be effective unless it has been approved in writing by the department. Information to support a request for modification or termination may include one or more of the following:

(I) A proposal to perform additional remedial work;

(II) New information regarding the risks posed by the residual contamination;

(III) Information demonstrating that residual contamination has diminished;

(IV) Information demonstrating that an engineered feature or structure is no longer necessary;

(V) Information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and

- (VI) Other appropriate supporting information; and
(i) Such other subjects as may be appropriate.

Source: L. 2001: Entire section added, p. 453, § 2, effective July 1. L. 2008: IP(1), (1)(a), (1)(c), (1)(e), (1)(f), (1)(g), and IP(1)(h) amended, p. 170, § 5, effective March 24.

25-15-320. Environmental covenants - when required - waiver. (1) No environmental covenant shall be required for any environmental remediation project that results in residual contamination levels that have been determined by the relevant regulatory agency to be safe for all uses and that does not incorporate any engineered feature or structure or require any monitoring, maintenance, or operation.

(2) Except as specified in subsections (3) and (4) of this section, an environmental covenant under this part 3 shall be required for any environmental remediation project in which the relevant regulatory authority makes a remedial decision on or after July 1, 2001, that would result in either or both of the following:

(a) Residual contamination at levels that have been determined to be safe for one or more specific uses, but not all uses; or

(b) Incorporation of an engineered feature or structure that requires monitoring, maintenance, or operation or that will not function as intended if it is disturbed.

(3) The department may waive the requirement for an environmental covenant in the following circumstances:

(a) If the department determines that it is authorized under another statute or decision of the Colorado supreme court to implement and enforce environmental use restrictions against the present and subsequent owners of real property remediated pursuant to an environmental remediation project and implements environmental use restrictions under such statute or decision; or

(b) For a parcel of land involved in an environmental remediation project that is owned by any person who is not being required to remediate the contamination, and:

(I) The owner of any such parcel does not grant an environmental covenant under this section;

(II) The county, city and county, or municipality having jurisdiction over the affected land has enacted an ordinance or resolution imposing the relevant environmental use restrictions; and

(III) The county, city and county, or municipality having jurisdiction and the department have entered into an intergovernmental agreement for oversight and enforcement of the local ordinance or resolution pursuant to section 29-1-203, C.R.S. Such agreement shall be binding and mutually enforceable. The department shall have such authority as may be provided in the intergovernmental agreement to bring suit for injunctive relief to enforce any local ordinance or resolution described in this subsection (3), but only with respect to properties that are subject to the requirements of this section. Any intergovernmental agreement under this section shall require that, insofar as the local ordinance or resolution applies to properties that are subject to the requirements of this section, any amendments to the local ordinance or resolution shall incorporate such requirements as the department may recommend to ensure continued protection of human health and the environment.

(4) (a) When an environmental covenant is required under subsection (2) of this section, a restrictive notice may be substituted for the covenant as follows:

(I) An owner of a parcel of land involved in an environmental remediation project who is being required to remediate contamination may request that the department approve a proposed restrictive notice for such parcel or may request that the department issue a restrictive notice.

(II) The department may unilaterally issue a restrictive notice containing the provisions described in section 25-15-319 when an environmental covenant is required under subsection (2) of this section and the owner of the subject property fails to create a covenant or restrictive notice within thirty days after:

(A) The date of a remedial decision for an environmental remediation project that relies solely on environmental use restrictions to protect human health and the environment; or

(B) The completion of construction work for environmental remediation projects that require physical work.

(b) Prior to issuing a restrictive notice unilaterally under subparagraph (II) of paragraph (a) of this subsection (4), the department shall make a good faith attempt to reach agreement with the owner of the subject property regarding a consensual covenant or notice.

(c) The department may not issue a restrictive notice for a parcel of land involved in an environmental remediation project that is owned by a person who is not being required to remediate the contamination, unless such person consents in writing.

(5) The department may accept environmental covenants or issue restrictive notices in cases where such covenants or notices are not required, including approvals of voluntary cleanup plans or petitions for no action determinations under sections 25-16-306 and 25-16-307, but the owner of the remediated land nonetheless desires to create such a covenant or requests that the department issue such a notice. A covenant or notice created under this subsection (5) may be enforced as any other covenant or notice.

Source: L. 2001: Entire section added, p. 455, § 2, effective July 1. L. 2008: IP(2), (3)(b)(III), (4), and (5) amended, p. 171, § 6, effective March 24.

25-15-321. Creation, modification, and termination of an environmental covenant.

(1) An environmental covenant under this part 3 may be created only by the owner of the property through a written grant to the department by a deed or other instrument of conveyance specifically stating the intention of the grantor to create such a restriction under this article.

(2) The department is authorized to accept, refuse to accept, conditionally accept, hold, modify, and terminate environmental covenants.

(3) Instruments creating, modifying, or terminating an environmental covenant shall be recorded as any other instrument affecting title to and interests in real property.

(4) If the only uses allowed under the proposed environmental covenant are prohibited by existing ordinance or resolution, the department shall condition its acceptance of the covenant upon the applicant's demonstration that such applicant has obtained approval from the relevant authority that would allow for one or more of the proposed uses.

(5) Persons proposing to create, modify, or terminate an environmental covenant shall provide written notice of their intention to all persons holding an interest of record in the real property that will be subject to the environmental covenant, to all persons known to them to have an unrecorded interest in the property, and to all affected persons in possession of the property prior to such creation, modification, or termination, and shall provide the department with:

(a) A copy of the notice provided;

(b) A list of the persons to whom notice was given and the address or other location to which the notice was directed; and

(c) Such title information as the department may require.

(6) The department shall review and make a determination regarding all applications for creating, modifying, or terminating an environmental covenant within sixty days after receipt of such application, including the information described in subsection (5) of this section.

(7) Any determination by the department regarding a proposal to create, modify, or terminate an environmental covenant shall be subject to appeal in accordance with section 25-15-305.

Source: L. 2001: Entire section added, p. 456, § 2, effective July 1. L. 2008: (6) amended, p. 173, § 7, effective March 24.

25-15-321.5. Notice of environmental use restrictions - creation, modification, and termination. (1) A person who proposes to create, modify, or terminate a restrictive notice shall provide written notice of the person's intention to all persons holding an interest of record in the real property that will be subject to the restrictive notice, to all persons

known to the person to have an unrecorded interest in the property, and to all affected persons in possession of the property prior to such creation, modification, or termination and shall provide the department with:

- (a) A copy of the notice provided;
- (b) A list of the persons to whom notice was given and the address or other location to which the notice was directed; and
- (c) Such title information as the department may require.

(2) Before issuing a notice of environmental use restrictions unilaterally, the department shall provide a copy of the proposed restrictive notice to all persons holding an interest of record in the real property that will be subject to the restrictive notice, all persons known to the department to have an unrecorded interest in such property, and all affected persons in possession of such property, and shall offer such persons a minimum of thirty days to comment on the proposed restrictive notice, unless notice has already been provided pursuant to subsection (1) of this section. In determining whether to issue the restrictive notice unilaterally, the department shall consider any comments received.

(3) The department shall review and make a determination regarding all requests to create, modify, or terminate a restrictive notice within sixty days after receipt of such request, including the information described in subsection (1) of this section.

(4) Upon issuance or approval of the restrictive notice, the department shall record the restrictive notice in the clerk and recorder's office for the county or counties in which the affected land is situated. For approved restrictive notices, the department may allow the owner of the property to record the notice. No person may record a restrictive notice that does not have the department's written approval.

(5) The department may authorize any notice of environmental use restrictions created in accordance with this section to be replaced by an environmental covenant as described in section 25-15-319. The department may condition its authorization and approval of the termination of the notice of environmental use restrictions on the prior creation, department approval and acceptance, and effective recording of the environmental covenant.

(6) Modifications or terminations of restrictive notices shall be recorded as provided in subsection (4) of this section. No person may record a modification or termination of a restrictive notice that does not have the department's written approval.

(7) Any determination by the department to issue, approve, modify, or terminate a notice of environmental use restrictions shall be subject to appeal in accordance with section 25-15-305.

Source: L. 2008: Entire section added, p. 173, § 8, effective March 24.

25-15-322. Enforcement - remedies. (1) An environmental covenant or restrictive notice imposed at any environmental remediation project shall be enforceable as provided in this section, even if the environmental remediation project is not otherwise subject to this part 3.

(2) In the event of an actual or threatened failure to comply with an environmental covenant or restrictive notice, the department may issue an order under this section requiring compliance with the terms of the environmental covenant or restrictive notice and may request the attorney general to bring suit in district court to enforce the terms of the environmental covenant or restrictive notice, to enforce the order issued pursuant to this section, or to seek other appropriate injunctive relief. An administrative order issued under this subsection (2) shall be subject to appeal in accordance with section 25-15-308.

(3) If a court of competent jurisdiction determines that an environmental covenant or restrictive notice is void or otherwise unenforceable, the department may take such action as may be authorized by any other law.

(4) The grantor of an environmental covenant may file suit in district court to enjoin actual or threatened violations of the covenant. Any third-party beneficiary specifically named in an environmental covenant or restrictive notice may file suit in district court to enjoin actual or threatened violations of the covenant or restrictive notice. The person who requested creation of a restrictive notice may file suit in district court to enjoin actual or threatened violations of the restrictive notice.

(5) An affected local government, as defined in section 25-15-324, may file suit in district court to enjoin actual or threatened violations of any environmental covenant or restrictive notice that applies to land within its jurisdiction.

(6) (Deleted by amendment, L. 2008, p. 174, § 9, effective March 24, 2008.)

(7) A court of competent jurisdiction is authorized to issue orders requiring compliance with an environmental covenant or restrictive notice, to enjoin actual or threatened violations of environmental covenants or restrictive notices, and to grant such other injunctive relief as it may deem appropriate.

Source: L. 2001: Entire section added, p. 457, § 2, effective July 1. **L. 2008:** Entire section amended, p. 174, § 9, effective March 24.

25-15-323. Registry of environmental covenants and notices of environmental use restrictions. The department shall create and maintain a registry of all environmental covenants and notices of environmental use restrictions, including any modification or termination thereof.

Source: L. 2001: Entire section added, p. 458, § 2, effective July 1. **L. 2008:** Entire section amended, p. 175, § 10, effective March 24.

25-15-324. Coordination with affected local governments. (1) For purposes of this part 3, “affected local government” means every county, city and county, or municipality in which land subject to an environmental covenant or restrictive notice is located. The department shall provide each affected local government with a copy of every environmental covenant and restrictive notice within such local government’s jurisdiction and shall also provide a copy of any documents modifying or terminating such environmental covenant or restrictive notice.

(2) Whenever an affected local government receives an application affecting land use or development of land that is subject to an environmental covenant or restrictive notice and that may relate to or impact such covenant or restrictive notice, the affected local government shall notify the department of the application. The department shall evaluate whether the application is consistent with the environmental covenant or restrictive notice and shall notify the affected local government of the department’s determination in a timely fashion, considering the time frame for the local government’s review of the application.

Source: L. 2001: Entire section added, p. 458, § 2, effective July 1. **L. 2008:** Entire section amended, p. 175, § 11, effective March 24.

25-15-325. Other interests not impaired. Except as specifically provided in an environmental covenant or restrictive notice or pursuant to section 25-15-326, no transfer of a water right or any change of a point of diversion at any time, nor any interest in real property cognizable under statute, common law, or custom in effect in this state prior to July 1, 2001, nor any lease or sublease thereof at any time shall be impaired, invalidated, or in any way adversely affected by sections 25-15-317 to 25-15-326. All interests not transferred or conveyed in the environmental covenant shall remain in the grantor of the environmental covenant, including the right to engage in all uses of the lands affected by the environmental covenant that are not inconsistent with the environmental covenant and not expressly prohibited by the environmental covenant or by law.

Source: L. 2001: Entire section added, p. 458, § 2, effective July 1. **L. 2008:** Entire section amended, p. 175, § 12, effective March 24.

25-15-326. Validation. (1) Any document recorded by the owner of real property that restricts or requires certain uses or activities relating to such real property, including any restrictions on drilling for or pumping groundwater, to protect human health or the environment by limiting exposure to hazardous substances or by ensuring the integrity of

a response action, shall be considered valid and enforceable by its terms, regardless of whether such document is denominated an easement, covenant, deed restriction, or some other instrument.

(2) The provisions of subsection (1) of this section shall apply only to:

(a) Documents that were required as part of an environmental remediation decision that was rendered prior to July 1, 2001; and

(b) Documents recorded in connection with a voluntary cleanup plan approved under section 25-16-306 or petition for a no action determination approved under section 25-16-307.

(3) Nothing in this section shall impair the validity or enforceability of an environmental covenant created under section 25-15-321.

Source: L. 2001: Entire section added, p. 458, § 2, effective July 1.

25-15-327. Applicability. The requirements of section 25-15-320 apply to remedial decisions made on or after July 1, 2001, that would create one or more of the conditions described in section 25-15-320 (2).

Source: L. 2001: Entire section added, p. 459, § 2, effective July 1.

PART 4

INFECTIOUS WASTE

25-15-401. Legislative declaration. (1) The general assembly hereby finds that there is a need for more clarity and uniformity regarding the definition of infectious waste and in the requirements for the handling, treatment, and disposal thereof and that the absence of such clarity and the inappropriate designation of general waste as infectious waste will result in further substantial and unnecessary costs, disparity, and confusion in the management of infectious waste, ultimately affecting many business and residential operations and facilities, including the operations and quality of care rendered by health care providers.

(2) For the purposes set forth in subsection (1) of this section, the provisions of this part 4 are enacted as a matter of statewide concern. The provisions of this part 4 shall not apply to infectious waste which is also deemed to be hazardous waste pursuant to section 25-15-101 (6), nor shall infectious waste be deemed hazardous waste solely because it is characterized as infectious waste.

(3) The general assembly further finds that, because of the nature of infectious waste and the manner of its designation as provided in this part 4 and because this part 4 recommends portions of the guidelines of the United States environmental protection agency, no rules or regulations governing the generators of infectious waste are necessary for nor shall be applicable to the implementation of this part 4. This limitation shall not be construed to limit any other rule-making which is permitted under other authorizing statutes.

Source: L. 89: Entire part added, p. 1175, § 1, effective April 23. **L. 92:** (2) amended, p. 1261, § 25, effective August 1.

25-15-402. Infectious waste - definitions. (1) For the purposes of this part 4 and statewide applicability:

(a) "Infectious waste" means waste capable of producing an infectious disease and requires the consideration of certain factors necessary for induction of disease. These factors include:

(I) Presence of a pathogen of sufficient virulence;

(II) Dose;

(III) Portal of entry;

(IV) Resistance of host.

(b) For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in disease. All the factors specified in paragraph (a) of this subsection (1) must be present simultaneously for disease transmission to occur and must be present in a manner which constitutes a substantial risk of infection to humans.

(2) (a) Infectious waste shall be designated as such by the generator in accordance with this part 4. Such designation shall not be based solely upon any source or type of waste but shall be based upon the factors specified in subsection (1) of this section.

(b) It is recommended by the general assembly that the following categories of waste, as published in the "EPA Guide for Infectious Waste Management", May 1986, by the United States environmental protection agency, be designated as infectious:

(I) Isolation wastes from persons diagnosed as having a disease caused by an organism requiring, pursuant to recommendations by the centers for disease control in the 1988 publication "Biosafety in the Microbiological and Biomedical Laboratory" (second edition), biosafety level IV containment;

(II) Cultures and stocks of infectious agents and associated biologicals;

(III) Human blood and blood products and body fluids consisting of serum, plasma and other blood components, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid;

(IV) Human pathological/anatomical waste consisting of tissues and body parts that are discarded from surgical, obstetrical, autopsy, and laboratory procedures;

(V) Contaminated sharps;

(VI) Contaminated laboratory or research animal carcasses, body parts, and bedding.

Source: L. 89: Entire part added, p. 1176, § 1, effective April 23.

25-15-402.5. Disposition of fetal tissue. (1) As used in this section, unless the context otherwise requires, "fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(2) Nothing in this part 4 shall be deemed to prohibit the treatment of the remains from a fetal death pursuant to article 54 of title 12, C.R.S.

Source: L. 2001: Entire section added, p. 1032, § 1, effective June 5.

25-15-403. Generator management plan. (1) Each generator of infectious waste shall develop and implement an on-site infectious waste management plan which is appropriate for the particular facility. Such plan shall include:

(a) The designation of infectious waste generated by the facility;

(b) The handling of infectious waste which includes segregation, identification, packaging, storage, transportation, treatment techniques for each waste type, if applicable, and disposal;

(c) Contingency planning for spills or loss of containment;

(d) Staff training and the designation of a person responsible for implementation of the management plan;

(e) If on-site treatment is not available, the management plan shall provide for appropriate off-site treatment or disposal.

(2) The management plan, including the documentation provided in section 25-15-404 (2), shall be available for inspection to the hauler of any waste, to the disposal facility, and to the licensing or regulatory agency, if applicable, of the generator.

Source: L. 89: Entire part added, p. 1177, § 1, effective April 23.

25-15-404. On-site disinfection. (1) Any infectious waste which has been appropriately treated at the site of generation by the generator so as to render it noninfectious shall not thereafter be deemed infectious for purposes of handling or disposal.

(2) Appropriate treatment shall include any method of treatment which renders the infectious waste noninfectious. Use of a treatment method recommended by the United States environmental protection agency, as published in the "EPA Guide for Infectious Waste Management", May 1986, shall be conclusively presumed to be an appropriate treatment method. Any method of treatment shall include:

(a) Documentation by the generator that the method of treatment utilized for his operation is effective in rendering infectious waste noninfectious in such operation;

(b) Written standard operating procedures for the use of or implementation of the treatment method;

(c) Regular monitoring of the standard operating procedures and the effectiveness of such disinfective method.

(3) Upon request of the chairman of either the senate or house of representatives committees on health, environment, welfare, and institutions, or any successor committees, the department of public health and environment shall make a report to the senate and house of representatives committees on health, environment, welfare, and institutions, or any successor committees, on the current status, in view of scientific knowledge and technology, of the recommendations contained in the "EPA Guide for Infectious Waste Management", May 1986, and may make any additional recommendations it deems necessary.

Source: L. 89: Entire part added, p. 1177, § 1, effective April 23. L. 94: (3) amended, p. 2792, § 531, effective July 1. L. 2007: (3) amended, p. 2042, § 68, effective June 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-15-405. Appropriate treatment and disposal - nonliability. (1) A generator of infectious waste using an appropriate treatment method with appropriate documentation as provided in section 25-15-404 (2) and, in good faith, utilizing disposal facilities for such waste shall not be civilly or criminally liable for injuries or damages allegedly resulting from the infectious character of such waste; except that any generator who does not use an appropriate treatment method or any generator who fails to utilize disposal facilities in good faith shall not be relieved of civil or criminal liability.

(2) When any infectious waste has been appropriately treated, the generator shall either identify it as such or provide the hauler and disposal facility with a written statement that its general waste includes infectious waste which has been appropriately treated to render it noninfectious.

Source: L. 89: Entire part added, p. 1177, § 1, effective April 23.

25-15-406. Penalty. (1) (a) Any generator who knowingly removes, causes to be removed, or allows to be removed from the site of generation any infectious waste which he knew was not appropriately treated and not identified as untreated when such infectious waste was so removed from the site of generation shall be subject to the civil penalties set forth in paragraph (b) of this subsection (1).

(b) Upon conviction of a first offense, a generator shall be subject to a civil penalty of not more than three thousand dollars per day for each day of violation, not to exceed fifteen thousand dollars. Upon conviction of a second or subsequent offense which occurs within five years of a previous conviction, a generator shall be subject to a civil penalty of three thousand dollars per day for each day of violation, not to exceed twenty-five thousand dollars.

(2) (a) Any person who knowingly hauls untreated infectious waste and recklessly spills or loses such waste or knowingly disposes of such waste at an unlawful site or

disposal or treatment facility shall be subject to the civil penalties set forth in paragraph (b) of this subsection (2).

(b) Upon conviction of a first offense, a person shall be subject to a civil penalty of not more than three thousand dollars per day for each day of violation, not to exceed fifteen thousand dollars. Upon conviction of a second or subsequent offense which occurs within five years of a previous conviction, a person shall be subject to a civil penalty of three thousand dollars per day, not to exceed twenty-five thousand dollars.

(3) All civil penalties set forth in this section shall be determined by a court of competent jurisdiction upon action instituted by the department of public health and environment.

Source: L. 89: Entire part added, p. 1178, § 1, effective April 23. L. 94: (3) amended, p. 2792, § 532, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-15-407. Presumption of noninfectiousness. It is conclusively presumed that any infectious waste which has been appropriately treated and documented in section 25-15-404 (2) either on the site or off the site is not infectious after it has been so treated.

Source: L. 89: Entire part added, p. 1178, § 1, effective April 23.

PART 5

HAZARDOUS WASTE INCINERATOR OR PROCESSOR SITES

25-15-501. Short title. This part 5 shall be known and may be cited as the “State Hazardous Waste Incinerator or Processor Siting Act”.

Source: L. 92: Entire part added, p. 1264, § 1, effective July 1. L. 2002: Entire section amended, p. 87, § 1, effective March 22.

25-15-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) “Existing hazardous waste incinerator” means a hazardous waste incinerator that was in active operation, as authorized by applicable federal and state laws and regulations, on or before August 21, 1991.

(1.5) “Existing hazardous waste processor” means a hazardous waste processing facility that was in active operation, regardless of the amount of hazardous waste treated annually, as authorized by applicable federal and state laws and rules, on or before March 22, 2002.

(2) “Governing body having jurisdiction” means the board of county commissioners if a hazardous waste incinerator or processor site is located in any unincorporated portion of a county and means the governing body of the appropriate municipality if a hazardous waste incinerator or processor site is located within an incorporated area.

(3) (a) “Hazardous waste incinerator” means:

(I) Any hazardous waste incinerator as defined in regulations of the commission promulgated pursuant to section 25-15-302; or

(II) Any boiler or industrial furnace that burns hazardous waste, as defined in subpart B of part 260 of title 40, code of federal regulations, as from time to time amended, until such time as the commission, pursuant to section 25-15-302, promulgates a definition of boiler or industrial furnace, at which time such state definition shall operate in lieu of the foregoing federal definition. Such term shall include, but is not limited to, any cement kiln, lime kiln, aggregate kiln, or blast furnace.

(b) The term “hazardous waste incinerator” excludes any facility for incineration of a hazardous waste performing on-site remediation pursuant to the federal “Comprehensive Environmental Response, Compensation, and Liability Act”.

(4) (a) “Hazardous waste processing” means both of the following, except as provided in paragraph (b) of this subsection (4):

(I) Any treatment method, technique, or process designed to change the physical, chemical, or biological character or composition of acute hazardous waste, as defined in rules of the commission promulgated pursuant to part 3 of this article, in order to neutralize such waste, reduce the volume of such waste, or render such waste less hazardous, safer for transport, amenable to recovery or use, or amenable to storage; and

(II) Any acute hazardous waste processing, as defined in rules of the commission promulgated pursuant to section 25-15-302.

(b) “Hazardous waste processing” does not include:

(I) The treatment of less than one thousand kilograms of acute hazardous waste per year;

(II) The treatment, storage, or disposal of hazardous waste pursuant to a certificate of designation issued under, or otherwise regulated by, part 2 of this article;

(III) The processing of hazardous waste that is not listed as acute hazardous waste in rules of the commission promulgated pursuant to part 3 of this article;

(IV) The processing of any hazardous waste pursuant to any record of decision, consent decree, or administrative order authorized by or made pursuant to applicable federal or state laws and rules, as amended or revised, or any record of decision issued pursuant to a periodic revision of a record of decision that was made on or before March 22, 2002;

(V) The performance of on-site processing or treatment of hazardous waste associated with efforts to clean up contaminated soil, groundwater, or surface water pursuant to federal or state environmental laws;

(VI) The processing of hazardous waste incidental to commercial manufacturing;

(VII) The treatment, storage, management, or processing of solid waste pursuant to a certificate of designation issued under article 20 of title 30, C.R.S.;

(VIII) The conduct of any activities pursuant to an approved reclamation plan contained in a permit issued under, or otherwise regulated by, article 32 or 33 of title 34, C.R.S.; or

(IX) The conduct of any activities regulated under article 60 of title 34, C.R.S.

(5) “Hazardous waste processor” means a facility that engages in hazardous waste processing subject to the requirement for a part B permit or interim status under rules of the commission promulgated pursuant to section 25-15-302.

(6) “Hazardous waste processor site” means a location where hazardous waste is:

(a) Processed; or

(b) Generated or stored by the owner of a hazardous waste processor or by an affiliate or customer of a hazardous waste processor who produces hazardous waste.

Source: L. 92: Entire part added, p. 1264, § 1, effective July 1; (3)(a) and (3)(b) amended, p. 1261, § 26, effective August 1. L. 93: (3) amended, p. 267, § 1, effective April 3. L. 2002: (1.5), (4), (5), and (6) added and (2) amended, p. 87, § 2, effective March 22.

25-15-503. Certificate required - incineration or processing of hazardous waste prohibited - exceptions. (1) Any person desiring to own or operate a hazardous waste incinerator or processor shall first obtain a certificate of designation from the governing body having jurisdiction over the area in which such proposed hazardous waste incinerator or processor site is located.

(2) Hazardous waste incineration or processing by any person is prohibited except on or at a hazardous waste incinerator or processor site for which a certificate of designation has been obtained as provided in this part 5.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section and section 25-15-507, any existing hazardous waste incinerator or processor shall be an approved activity for which obtaining a certificate of designation under the provisions of this part 5 shall be unnecessary.

Source: L. 92: Entire part added, p. 1265, § 1, effective July 1. L. 2002: Entire section amended, p. 89, § 3, effective March 22.

25-15-504. Application for certificate - review by governing body. (1) Any person desiring to own or operate a hazardous waste incinerator or processor shall make application to the governing body having jurisdiction over the area in which such incinerator, incinerator site, processor, or processor site is or is proposed to be located for a certificate of designation.

(2) An application made pursuant to the provisions of subsection (1) of this section shall be accompanied by a fee to be established by the governing body having jurisdiction. Such fee shall be based on the reasonable anticipated costs that may be incurred by such governing body in the application review and approval process imposed by this article. Such fee shall be for the reasonable costs necessary in the application review and hearing process imposed by this article and shall not exceed one hundred thousand dollars. The local governing body having jurisdiction shall provide an accounting of the actual costs incurred by such body in the application review and hearing process and shall refund any payment in excess of such costs within ninety days after completion of the certification process.

(3) An application made pursuant to the provisions of subsection (1) of this section shall set forth the location of the incinerator or processor site and incinerator or processor, the types of hazardous waste to be accepted or rejected, the types of incinerator or processor by-product disposal, the method of supervision, the anticipated access routes in the county in which the site is located, and such other information as may be required by the governing body having jurisdiction.

(4) The clerk of the governing body having jurisdiction shall promptly notify the county commissioners and the governing body of any other county or municipality within twenty miles of a proposed hazardous waste incinerator or processor upon the filing of any application for a certificate of designation for such incinerator, processor, or site.

Source: L. 92: Entire part added, p. 1265, § 1, effective July 1. L. 2002: Entire section amended, p. 89, § 4, effective March 22.

25-15-505. Grounds for approval. (1) A governing body having jurisdiction shall approve or disapprove an application for a hazardous waste incinerator or processor site certificate of designation within one hundred eighty days after receiving such application. Such governing body having jurisdiction may approve an application for a certificate of designation upon a finding of all of the following factors:

(a) That the proposed hazardous waste incinerator or processor site would not pose a significant threat to the health or safety of the public or the environment, taking into consideration:

(I) The density of population in the areas neighboring such proposed site;

(II) The density of population in the areas that are adjacent to any portion of delivery roads to such proposed site and that lie within a fifty-mile radius of such proposed site; and

(III) The risk of accidents occurring during the transportation of waste to or at the proposed site;

(b) That the applicant has documented such applicant's financial ability to operate the proposed hazardous waste incinerator or processor;

(c) That the applicant, taking into account such applicant's prior performance records, if any, in the treatment, storage, disposal, processing, or incineration of hazardous waste, has documented sufficient reliability, expertise, and competency to operate and manage the proposed hazardous waste incinerator or processor; and

(d) That the proposed site conforms to the comprehensive land use plans and relevant land use regulations of the governing body having jurisdiction; except that, to the extent the commission has promulgated a rule imposing a condition on incinerator or processor operation pursuant to section 25-15-302, such comprehensive land use plans and rules shall not impose a condition more stringent than that contained in such state rule.

(2) In considering an application for a proposed hazardous waste incinerator or processor, the governing body having jurisdiction shall take into account the effect that such hazardous waste incinerator or processor will have on the surrounding property, taking into consideration the types of processing to be used, wind and climatic conditions, and both the quality and quantity of public and private infrastructure necessary to facilitate the construction and subsequent operation of such incinerator, processor, or site.

(3) (a) Prior to the issuance of a certificate of designation for a hazardous waste incinerator or processor, the application, comprehensive land use plans, any relevant zoning ordinances, and any other pertinent information shall be presented to the governing body having jurisdiction at a public hearing to be held after notice. Such notice shall contain the date, time, and location of the hearing and shall state that the matter to be considered at such hearing is the applicant's application for a hazardous waste incinerator or processor. Such notice shall be published in a newspaper having general circulation in the county or municipality in which the proposed hazardous waste incinerator or processor site is located at least ten days but no more than thirty days prior to the date of such hearing. Any such notice shall be printed prominently in at least ten-point, bold-faced type. Such notice shall be posted at the proposed hazardous waste incinerator or processor site for a period beginning at least thirty days before such public hearing and continuing through the date of such hearing.

(b) At any public hearing held pursuant to the provisions of paragraph (a) of this subsection (3), the governing body having jurisdiction shall hear or receive any written or oral testimony presented by the applicant and by governmental entities and residents or any interested party concerning such proposed incinerator or processor site. All such testimony shall be considered by the governing body having jurisdiction in making a decision concerning such application.

(4) The governing body having jurisdiction shall notify the department of the approval or disapproval of any application for a hazardous waste incinerator or processor certificate of designation within five days after such approval or disapproval.

(5) The governing body having jurisdiction over a hazardous waste incinerator or processor may enact local procedural rules in order to implement the provisions of this part 5. If a local procedural rule conflicts with any of the provisions of this article, the provisions of this article shall control.

Source: L. 92: Entire part added, p. 1266, § 1, effective July 1; (1)(d) amended, p. 1261, § 27, effective August 1. L. 2002: Entire section amended, p. 90, § 5, effective March 22.

25-15-506. Certificate. (1) A certificate of designation for a hazardous waste incinerator or processor site shall identify the general types of waste that shall be incinerated or processed and the types of waste that shall be rejected by such hazardous waste incinerator or processor site, subject to a more specific statement of waste to be rejected in the hazardous waste permit issued pursuant to part 3 of this article or the federal act.

(2) Such certificate of designation shall be displayed in a prominent place at the hazardous waste incinerator or processor site.

(3) Such certificate of designation may provide such conditions as may reasonably be necessary for the safe operation of such site. Such conditions may include but are not limited to the provision by the site owner or operator of additional fire protection, security, or trained personnel for monitoring, inspections, and incident responses.

(4) A certificate of designation issued pursuant to this part 5 shall be deemed to satisfy any requirement imposed by part 1 of article 20 of title 30, C.R.S., for a certificate of designation as a solid wastes disposal site and facility.

Source: L. 92: Entire part added, p. 1268, § 1, effective July 1. L. 2002: (1) and (2) amended, p. 91, § 6, effective March 22.

25-15-507. Substantial change in ownership, design, or operation. (1) Any substantial change in the ownership of a hazardous waste incinerator or processor, including but not limited to an assignment or a transfer of the certificate of designation, or in the design or operation of a hazardous waste incinerator, incinerator site, processor, or processor site shall be submitted to the governing body having jurisdiction for its approval. Approval by the governing body having jurisdiction shall be required before such a substantial change may become effective. For the purposes of this section, "substantial change" shall have such meaning as is provided for such term in the rules of the commission promulgated pursuant to section 25-15-510.

(2) Except as provided in subsection (3) of this section, approval of a substantial change under this section shall be made if the governing body having jurisdiction finds all of the factors required by the provisions of section 25-15-505 (1) and has considered the factor provided in section 25-15-505 (2).

(3) A substantial change involving only a change in ownership, including an assignment or transfer of the certificate of designation, shall be made if the governing body having jurisdiction finds the factors required in section 25-15-505 (1) (b) and (1) (c).

(4) An application for approval of a substantial change under this section shall be accompanied by a fee established by the governing body having jurisdiction, which fee shall not exceed ten thousand dollars and which fee may be refunded in whole or in part.

Source: L. 92: Entire part added, p. 1268, § 1, effective July 1; (1) amended, p. 1261, § 28, effective August 1. L. 2002: (1) amended, p. 92, § 7, effective March 22.

25-15-508. Revocation or suspension of certificate. (1) A governing body having jurisdiction that has granted a certificate of designation for a hazardous waste incinerator or processor may revoke or suspend such certificate of designation if such governing body having jurisdiction finds that:

(a) There was a material misrepresentation or misstatement of fact in the application for such certificate of designation;

(b) Such hazardous waste incinerator or processor is not being operated in substantial compliance with any term, condition, or limitation of its certificate of designation or any applicable rule adopted pursuant to this part 5; or

(c) The owner or operator of such hazardous waste incinerator or processor has failed to pay the annual fee to the governing body having jurisdiction as required by the provisions of section 25-15-515 (1).

(2) The revocation or suspension of a certificate of designation shall not relieve the owner or operator of the hazardous waste incinerator or processor from any legal liability.

Source: L. 92: Entire part added, p. 1269, § 1, effective July 1. L. 2002: Entire section amended, p. 92, § 8, effective March 22.

25-15-509. Judicial review. The award, denial, revocation, or suspension of a certificate of designation by the governing body having jurisdiction shall be subject to judicial review in the district court for the judicial district in which the hazardous waste incinerator or processor is located or is proposed to be located. Any request for such judicial review shall be made within thirty days after such award, denial, revocation, or suspension. If the court finds that the governing body having jurisdiction has acted reasonably and in accordance with the procedures and procedural limitations of this part 5, the court shall affirm the action of the governing body having jurisdiction. If the court finds that the action is arbitrary and capricious, not in accord with the procedures or procedural limitations of this part 5, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the action and shall remand the case to the governing body having jurisdiction for further proceedings as appropriate.

Source: L. 92: Entire part added, p. 1269, § 1, effective July 1. L. 2002: Entire section amended, p. 92, § 9, effective March 22.

25-15-510. Rules - limitations. (1) The commission may promulgate rules establishing what constitutes a substantial change in ownership, design, or operation of a hazardous waste incinerator or processor under the provisions of section 25-15-507.

(2) The regulations promulgated by the commission pursuant to this section shall be based upon generally accepted scientific data.

Source: L. 92: Entire part added, p. 1269, § 1, effective July 1; entire section amended, p. 1262, § 29, effective August 1. L. 2002: (1) amended, p. 93, § 10, effective March 22.

25-15-511. List of hazardous wastes - final inventory. The operator of any hazardous waste incinerator or processor site shall maintain a list of the hazardous wastes accepted for incineration or processing at such site. Such list shall indicate the types of hazardous waste accepted for incineration or processing at such hazardous waste incinerator or processor and the location of such waste. A copy of such list shall be provided to any person upon request and upon payment of a reasonable charge for the costs of the reproduction of such list. Upon the closure of a hazardous waste incinerator or processor site, a final inventory of hazardous wastes shall be prepared and filed with the department. The department shall make any such final inventory available for public inspection and copying at reasonable cost.

Source: L. 92: Entire part added, p. 1270, § 1, effective July 1. L. 2002: Entire section amended, p. 93, § 11, effective March 22.

25-15-512. Inspections of hazardous waste incinerator or processor sites. (1) The department shall conduct inspections of each hazardous waste incinerator or processor site at intervals determined by rules of the commission based upon the volume and toxicity of the wastes being received at such site. Such inspections shall include, but are not limited to, inspections conducted during the reception of hazardous wastes, during the incineration of hazardous wastes, during the processing of hazardous wastes, and during the shipment of incineration or processing by-products. The department shall be permitted reasonable access to all operations at any hazardous waste incinerator or processor site for the purpose of monitoring and inspecting such operations. Unless an emergency exists at such site, or unless the department has reason to believe that unlawful activity is being conducted or will be conducted at such site, the department shall provide prior notification of the inspection and shall conduct such inspection during normal business hours.

(2) The governing body having jurisdiction over any hazardous waste incinerator or processor site or the governing body of any other county or municipality having jurisdiction over such site pursuant to an intergovernmental agreement shall have physical and structural access to such site during the operating hours of such site for the purpose of periodic inspections by the agents of such governing body.

Source: L. 92: Entire part added, p. 1270, § 1, effective July 1. L. 93: (1) amended, p. 1787, § 70, effective June 6. L. 2002: Entire section amended, p. 93, § 12, effective March 22.

25-15-513. Violation - criminal penalty. Any person who violates any provision of this part 5 commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 92: Entire part added, p. 1270, § 1, effective July 1. L. 2002: Entire section amended, p. 1538, § 271, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

25-15-514. Violation - civil penalty - reimbursement of costs. (1) Any person who violates any provision of this part 5 shall be subject to a civil penalty of not more than ten thousand dollars per day of violation. Such penalty shall be determined and collected by the district court for the judicial district in which such violation occurs upon action instituted by the department or the governing body having jurisdiction. In determining the amount of any such penalty, the court shall take into account the seriousness of the violation, whether the violation was willful or due to mistake, the economic impact of the penalty on the violator, and any other relevant factors. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit fifty percent of such moneys to the general fund and shall transmit the remaining fifty percent of such moneys to the governing body having jurisdiction.

(2) If the violation of the provisions of this part 5 for which a penalty has been assessed and paid into the general fund pursuant to the provisions of subsection (1) of this section results in a county, municipality, or other local government incurring costs to remove, contain, or otherwise mitigate the effects of the hazardous waste which was involved in the violation, such local government shall be entitled to reimbursement for such costs. A local government requesting reimbursement of such costs shall file a claim for reimbursement with the state treasurer. The state treasurer shall make reimbursements out of any funds attributable to the civil penalty imposed for such violation pursuant to the provisions of subsection (1) of this section.

Source: L. 92: Entire part added, p. 1271, § 1, effective July 1.

25-15-515. Annual fees - commercial hazardous waste incinerator or processor funds. (1) (a) The owner or operator of any hazardous waste incinerator or processor for which a certificate of designation has been issued pursuant to this article shall be required, contingent upon the issuance of federal or state permits, to pay the governing body having jurisdiction an annual fee for the purpose of offsetting the estimated direct costs necessitated by such hazardous waste incinerator or processor. The governing body having jurisdiction shall provide the owner or operator of such hazardous waste incinerator or processor with an accounting of the basis of such fees. Such costs may include but are not limited to the improvement and maintenance of roads and bridges; fire protection; law enforcement; monitoring by county or municipal health officials pursuant to the requirements of state law, rules, and the certificate of designation; and emergency preparation and response. The amount of such fee shall be no more than the greater of two percent of the annual estimated operating cost of or the annual estimated gross revenue received for the incineration or processing of hazardous wastes by the hazardous waste incinerator or processor. The governing body having jurisdiction may provide reimbursement out of such fee moneys to other governmental units for the reasonable direct costs to such governmental units of increased services necessitated by such hazardous waste incinerator or processor.

(b) In lieu of the annual fees imposed under paragraph (a) of this subsection (1), the governing body may request that the owner or operator of any hazardous waste incinerator or processor site make a lump-sum payment covering the total amount of fees imposed under this section. Such lump sum payment shall not be made unless the governing body having jurisdiction and the owner or operator of a hazardous waste incinerator or processor agree to such payment.

(2) In the event that the owner or operator of a hazardous waste incinerator or processor site fails to pay the annual fee imposed pursuant to the provisions of subsection (1) of this section, the governing body having jurisdiction may suspend the certificate of designation for such site until such annual fee has been paid.

(3) Any governing body having jurisdiction is authorized to establish a hazardous waste incinerator or processor fund. All fees collected pursuant to subsection (1) of this section shall be deposited to the credit of said fund and appropriated by the governing body for the purposes for which such fees are collected.

Source: L. 92: Entire part added, p. 1271, § 1, effective July 1. **L. 2002:** Entire section amended, p. 94, § 13, effective March 22. **L. 2004:** (1)(b) amended, p. 1202, § 67, effective August 4.

ARTICLE 16**Hazardous Waste Sites**

Editor's note: (1) This article was repealed in 1983 and was subsequently recreated and reenacted in 1984, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-16-105 provided for the repeal of this article, effective July 1, 1983. (See L. 82, p. 425.)

PART 1**CLEAN-UP**

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PART 2**RECOVERIES PURSUANT TO
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PART 3**VOLUNTARY CLEAN-UP AND
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- 25-16-301. Short title.
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- 25-16-307. No action determinations.
- 25-16-308. Environmental assessment - requirements.
- 25-16-309. Coordination with other laws.
- 25-16-310. Enforceability of voluntary clean-up plans and no action determinations.
- 25-16-311. Repeal of part. (Repealed)

PART 1**CLEAN-UP**

Law reviews: For comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990).

25-16-101. Legislative declaration. (1) The general assembly hereby finds and declares that the existence of facilities subject to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", including old radium mill residue deposits, poses a potential and significant health hazard. This article is therefore enacted to protect the public health, safety, and welfare by cooperating with the federal government in providing for the disposal and control of such wastes in a safe and environmentally sound manner to prevent or minimize other environmental impacts from such wastes and by providing for the creation of a hazardous substance response fund to provide the necessary state's share of the response costs of cleaning up such sites.

(2) The general assembly also finds and declares that in order to further the purposes of section 30-20-100.5, C.R.S., it is necessary for a portion of the solid waste user fee imposed under section 25-16-104.5 to be used for the purposes specified in part 1 of article 20 of title 30, C.R.S.

Source: **L. 84:** Entire article RC&RE, p. 785, § 1, effective April 12. **L. 85:** Entire section amended, p. 915, § 1, effective July 1. **L. 98:** Entire section amended, p. 879, § 1, effective July 1.

25-16-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Attended solid waste disposal site" means a site established pursuant to part 1 of article 20 of title 30, C.R.S., at which an attendant is present during the normal hours of operation on or after December 31, 1984. This term shall not include any site which is deemed to hold a certificate of designation, but for which such certificate is not required, pursuant to section 30-20-102 (4), C.R.S.; nor shall it include any site used by a person for disposal of solid waste on his own property pursuant to section 30-20-102 (3), C.R.S.

(1.5) "Commission" means the solid and hazardous waste commission created in section 25-15-302.

(2) "Department" means the department of public health and environment.

(3) "Federal act" means the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as from time to time amended.

(4) "Hazardous substance" has the same meaning as that ascribed to it in the federal act.

(5) "National contingency plan" has the same meaning as that ascribed to it in the federal act.

(6) "Remedial action" has the same meaning as that ascribed to it in the federal act.

(7) "Removal" has the same meaning as that ascribed to it in the federal act.

(8) "Response" has the same meaning as that ascribed to it in the federal act.

(9) "Responsible party" has the same meaning as that ascribed to it in the federal act.

(10) "Solid waste" has the same meaning as that ascribed to it in section 30-20-101 (6), C.R.S.

(11) "Waste producer" means any legal person who contracts for the transportation of waste ultimately destined for an attended solid waste disposal site.

Source: **L. 84:** Entire article RC&RE, p. 785, § 1, effective April 12. **L. 85:** Entire section R&RE, p. 915, § 2, effective July 1. **L. 94:** (2) amended, p. 2792, § 533, effective July 1. **L. 2010:** (1.5) added, (HB 10-1329), ch. 358, p. 1702, § 1, effective June 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16-103. Authorization to participate - implementation. (1) The general assembly hereby authorizes the department of public health and environment to participate in federal implementation of the federal act and, for such purpose, the department has the authority to participate in the selection and performance of responses and remedial actions and to enter into cooperative agreements with the federal government providing for remedial actions and responses. The department with the consent of the governor has the authority to decline to participate with the federal government on remedial actions which the department determines are not in the interest of the state. Any cooperative agreements entered into under this article may provide assurances acceptable to the federal government that:

(a) The state will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions;

(b) The state will assure the availability of an acceptable hazardous waste disposal facility for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances.

(2) Any state matching payment required by a cooperative agreement entered into pursuant to this section must be approved by the general assembly acting by bill.

Source: **L. 84:** Entire article RC&RE, p. 785, § 1, effective April 12. **L. 88:** IP(1) amended, p. 1050, § 1, effective April 4. **L. 94:** IP(1) amended, p. 2792, § 534, effective July 1.

Cross references: (1) For the approval by the general assembly of the state matching payment as required by subsection (2) of this section, see L. 85, p. 919, § 7.

(2) For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16-104. Financial participation. Subject to the provisions of section 25-16-103, the general assembly accepts the provisions of section 104 (c) (3) (C) of the federal act requiring the state to pay or assure payment of the necessary state share of response costs, as appropriated by the general assembly, including all future operation and maintenance costs. Any remedial action requiring state matching payment shall be explicitly approved by the general assembly acting by bill and shall be subject to appropriation.

Source: L. 84: Entire article RC&RE, p. 785, § 1, effective April 12. L. 88: Entire section amended, p. 1050, § 2, effective April 4.

Cross references: For the approval by the general assembly of the state matching payment as required by this section, see L. 85, p. 919, § 7.

25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal.

(1) Repealed.

(1.5) The general assembly hereby finds and declares that, for purposes of this section, a user fee is intended to be a charge imposed upon waste producers in addition to any charge specified by contract. Any such user fee imposed by this section shall be itemized and depicted on any bill, receipt, or other mechanism used for solid waste management services rendered to any person disposing of solid waste and shall be in addition to the costs of any other solid waste management services provided.

(1.7) (a) On or after July 1, 2010, the commission shall promulgate rules that establish a solid waste user fee upon each person disposing of solid waste at an attended solid waste disposal site. The operator of the site at the time of disposal shall collect the fee from waste producers or other persons disposing of solid waste. The effective date and amount of the fee shall be set by rule of the commission, and the amount shall be sufficient to offset:

(I) The department's direct and indirect costs associated with implementation of the solid waste management program under section 30-20-101.5, C.R.S.;

(II) The department's direct and indirect costs for the implementation of its responsibilities under the federal act, as described in this part 1, and to provide matching funds and cover future maintenance costs pursuant to section 25-16-103; and

(III) The anticipated payments to the department of law, pursuant to subparagraph (II) of paragraph (b) of this subsection (1.7), for the direct and indirect costs of the department of law for the implementation of its responsibilities under the federal act, as described in this part 1, which costs are distinct from those described in subparagraph (II) of this paragraph (a).

(b) (I) The portion of the fee collected for the costs described in subparagraph (I) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the solid waste management fund created in section 30-20-118, C.R.S.

(II) The portions of the fee imposed under this subsection (1.7) that are collected for the costs described in subparagraphs (II) and (III) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the hazardous substance response fund created in section 25-16-104.6. The department may expend moneys from the portion of the fee collected under subparagraph (III) of paragraph (a) of this subsection (1.7) to compensate the department of law for all or a portion of the expenses incurred for services rendered under the federal act, as billed to the department by the department of law.

(c) The fee established by the commission under this subsection (1.7) shall not exceed fifty cents per cubic yard of solid waste, of which no more than three and one-half cents shall pay for the costs described in subparagraph (III) of paragraph (a) of this subsection (1.7).

(d) The department shall give the operators of attended solid waste disposal sites written notice of changes to the solid waste user fees no later than ninety days before the effective date of the changes. Failure to provide the notice required by this paragraph (d) shall invalidate the rules that changed the fees.

(2) (a) Repealed.

(a.5) Notwithstanding any provision of law to the contrary, one hundred percent of the moneys collected pursuant to subparagraph (II) of paragraph (a) of subsection (1.7) of this section from persons disposing of solid waste at an attended solid waste disposal site where a local government solid waste disposal fee is imposed to fund hazardous substance response activities at sites designated on the national priority list pursuant to the federal act shall be transmitted to the owner of the solid waste disposal site to the extent that the moneys are used to fund the response activities at the sites on the national priority list. The balance of any moneys described under this paragraph (a.5) that are not used to fund such response activities shall be credited to the hazardous substance response fund created in section 25-16-104.6.

(b) At the end of each fiscal year, the state treasurer shall transfer any moneys in the solid waste management fund created in section 30-20-118, C.R.S., that exceed sixteen and one-half percent of the moneys expended from such fund during the fiscal year to the hazardous substance response fund created in section 25-16-104.6.

(3) to (3.7) Repealed.

(3.9) (a) Subject to the provisions of subsection (1.5) of this section, in addition to any other user fee imposed by this section, on or after July 1, 2007, there is hereby imposed a user fee to fund the recycling resources economic opportunity program created in section 25-16.5-106.7. Such fee shall be collected by the operator of an attended solid waste disposal site at the time of disposal and shall be imposed and passed through to waste producers and other persons disposing of waste at the following rate or at an equivalent rate established by the department:

(I) Two cents per load transported by a motor vehicle that is commonly used for the noncommercial transport of persons over public highways;

(II) Four cents per load transported by a truck, as defined in section 42-1-102 (108), C.R.S., that is commonly used for the noncommercial transport of persons and property over the public highways; and

(III) Seven cents per cubic yard per load transported by any commercial vehicle or other vehicle not included in the vehicles described in subparagraph (I) or (II) of this paragraph (a).

(b) Any user fee collected by the operator of a solid waste disposal site or facility pursuant to paragraph (a) of this subsection (3.9) shall be transmitted by the last day of the month following the end of each calendar quarter to the state treasurer, who shall credit one hundred percent of such moneys to the recycling resources economic opportunity fund created in section 25-16.5-106.5, to fund the recycling resources economic opportunity program pursuant to section 25-16.5-106.7.

(4) The department shall credit an amount equal to two and one-half percent of the money collected as fees by a solid waste disposal site or facility in order to defray the costs of such collection.

(5) Any operator who fails to collect or to transmit, within thirty days of the day specified in subsection (2) of this section, the fee imposed pursuant to this section is liable for payment of a civil penalty of ten percent of the total amount of fee money uncollected or untransmitted. Collection of such penalty and fee shall be in the manner provided for the collection and enforcement of taxes pursuant to article 21 of title 39, C.R.S.

(6) This section is repealed, effective July 1, 2017.

(7) Repealed.

Source: L. 85: Entire section added, p. 916, § 3, effective July 1. L. 88: (6) added, p. 1051, § 3, effective April 4. L. 90: (1)(a) to (1)(c) and (4) amended, p. 1347, § 2, effective January 1, 1991. L. 93: (6) amended, p. 443, § 1, effective April 19. L. 94: (1)(b) amended, p. 2564, § 73, effective January 1, 1995. L. 98: (1), (2), and (6) amended, p. 879, § 2, effective July 1. L. 2001: (1), (2), and (3) amended, p. 1098, § 1, effective July 1.

L. 2003: (3.5) added, p. 1515, § 2, effective May 1; (6) amended, p. 1811, § 1, effective May 21. **L. 2007:** IP(1) and (6) amended and (1.5), (3.7), and (3.9) added, p. 1133, § 3, effective July 1. **L. 2009:** (3.7)(a)(II) and (3.9)(a)(II) amended, (SB 09-292), ch. 369, p. 1971, § 89, effective August 5. **L. 2010:** (1.7), (2)(a.5), and (7) added and (6) amended, (HB 10-1329), ch. 358, p. 1702, 1703, §§ 2, 3, effective June 7; (6) amended, (HB 10-1052), ch. 84, p. 281, § 2, effective July 1.

Editor's note: (1) Subsection (3.5)(c)(I) provided for the repeal of subsection (3.5), effective July 1, 2006. (See L. 2003, p. 1515.) Subsection (7) provided for the repeal of subsections (1), (2)(a), (3), (3.7), and (7), effective July 1, 2011. (See L. 2010, pp. 1702, 1703.)

(2) Amendments to subsection (6) by House Bill 10-1052 and House Bill 10-1329 were harmonized.

Cross references: For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 205, Session Laws of Colorado 1990. For the legislative declaration contained in the 2007 act amending the introductory portion to subsection (1) and subsection (6) and enacting subsections (1.5), (3.7), and (3.9), see section 2 of chapter 278, Session Laws of Colorado 2007. For the legislative declaration in the 2010 act amending subsection (6), see section 1 of chapter 84, Session Laws of Colorado 2010.

25-16-104.6. Fund established - administration - revenue sources - use.

(1) (a) There is hereby established in the state treasury the hazardous substance response fund. The fund shall be composed of any moneys that the general assembly may choose to appropriate from the general fund and any moneys derived from the fee imposed pursuant to section 25-16-104.5 and any interest derived therefrom; any moneys recovered from responsible parties pursuant to the federal act that are not generated by the state litigating as trustee for natural resources pursuant to section 25-16-104.7; any moneys recovered through litigation by the state pursuant to the federal act that are designated for future response cost; and any other moneys derived from public or private sources that may be credited to the fund. Moneys in the fund shall be annually appropriated by the general assembly, subject to the provisions of section 25-16-104, shall remain available for the purposes of this article, and shall not revert or be transferred to the general fund of the state at the end of any fiscal year. If the fund balance exceeds ten million dollars in any state fiscal year and the fund balance is not projected to fall below ten million dollars within twenty-four months, the department shall evaluate the need to reduce fees to bring the balance of the fund below ten million dollars, and shall present the evaluation to the commission.

(b) (I) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 27, 2002, the state treasurer shall deduct thirty million dollars from the hazardous substance response fund and transfer such sum to the general fund.

(II) In order to restore the amount transferred from the hazardous substance response fund pursuant to subparagraph (I) of this paragraph (b), moneys from the general fund shall be transferred to the hazardous substance response fund in accordance with section 24-75-217, C.R.S.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on April 20, 2009, the state treasurer shall deduct seventeen million four hundred sixty-eight thousand five hundred seventeen dollars from the hazardous substance response fund and transfer such sum to the general fund.

(d) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on June 1, 2009, the state treasurer shall deduct twelve million five hundred thousand dollars from the hazardous substance response fund and transfer such sum to the general fund.

(e) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on July 1, 2009, the state treasurer shall deduct two million five hundred thousand dollars from the hazardous substance response fund and transfer such sum to the general fund.

(f) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, for the state fiscal year commencing July 1, 2010, the state treasurer shall make

a one-time transfer from the hazardous substance response fund to the solid waste management fund created in section 30-20-118, C.R.S., of up to four hundred thousand dollars, to be used in connection with the department's solid waste management activities.

(2) The general assembly may appropriate up to two and one-half percent of the moneys in the hazardous substance response fund for the department's costs of administration and its costs of collection of fees or civil penalties pursuant to section 25-16-104.5. In addition, the department is authorized, subject to appropriation by the general assembly, to use the moneys in the fund for the following purposes:

(a) To maintain an inventory of all sites and facilities at which hazardous substances have been disposed of in the state;

(b) To supply such state matching funds as may be needed to perform response actions at any site where action is being taken pursuant to the federal act;

(c) To provide any post-cleanup monitoring and maintenance required pursuant to the federal act;

(d) To provide for future response costs in connection with state activities at natural resource damage sites;

(e) To provide such state matching funds as may be needed to perform remediation activities at sites subject to remediation under the federal "Water Pollution Control Act", 33 U.S.C. sec. 1251 et seq., where such remediation activities would keep the site from being added to the national priorities list established pursuant to the federal act;

(f) To remediate sites:

(I) That do not have a responsible party that will perform a remediation;

(II) That have been determined to present a threat to human health or the environment; and

(III) Where the remediation will allow the redevelopment of the property for the public good;

(g) Repealed.

(2.5) Moneys in the hazardous substance response fund created pursuant to this section may be appropriated as follows:

(a) To finance any litigation arising under this part 1 or the federal act on behalf of the state;

(b) For the enforcement of court-approved remedies under the federal act out of moneys in the hazardous substance response fund received for future response costs, excluding fines, under the federal act.

(2.7) (Deleted by amendment, L. 2007, p. 1503, § 1, effective May 31, 2007.)

(3) Before the department supplies hazardous substance response fund money as state matching funds for a particular site pursuant to paragraph (b) of subsection (2) of this section, the executive director of the department shall first make a written determination that no potentially responsible party or parties have offered to implement a proper removal and remedial action plan at such site at their own expense, consistent with the national contingency plan established pursuant to the federal act.

(4) It is the intent of the general assembly that state matching moneys be appropriated solely from the hazardous substance response fund.

Source: **L. 85:** Entire section added, p. 917, § 3, effective July 1. **L. 88:** IP(2), (2)(b), and (3) amended and (4) added, p. 1051, § 4, effective April 4. **L. 90:** (1), IP(2), and (2)(d) amended and (2.5) and (2.7) added, p. 1349, § 1, effective July 1; IP(2) amended and (2.5) added, p. 1348, § 3, effective January 1, 1991. **L. 96:** (2.7) amended, p. 855, § 1, effective May 23. **L. 2000:** (2)(b) amended and (2)(e) and (2)(f) added, p. 892, § 3, effective January 1, 2001. **L. 2002:** (1) amended, p. 156, § 15, effective March 27. **L. 2003:** (2.5) amended, p. 1515, § 1, effective May 1. **L. 2007:** IP(2.5), (2.5)(a), and (2.7) amended, p. 1503, § 1, effective May 31. **L. 2008:** (2)(g) added, p. 1634, § 2, effective May 29; (1)(a) amended, p. 1907, § 104, effective August 5. **L. 2009:** (1)(c) added, (SB 09-208), ch. 149, p. 625, § 24, effective April 20; (1)(d) and (1)(e) added, (SB 09-279), ch. 367, p. 1929, § 16, effective June 1. **L. 2010:** (1)(a) amended and (1)(f) added, (HB 10-1329), ch. 358, p. 1704, § 4, effective June 7.

Editor's note: (1) Amendments to the introductory portion to subsection (2) by Senate Bill 90-176 and House Bill 90-1205 were harmonized.

(2) Subsection (2)(g)(IV) provided for the repeal of subsection (2)(g), effective July 1, 2009. (See L. 2008, p. 1634.)

Cross references: For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 205, Session Laws of Colorado 1990. For the legislative declaration contained in the 2008 act enacting subsection (2)(g), see section 1 of chapter 347, Session Laws of Colorado 2008.

25-16-104.7. Natural resource damage recoveries - fund created - repeal. (1) Except as provided in subsection (3) of this section, any moneys recovered through litigation by the state acting as trustee of natural resources pursuant to the federal act, and any interest derived therefrom, shall be credited to the natural resource damage recovery fund, which fund is hereby created. Moneys in the fund shall be subject to annual appropriation by the general assembly and shall be used only for purposes authorized by the federal act, including the restoration, replacement, or acquisition of the equivalent of natural resources that have been injured, destroyed, or lost as a result of a release of a hazardous substance. In addition, the appropriation and use of moneys in the natural resource damage recovery fund shall be consistent with any judicial order, decree, or judgment governing the use of any particular recovery credited to the fund.

(2) Repealed.

(3) To the extent authorized by law, and consistent with a final judicial order or decree in any litigation by the state acting as trustee of natural resources pursuant to the federal act, any recovery of natural resource damage assessment or other costs, including litigation costs and fees, shall be credited to the fund from which such costs were originally paid.

(4) (a) Notwithstanding any other provision of law and except as provided in paragraph (b) of this subsection (4), on June 30, 2010, and each June 30 thereafter, the state treasurer shall:

(I) Deduct an amount equal to sixty-two and three-tenths percent of the interest earned on those moneys in the natural resource damage recovery fund that were received in the settlement reached in the case denominated *State of Colorado v. United States of America, Shell Oil Company, et al.*, Case No. 83 CV 2386, in the United States district court for the district of Colorado, and shall transfer such amount to the hazardous substance response fund created in section 25-16-104.6; and

(II) Deduct an amount equal to thirty-seven and seven-tenths percent of the interest earned on those moneys in the natural resource damage recovery fund that were received in the settlement reached in the case denominated *State of Colorado v. United States of America, Shell Oil Company, et al.*, Case No. 83 CV 2386, in the United States district court for the district of Colorado, and shall transfer such amount to the general fund.

(b) The state treasurer shall continue to make the transfer specified in subparagraph (I) of paragraph (a) of this subsection (4) until the total amount transferred to the hazardous substance response fund equals one million six hundred fifty-seven thousand five hundred seventy-seven dollars, at which time the state treasurer shall cease the transfers. The state treasurer shall continue to make the transfer specified in subparagraph (II) of paragraph (a) of this subsection (4) until the total amount transferred to the general fund reaches one million four thousand eight hundred seventy-three dollars, at which time the state treasurer shall cease the transfers.

(c) This subsection (4) is repealed, effective July 1, 2017.

Source: L. 85: Entire section added, p. 918, § 3, effective July 1. L. 90: Entire section R&RE, p. 1350, § 2, effective July 1. L. 2005: (2) repealed, p. 287, § 33, effective August 8. L. 2007: (1) amended and (3) added, p. 325, § 1, effective April 2; (3) amended, p. 1504, § 2, effective May 31. L. 2010: (4) added, (HB 10-1325), ch. 30, p. 110, § 1, effective March 18.

25-16-104.8. Report required. (Repealed)

Source: **L. 90:** Entire section added, p. 1350, § 3, effective July 1. **L. 2000:** Entire section repealed, p. 462, § 6, effective August 2.

25-16-105. Repeal of part - repeal of various sections. (Repealed)

Source: **L. 84:** Entire article RC&RE, p. 785, § 1, effective April 12. **L. 85:** Entire section amended, p. 921, § 3, effective February 19. **L. 88:** Entire section repealed, p. 1052, § 6, effective April 4.

PART 2**RECOVERIES PURSUANT TO FEDERAL LAW - DISPOSITION****25-16-201. CERCLA recovery fund - creation - repeal of subsection. (Repealed)**

Source: **L. 85:** Entire part added, p. 921, § 2, effective February 19; (1)(b) added by revision, p. 918, § 5; (1) amended, p. 918, § 4, effective July 1. **L. 88:** (1)(a) amended, p. 1051, § 5, effective April 4. **L. 90:** (2) repealed, p. 1351, § 4, effective July 1.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective January 1, 1990. (See L. 85, p. 918.)

PART 3**VOLUNTARY CLEAN-UP AND REDEVELOPMENT ACT**

25-16-301. Short title. This part 3 shall be known and may be cited as the "Voluntary Clean-up and Redevelopment Act".

Source: **L. 94:** Entire part added, p. 1948, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Brownfield Developments and Environmental Risk Assessments," see 25 Colo. Law. 53 (April 1996). For

article, "Remediation of Brownfields Under the Colorado Voluntary Cleanup and Redevelopment Act", see 78 Den. U. L. Rev. 1 (2000).

25-16-302. Legislative declaration. (1) The general assembly hereby declares that the purpose of this part 3 is to provide for the protection of human health and the environment and to foster the transfer, redevelopment, and reuse of facilities and sites that have been previously contaminated with hazardous substances or petroleum products. The general assembly further declares that this program is intended to permit and encourage voluntary clean-ups of contaminated property by providing persons interested in redeveloping existing industrial sites with a method of determining what the clean-up responsibilities will be when they plan the reuse of existing sites. It is the further intent of the general assembly that this voluntary program operate in such a way as to:

- (a) Eliminate impediments to the sale or redevelopment of previously contaminated property;
- (b) Encourage and facilitate prompt clean-up activities; and
- (c) Minimize administrative processes and costs.

Source: **L. 94:** Entire part added, p. 1948, § 1, effective July 1.

25-16-303. Voluntary clean-up and redevelopment program - general provisions - fees - access to property during reviews. (1) The program established in this part 3 shall be voluntary and may be initiated by:

(a) The submission to the department of an application for approval of a voluntary clean-up plan pursuant to section 25-16-304 for properties where remediation may be necessary to protect human health and the environment in light of the current or proposed use of the property; or

(b) The submission to the department of a no action petition pursuant to section 25-16-307 for properties where remediation is complete or not necessary to protect human health and the environment in light of the current or proposed use of the property.

(2) No person, financial institution, or other entity financing a commercial real estate transaction shall require a purchaser to participate in the voluntary program contained in this part 3, and no entity of Colorado state government regulating any person, financial institution, or other entity financing a commercial real estate transaction shall require evidence of participation in this program to be a component of standard real estate loan documentation.

(3) (a) The program contained in this part 3 is voluntary and may only be initiated by the owner of the subject real property.

(b) The provisions of this part 3 shall not apply to the following:

(I) Property that is listed or proposed for listing on the national priorities list of superfund sites established under the federal act;

(II) Property that is the subject of corrective action under orders or agreements issued pursuant to the provisions of part 3 of article 15 of this title or the federal "Resource Conservation and Recovery Act of 1976", as amended;

(III) Property that is subject to an order issued by or an agreement with the water quality control division pursuant to part 6 of article 8 of this title;

(IV) A facility which has or should have a permit or interim status pursuant to part 3 of article 15 of this title for the treatment, storage, or disposal of hazardous waste; or

(V) Property that is subject to the provisions of part 2 of article 20.5 of title 8, C.R.S.

(4) (a) Each application for approval of a voluntary clean-up plan and each petition for a no action determination shall be accompanied by a filing fee determined by the department at a level sufficient to cover the direct and indirect costs of the department in processing applications for approval of voluntary clean-up plans and petitions for no action under this part 3, but such filing fee shall not exceed two thousand dollars.

(b) (I) The department shall establish and publish hourly rates for review charges performed by the department in connection with applications for approval of voluntary clean-up plans and petitions for no action under this part 3. Within thirty days after the department's approval or denial of a voluntary clean-up plan or no action petition, the department shall bill an applicant or petitioner for all direct and indirect charges of review of applications and petitions under this part 3 in accordance with the hourly rate structure established pursuant to this subparagraph (I). The department's charges shall be billed against the application fee paid pursuant to this subsection (4) in accordance with subparagraph (II) of this paragraph (b).

(II) (A) If the department bills charges in an amount less than the application fee, the department shall return any unused balance to the applicant or petitioner after the department's final determination in the matter has been made.

(B) If the department bills charges that exceed the application fee, the department may bill the applicant or petitioner for direct and indirect charges that the department incurs in excess of the application fee up to a maximum of an additional one thousand dollars.

(C) If the department determines that review of the application cannot be completed for three thousand dollars or less due to the size or complexity of the site, the department shall contact the applicant or petitioner prior to incurring additional charges. The applicant or petitioner shall then be given the opportunity to either negotiate an agreement containing an upper limit on the department's charges and complete the review, or withdraw the application and receive a refund of the unbilled balance of fees already paid to the department. Agreements negotiated pursuant to this sub-subparagraph (C) shall be in writing and shall be signed by authorized representatives of the parties.

(D) The department shall make its best efforts to determine whether the application review will exceed three thousand dollars within the first ten hours of review or, if the applicant or petitioner requests a pre-application conference, within ten business days after such conference.

(c) All moneys collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the same to the hazardous substance response fund, created in section 25-16-104.6 (1). Moneys collected pursuant to this subsection (4) shall be subject to annual appropriation by the general assembly only to defray the direct and indirect costs of the department in processing voluntary clean-up plans and petitions for no action determination as specified in this part 3.

(5) During the time allocated for review of applications for voluntary clean-up plans and petitions for no action determination under this part 3, the department shall, upon reasonable notice to the property owner, have access at all reasonable times to the subject real property.

Source: L. 94: Entire part added, p. 1949, § 1, effective July 1. L. 95: (3)(b)(V) amended, p. 420, § 9, effective July 1. L. 2003: (4)(b) amended, p. 823, § 1, effective August 6.

25-16-304. Voluntary clean-up plan. (1) Any person who owns real property which has been contaminated with hazardous substances or petroleum products may submit an application for the approval of a voluntary clean-up plan to the department under the provisions of this section.

(2) A voluntary clean-up plan shall include:

(a) An environmental assessment of the real property which describes the contamination, if any, on the property and the risk the contamination currently poses to public health and the environment;

(b) A proposal, if needed, to remediate any contamination or condition which has or could lead to a release which poses an unacceptable risk to human health or the environment, considering the present and any differing proposed future use of the property and a timetable for implementing the proposal and for monitoring the site after the proposed measures are completed;

(c) A description of applicable promulgated state standards establishing acceptable concentrations of constituents in soils, surface water, or groundwater and, for constituents present at the site for which such state standards do not exist, a description of proposed clean-up levels and any current risk to human health or the environment based upon the current or proposed use of the site.

Source: L. 94: Entire part added, p. 1950, § 1, effective July 1.

25-16-305. Remediation alternatives. (1) Remediation alternatives shall be based on the actual risk to human health and the environment currently posed by contaminants on the real property, considering the following factors:

(a) The present or proposed uses of the site;

(b) The ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels which exceed applicable promulgated state standards or, in the absence of such standards, which represent an unacceptable risk to human health or the environment;

(c) The potential risks associated with proposed clean-up alternatives and the economic and technical feasibility and reliability of such alternatives.

Source: L. 94: Entire part added, p. 1951, § 1, effective July 1.

25-16-306. Approval of voluntary clean-up plan - time limits - contents of notice - conditions under which approval is void - expiration of approval. (1) (a) The department shall provide formal written notification that a voluntary clean-up plan has been

approved or disapproved within no more than forty-five days after a request by a property owner, unless the property owner and the department agree to an extension of the review to a date certain. Such review shall be limited to a review of the materials submitted by the applicant and documents or information readily available to the department. If the department fails to act on an application within the time limits specified in this subsection (1), the voluntary clean-up plan shall be deemed approved. If the department has received eight applications for review of voluntary clean-up plans or no action petitions in a calendar month, the department may notify any additional applicants in that month that their plan or petition will be considered the following month, and the forty-five day period for department review shall begin on the first day of the month following receipt of the plan or petition.

(b) The department shall approve a voluntary clean-up plan if, based on the information submitted by the property owner, the department concludes that the plan will:

(I) Attain a degree of clean-up and control of hazardous substances or petroleum products, or both, that complies with all promulgated applicable state requirements, regulations, criteria, or standards;

(II) For constituents not governed by subparagraph (I) of this paragraph (b), reduce concentrations such that the property does not present an unacceptable risk to human health or the environment based upon the property's current use and any future uses proposed by the property owner.

(c) In the event that a voluntary clean-up plan is not approved by the department, the department shall promptly provide the property owner with a written statement of the reasons for such denial. If the department disapproves a voluntary clean-up plan based upon the applicant's failure to submit the information required by section 25-16-304, the department shall notify the applicant of the specific information omitted by the applicant.

(d) The approval of a voluntary clean-up plan by the department applies only to conditions on the property and state standards that exist as of the time of submission of the application.

(2) Written notification by the department that a voluntary clean-up plan is approved shall contain the basis for the determination and the following statement:

Based upon the information provided by [insert name(s) of property owner(s)] concerning property located at [insert address], it is the opinion of the Colorado Department of Public Health and Environment that upon completion of the voluntary clean-up plan no further action is required to assure that this property, when used for the purposes identified in the voluntary clean-up plan, is protective of existing and proposed uses and does not pose an unacceptable risk to human health or the environment at the site.

(3) (a) Failure of a property owner to materially comply with the voluntary clean-up plan approved by the department pursuant to this section shall render the approval void.

(b) Submission of materially misleading information by the applicant in the context of the voluntary clean-up plan shall render the department approval void.

(4) (a) If a voluntary clean-up plan is not initiated within twelve months and completed within twenty-four months after approval by the department, such approval shall lapse; except that the department may grant an extension of the time limit for completion of the voluntary clean-up plan.

(b) A property owner desiring to implement a voluntary clean-up plan after the time limits permitted in paragraph (a) of this subsection (4) shall submit a written petition for reapplication accompanied by written certification of a qualified environmental professional that the conditions on the subject real property are substantially similar to those that existed at the time of the original approval.

(c) Reapplications pursuant to paragraph (b) of this subsection (4) shall be subject to limited review by the department, which shall complete such review within thirty days of receipt of a petition for reapplication; except that any reapplication that involves real property, the condition of which has substantially changed since approval of the original voluntary clean-up plan, shall be treated as a new application and shall be subject to all the requirements of this part 3.

(5) (a) Within forty-five days after the completion of the voluntary clean-up described in the voluntary clean-up plan approved by the department, the property owner shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented.

(b) If the owner is applying for the tax credit provided in section 39-22-526, C.R.S., the owner shall submit to the department the certification along with an application pursuant to section 25-16-303. The certification shall, in addition to certifying that the plan has been fully implemented, disclose the costs of implementation and include supporting documentation of those costs. The department shall then certify the accuracy of the costs and issue the property owner a certificate stating that the clean-up has occurred and the costs of such clean-up. The property owner may submit this certificate to the department of revenue to claim a tax credit under section 39-22-526 (2), C.R.S.

Source: L. 94: Entire part added, p. 1951, § 1, effective July 1. L. 2000: (5) amended, p. 891, § 1, effective January 1, 2001. L. 2008: (1)(b)(II) amended, p. 1907, § 105, effective August 5.

25-16-307. No action determinations. (1) A property owner may file with the department a written petition to request a no action determination pursuant to this section. The department shall provide formal written notification that a no action petition has been approved or disapproved within no more than forty-five days after a request by a property owner, unless the property owner and the department agree to an extension of the review to a date certain. Such review shall be limited to a review of the materials submitted by the applicant and documents or information readily available to the department. If the department fails to act on a petition within the time limits specified in this subsection (1), the no action petition shall be deemed approved. If the department has received eight applications for review of voluntary clean-up plans or no action petitions in a calendar month, the department may notify any additional applicants in that month that their plan or petition will be considered the following month, and the forty-five day period for department review shall begin on the first day of the month following receipt of the plan or petition.

(2) (a) The department shall issue a written determination approving a no action petition when:

(I) The environmental assessment described in section 25-16-308 performed by a qualified environmental professional indicates the existence of contamination which does not exceed applicable promulgated state standards or contamination which does not pose an unacceptable risk to human health and the environment; or

(II) The department finds that contamination or a release or threatened release of a hazardous substance or petroleum product originates from a source on adjacent or nearby real property if a person or entity responsible for such a source of contamination is or will be taking necessary action, if any, to address the contamination.

(b) The department shall provide formal written notification of a no action determination, which shall contain the basis for the determination and the following statement:

Based upon the information provided by [insert name(s) of property owner(s)] concerning property located at [insert address], it is the opinion of the Colorado department of public health and environment that no further action is required to assure that this property, when used for the purposes identified in the no action petition, is protective of existing and proposed uses and does not pose an unacceptable risk to human health or the environment at the site.

(c) The approval of a no action petition by the department applies only to conditions on the property and state standards that exist as of the time of submission of the petition.

(3) Submission of materially misleading information by the applicant in the context of a no action petition shall render the department approval void.

(4) In the event that a no action petition is not approved by the department, the department shall promptly provide the property owner with a written statement of the

reasons for such denial. If the department disapproves a no action petition based upon the applicant's failure to submit required information, the department shall notify the applicant of the specific information omitted.

Source: L. 94: Entire part added, p. 1953, § 1, effective July 1.

25-16-308. Environmental assessment - requirements. (1) The department may only accept environmental assessments under this part 3 that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) The environmental assessment described in section 25-16-304 (2) (a) shall include the following information:

(a) The legal description of the site and a map identifying the location and size of the property;

(b) The physical characteristics of the site and areas contiguous to the site, including the location of any surface water bodies and groundwater aquifers;

(c) The location of any wells located on the site or on areas within a one-half mile radius of the site and a description of the use of those wells;

(d) The current and proposed use of on-site groundwater;

(e) The operational history of the site and the current use of areas contiguous to the site;

(f) The present and proposed uses of the site;

(g) Information concerning the nature and extent of any contamination and releases of hazardous substances or petroleum products which have occurred at the site including any impacts on areas contiguous to the site;

(h) Any sampling results or other data which characterizes the soil, groundwater, or surface water on the site; and

(i) A description of the human and environmental exposure to contamination at the site based upon the property's current use and any future use proposed by the property owner.

Source: L. 94: Entire part added, p. 1954, § 1, effective July 1.

25-16-309. Coordination with other laws. (1) Nothing in this part 3 shall absolve any person from obligations under any other law or regulation, including any requirement to obtain permits or approvals for work performed under a voluntary clean-up plan.

(2) If the United States environmental protection agency indicates that it is investigating a site which is the subject of an approved voluntary clean-up plan or no action petition, the department shall actively pursue a determination by the United States environmental protection agency that the property not be addressed under the federal act or, in the case of property being addressed through a voluntary clean-up plan, that no further federal action be taken with respect to the property at least until the voluntary clean-up plan is completely implemented.

Source: L. 94: Entire part added, p. 1955, § 1, effective July 1.

25-16-310. Enforceability of voluntary clean-up plans and no action determinations. (1) Voluntary clean-up plans are not enforceable against a property owner; except that, if the department can demonstrate that a property owner who initiated a voluntary clean-up under an approved plan has failed to fully and properly implement that plan, the department may require further action if the action is authorized by other laws or regulations of this state.

(2) Information provided by a property owner to support a voluntary clean-up plan or no action petition shall not provide the department with an independent basis to seek penalties from the property owner pursuant to state environmental statutes or regulations. If, pursuant to other state statutes or regulations, the department initiates an enforcement action against the property owner subsequent to the submission of a voluntary clean-up plan or no action petition regarding the contamination addressed in the plan or petition, the

voluntary disclosure of the information in the plan or petition shall be considered by the enforcing authority to reduce or eliminate any penalties assessed to the property owner.

Source: L. 94: Entire part added , p. 1955, § 1, effective July 1.

25-16-311. Repeal of part. (Repealed)

Source: L. 94: Entire part added, p. 1956, § 1, effective July 1. **L. 99:** Entire section repealed, p. 265, § 1, effective April 9.

ARTICLE 16.5

Pollution Prevention

25-16.5-101.	Short title.		program.
25-16.5-102.	Legislative declaration - state policy on pollution prevention.	25-16.5-106.5.	Recycling resources economic opportunity fund - creation - repeal.
25-16.5-103.	Definitions.	25-16.5-106.7.	Recycling resources economic opportunity program - grants - loans - definitions - repeal.
25-16.5-104.	Pollution prevention advisory board - creation.		
25-16.5-105.	Powers and duties of advisory board.	25-16.5-107.	Technical assistance program.
25-16.5-105.5.	Pollution prevention advisory board assistance committee - appointments - membership - definitions.	25-16.5-108.	Pollution prevention fees.
		25-16.5-109.	Pollution prevention fund - created.
25-16.5-106.	Pollution prevention activities	25-16.5-110.	Report to the general assembly. (Repealed)

25-16.5-101. Short title. This article shall be known and may be cited as the “Pollution Prevention Act of 1992”.

Source: L. 92: Entire article added, p. 1326, § 1, effective July 1.

25-16.5-102. Legislative declaration - state policy on pollution prevention.

- (1) The general assembly hereby finds and declares that:

(a) Colorado is blessed by natural beauty and an excellent quality of life, which should be maintained;

(b) The prevention of pollution will assist in maintaining quality of life in our state;

(c) There are resources and expertise in Colorado, including industry, government, and citizen groups, which can provide information and assistance to promote the cost-effective prevention of pollution;

(d) There are opportunities to reduce or prevent pollution through voluntary changes in procurement, production, operations, and use of raw materials throughout the state;

(e) The purpose of this article is to create a cooperative partnership among business, agriculture, the environmental community, and the department of public health and environment in which technical assistance, outreach, and education activities are coordinated and conducted to achieve pollution prevention and waste reduction and source reduction;

(f) The prevention of pollution is preferable to treatment and disposal of toxic substances and is the cornerstone of the future of environmental management.
- (2) The general assembly, therefore, determines and declares that the state policy of Colorado shall be that pollution prevention is the environmental management tool of first choice. The state policy shall be that: Pollution should be prevented or reduced at the source by means including the reduction in the production or use of hazardous substances; pollution that cannot be prevented should be recycled in an environmentally safe manner; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and disposal or other releases into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Source: L. 92: Entire article added, p. 1326, § 1, effective July 1. L. 94: (1)(e) amended, p. 2793, § 535, effective July 1.

Cross references: (1) For further provisions concerning the purchase of recycled paper and recycled products, see §§ 13-1-133, 24-103-207, and 30-11-109.5; for further provisions concerning the recycling of plastics and other materials and strategies for waste diversion of motor vehicle tires, see article 17 of this title.

(2) For the legislative declaration contained in the 1994 act amending subsection (1)(e), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Advisory board” means the pollution prevention advisory board created in section 25-16.5-104.

(2) “By-product” means all toxic or hazardous substances, other than a product, that are generated from production processes prior to recycling, handling, treatment, disposal, or release.

(3) “Department” means the department of public health and environment.

(4) “Federal act” means the federal “Emergency Planning and Community Right-to-know Act of 1986”, 42 U.S.C. sec. 11001 et seq., Title III of the federal “Superfund Amendments and Reauthorization Act of 1986”, Pub.L. 99-499, as amended.

(5) “Hazardous substance” or “toxic substance” means those chemicals defined as hazardous substances under section 313 of the federal “Superfund Amendments and Reauthorization Act of 1986” (SARA Title III) and sections 101(14) and 102 of the federal “Comprehensive Environmental Response, Compensation, and Liability Act” (CERCLA), as amended.

(6) “Pollution prevention” means any practice which reduces the use of any hazardous substance or amount of any pollutant or contaminant prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the use or release or both of such substances, pollutants, or contaminants.

(7) “Production process” means a process, line, method, activity, or technique, or a series or combinations of such processes, necessary to and integral to making a product or providing a service, and does not include waste management activities.

(8) “Small and medium-sized business” means a business which has five hundred or fewer employees and which has gross annual sales of seventy-five million dollars or less.

(9) “Toxics use reduction” means changes in production processes, products, or raw materials that reduce, avoid, or eliminate the use of toxic or hazardous substances and the generation of hazardous by-products per unit of production, so as to reduce the overall risks to the health of workers, consumers, or the environment without creating new risks of concern.

(10) “Waste management” means the recycling, treatment, handling, transfer, controlled release, cleanup, and disposal of waste, and the containment of accidents and spills.

(11) “Waste reduction” and “source reduction” mean any practice which reduces the amount of any hazardous substances, pollutant, or contaminant entering any waste stream or otherwise being released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal, and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The terms include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. The term “source reduction” does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

Source: L. 92: Entire article added, p. 1327, § 1, effective July 1. L. 94: (3) amended, p. 2793, § 536, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16.5-104. Pollution prevention advisory board - creation. (1) There is hereby created in the department of public health and environment a pollution prevention advisory board for the purposes of providing overall policy guidance, coordination, and advice to the department on pollution prevention activities and for carrying out the duties specified in section 25-16.5-105. The advisory board shall consist of fifteen members to be appointed by the governor. The members appointed shall include representatives of businesses, agriculture, environmental groups, academic institutions of higher education, community groups, and local governments. In addition, the governor shall appoint two representatives from state agencies to serve as ex-officio members of the advisory board, with at least one of such appointees to be from the department of public health and environment. In making the appointments, the governor shall provide for geographic diversity. The board shall elect its own chairperson. Members of the advisory board shall serve without compensation.

(2) Repealed.

Source: L. 92: Entire article added, p. 1328, § 1, effective July 1. L. 95: (2) repealed, p. 116, § 3, effective March 31; (2) repealed, p. 181, § 2, effective April 7. L. 2005: (1) amended, p. 287, § 34, effective August 8.

25-16.5-105. Powers and duties of advisory board. (1) The advisory board shall have the following powers and duties:

(a) To provide overall policy guidance, coordination, and advice in the development and implementation of the pollution prevention activities of the department;

(b) To support nonregulatory public and private efforts that promote the prevention of pollution in this state;

(c) To develop pollution prevention goals and objectives;

(d) To review environmental regulatory programs, laws, and policies to identify pollution prevention opportunities and incentives;

(e) To provide direction for pollution prevention outreach, education, training, and technical assistance programs;

(f) Repealed.

(g) To contract with a provider or providers, which may include the department, to provide pollution prevention activities as described in section 25-16.5-106;

(h) To award grants from the recycling resources economic opportunity fund, referred to in this section as the “fund”, in accordance with the requirements of section 25-16.5-106.7 and to develop criteria for awarding grants from the fund in accordance with the provisions of section 25-16.5-106.7 (3) (b). Grant awards shall be made, and the criteria for awarding grants shall be developed, in consultation with the pollution prevention advisory board assistance committee created in section 25-16.5-105.5 (2), referred to in this section as the “committee”.

(i) To make loans from the fund in accordance with the provisions of section 25-16.5-106.7 (5);

(j) To receive and expend gifts, grants, and bequests from any source, public or private, specifically including state and federal moneys and other available moneys, to fund grants made available from the fund in accordance with the provisions of section 25-16.5-106.7;

(j.5) (Deleted by amendment, L. 2010, (HB 10-1018), ch. 421, p. 2163, § 3, effective June 10, 2010.)

(k) (1) In consultation with the committee, to develop a formula for paying a rebate to any local government or to any nonprofit or for-profit entity that recycles any commodity. The rebate authorized by this paragraph (k) shall be paid on commodities recycled on a per-ton basis with differential rates for different commodities. For any one state fiscal year, the amount rebated pursuant to this paragraph (k) shall equal one-fourth of the amount of moneys collected in the fund in the immediately previous state fiscal year. Any rebate shall be paid out of moneys collected:

(A) Repealed.

(B) From the user fee imposed by section 25-16-104.5 (3.9) (a) to fund the recycling resources economic opportunity program created in section 25-16.5-106.7.

(II) Applications to the advisory board for any rebate may be submitted after the last day of the month following the end of each calendar quarter for recycling activities undertaken in such calendar quarter, beginning with the calendar quarter ending on December 31, 2007; except that the period for the first rebate payment shall cover July 1, 2007, through December 31, 2007.

(l) To make recommendations, as requested, on policy matters related to sustainable resource and discarded materials management; and

(m) (I) In accordance with the provisions of subparagraph (II) of this paragraph (m), to submit an annual report to the department of local affairs, the department, the Colorado energy office created in section 24-38.5-101, C.R.S., and the standing committee of reference in each house of the general assembly exercising jurisdiction over matters concerning public health and the environment.

(II) The annual report required by subparagraph (I) of this paragraph (m) shall include a calculation of the proportion of solid waste generated in the state in the previous year that was diverted to other uses and the number of jobs created and any other economic impacts resulting from grants made from the fund by the advisory board pursuant to paragraph (h) of this subsection (1) and section 25-16.5-106.7 (3).

(2) (Deleted by amendment, L. 2010, (HB 10-1018), ch. 421, p. 2163, § 3, effective June 10, 2010.)

Source: **L. 92:** Entire article added, p. 1329, § 1, effective July 1. **L. 95:** Entire section amended, p. 181, § 3, effective April 7. **L. 96:** (1)(f) repealed, p. 1260, § 164, effective August 7. **L. 2007:** (1)(j.5) and (2) added, p. 1602, §§ 2, 3, effective May 31; (1)(h), (1)(i), (1)(j), (1)(k), (1)(l), and (1)(m) added, p. 1135, § 4, effective July 1. **L. 2008:** (1)(m)(I) amended, p. 71, § 8, effective March 18. **L. 2010:** (1)(j.5), (1)(k), and (2) amended, (HB 10-1018), ch. 421, p. 2163, § 3, effective June 10. **L. 2012:** (1)(m)(I) amended, (HB 12-1315), ch. 224, p. 974, § 34, effective July 1.

Editor's note: (1) Subsection (2) was formerly numbered as § 23-1-106.5 (9).

(2) Subsection (1)(k)(I)(A) provided for the repeal of subsection (1)(k)(I)(A), effective July 1, 2011. (See L. 2010, p. 2163.)

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2007 act enacting subsections (1)(h), (1)(i), (1)(j), (1)(k), (1)(l), and (1)(m), see section 2 of chapter 278, Session Laws of Colorado 2007.

25-16.5-105.5. Pollution prevention advisory board assistance committee - appointments - membership - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the pollution prevention advisory board assistance committee created in subsection (2) of this section.

(b) "Fund" means the recycling resources economic opportunity fund created in section 25-16.5-106.5 (1).

(2) (a) There is hereby created in the department the committee that shall assist the advisory board in undertaking the powers and duties given to the board as specified in this article.

(b) The committee shall consist of thirteen members as described in paragraph (c) of this subsection (2), each of whom shall be appointed by the executive director of the department no later than September 1, 2007.

(c) The members appointed to the committee shall include representatives of industry, nonprofit and community organizations, state agencies, and local governments in accordance with the following:

(I) One member of the committee shall be a representative of the department.

(II) One member of the committee shall be a representative of the Colorado office of economic development created in section 24-48.5-101 (1), C.R.S.

(III) One member of the committee shall be a representative of the Colorado energy office created in section 24-38.5-101, C.R.S.

(IV) Two members of the committee shall represent counties that operate county solid waste or recycling facilities, one member of which shall represent a county that is predominately rural in character and the other of which shall represent a county that is predominately urban in character.

(V) Two members of the committee shall represent municipalities that operate municipal solid waste or recycling facilities, one member of which shall represent a municipality that is located in a county that is predominately rural in character and the other of which shall represent a municipality that is located in a county that is predominately urban in character.

(VI) The remaining six members of the committee shall be balanced equally to the extent practicable from among representatives of nonprofit and for-profit entities engaged in recycling or composting through the collection of recyclable material, the manufacturing of products containing recycled material, the marketing of products manufactured with recycling material, or other entities whose mission is directed to advance and promote recycling and composting through educational programs, technical assistance, research, or community outreach.

(d) The terms of members of the committee shall be for four years; except that the initial terms of seven of the members of the committee shall, in the discretion of the executive director of the department, be for two years. All appointments made following the expiration of the initial two-year terms shall be for four years. Members of the committee shall serve no more than three consecutive four-year terms on the committee. No more than six members of the committee shall be from the same political party.

(e) Any vacancy on the committee shall be filled for the unexpired term in the same manner as the original appointment. Any member of the committee may be removed by the executive director of the department at any time and for any reason.

(f) The committee shall elect a chairperson and vice-chairperson by majority vote of the members. The members of the committee shall serve without compensation; except that members of the committee shall receive a per diem amount of ninety-nine dollars for each day actually engaged in the duties of the committee and shall be reimbursed for necessary traveling and other reasonable expenses incurred in the performance of their official duties.

(3) The committee shall have the following powers and duties:

(a) To make recommendations to the advisory board in connection with the awarding of grants by the board from the fund pursuant to section 25-16.5-105 (1) (h) and to make recommendations to the board on the development of criteria to guide the board in making decisions concerning the awarding of grants pursuant to section 25-16.5-106.7 (3) (b);

(b) To make recommendations to the advisory board in connection with the making of loans by the board from the fund pursuant to section 25-16.5-105 (1) (i);

(c) To make recommendations to the advisory board in connection with the receipt or expenditure of gifts, grants, and bequests by the board pursuant to section 25-16.5-105 (1) (j);

(d) To make recommendations to the advisory board, as requested, on policy matters related to sustainable resource and discarded materials management;

(e) To make recommendations to the advisory board on the formula created for paying rebates to entities recycling commodities pursuant to section 25-16.5-105 (1) (k); and

(f) To make additional recommendations to the advisory board on such other matters as will further the purposes of this article.

Source: **L. 2007:** Entire section added, p. 1136, § 5, effective July 1. **L. 2008:** (2)(c)(III) amended, p. 71, § 9, effective March 18. **L. 2012:** (2)(c)(III) amended, (HB 12-1315), ch. 224, p. 974, § 35, effective July 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 2 of chapter 278, Session Laws of Colorado 2007.

25-16.5-106. Pollution prevention activities program. (1) The advisory board shall contract with a provider or providers, which may include the department, to develop a pollution prevention activities program. The pollution prevention activities program shall be carried out to make pollution prevention the environmental management tool of first choice, and the provider which provides the services pursuant to contract shall have the following powers and duties:

(a) To provide education and training about pollution prevention to businesses that use or produce hazardous substances and their employees, local and state governments, and the general public. Such education and training may include pollution prevention techniques, total cost analysis of toxics use and pollution prevention techniques, economic evaluation methods of such techniques, and management and employee involvement and public involvement.

(b) To expand the pollution prevention technical library and resource center providing access to information on new products, production process techniques, and raw materials for production related to pollution prevention, technical reports, fact-sheets, case studies, articles, and other reference materials;

(c) To collect and evaluate information on toxics use reduction and waste reduction and the amount of hazardous substances used in Colorado as the basis for establishing pollution prevention priorities and measuring progress in achieving pollution prevention program objectives;

(d) To conduct an evaluation of pollution prevention activities in this state analyzing existing data to determine what priority should be given to different hazardous substances and production processes;

(e) To prepare a report with data on the amount of hazardous substances, pollutants, and contaminants used in Colorado and the amount of pollution released in Colorado prior to recycling, treatment, or disposal. Such report shall be developed from existing sources and updated every two years and used as a tool to measure the success of the pollution prevention activities program and the technical assistance program in Colorado.

(f) To develop other methods to measure the success of pollution prevention projects at facilities. Methods shall be developed to measure the use of hazardous substances for production processes and the amount of waste prior to waste management practices.

(g) To cooperate with the advisory board in the performance of duties assigned to the board, including the review of environmental regulatory programs, laws, and policies for identifying pollution prevention opportunities and incentives;

(h) To coordinate with any of the academic institutions or other recipients of grants under the technical assistance program pursuant to section 25-16.5-107.

Source: L. 92: Entire article added, p. 1329, § 1, effective July 1.

25-16.5-106.5. Recycling resources economic opportunity fund - creation - repeal.

(1) (a) The recycling resources economic opportunity fund is hereby created in the state treasury, referred to in this section as the "fund". The fund shall consist of:

(I) (A) Repealed.

(B) Effective July 1, 2011, moneys collected for the fund pursuant to section 25-16-104.5 (3.9) (a) and credited to the fund in accordance with section 25-16-104.5 (3.9) (b).

(II) Any moneys appropriated to the fund by the general assembly; and

(III) All other moneys that may be available to the fund, including moneys made available from gifts, grants, or bequests.

(b) All interest derived from the deposit of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(2) Any moneys generated pursuant to subsection (1) of this section shall be annually appropriated to the department for allocation to the advisory board for the purpose of funding the recycling resources economic opportunity activities authorized by section 25-16.5-106.7, as well as any administrative costs associated therewith, including without

limitation the grants authorized to be made under section 25-16.5-106.7 (3) and grant program oversight authorized by section 25-16.5-105.5 (3).

(3) Moneys in the fund shall be used to pay for administrative costs incurred by the department in implementing the provisions of House Bill 07-1288 as enacted by the first regular session of the sixty-sixth general assembly.

(4) Except as otherwise provided in this section, no moneys in the fund shall be used for the administration, implementation, or enforcement of any state law or rule.

(4.5) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall deduct one million five hundred thousand dollars from the recycling resources economic opportunity fund and transfer such sum to the general fund.

(5) This section is repealed, effective July 1, 2017.

Source: **L. 2007:** Entire section added, p. 1138, § 5, effective July 1. **L. 2008:** (2) amended, p. 914, § 1, effective May 20. **L. 2009:** (4.5) added, (SB 09-208), ch. 149, p. 625, § 25, effective April 20. **L. 2010:** (1) and (2) amended, (HB 10-1018), ch. 421, p. 2164, § 4, effective June 10; (1) and (2) amended, (HB 10-1018), ch. 421, p. 2181, § 16, effective July 1; (1), (2), and (5) amended, (HB 10-1052), ch. 84, p. 281, § 3, effective July 1.

Editor's note: Subsection (1)(a)(I)(A) provided for the repeal of subsection (1)(a)(I)(A), effective July 1, 2011. (See L. 2010, p. 2181.)

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 2 of chapter 278, Session Laws of Colorado 2007. For the legislative declaration in the 2010 act amending subsections (1), (2), and (5), see section 1 of chapter 84, Session Laws of Colorado 2010.

25-16.5-106.7. Recycling resources economic opportunity program - grants - loans - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the pollution prevention advisory board assistance committee created in section 25-16.5-105.5.

(b) "Fund" means the recycling resources economic opportunity fund created in section 25-16.5-106.5 (1).

(c) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

(2) There is hereby created the recycling resources economic opportunity program. In connection with the program, the advisory board shall accept proposals from local governments requesting an award of a grant from moneys made available under the fund. Subject to the requirements of this subsection (2), the board may award grants under this section to nonprofit or for-profit organizations or other entities where the application submitted by the organization or entity applying for grant moneys has been approved by the local government within the boundaries of which the organization or entity is located. In awarding grants pursuant to this section, the board may consider proposals that have not been approved by a local government if the entity submitting the proposal provides documentation that the proposal will be beneficial to the community that would be affected by the grant award, the award otherwise satisfies the criteria specified in paragraph (b) of subsection (3) of this section, and the grant is made available for one of the purposes specified in subsection (4) of this section.

(3) (a) The advisory board may award grants from the fund to public and private entities, both nonprofit and for-profit, including without limitation the department and solid waste disposal sites and facilities and their local affiliates that collect the solid waste user fee pursuant to section 25-16-104.5 (3.9).

(b) (I) In consultation with the committee, the advisory board shall develop criteria to guide it in making decisions concerning the awarding of grants to implement the purposes described in subsection (4) of this section. Such criteria shall include without limitation:

(A) The amount of moneys raised for the fund by the region of the state in which the applicant's project is located;

- (B) The needs of the community submitting the proposal;
 - (C) The feasibility of the proposal and sustainability of the project that is the subject of the proposal;
 - (D) The economic and environmental benefits that would accrue from the proposal, including the creation of markets for recycled materials;
 - (E) Measurable results; and
 - (F) Adverse impacts on existing businesses.
- (II) In developing the criteria specified in subparagraph (I) of this paragraph (b), the advisory board shall determine priorities for the grants in consultation with the committee.
- (4) Moneys may be awarded from the fund to finance grants made available pursuant to subsection (2) of this section for the following purposes:
- (a) Recycling, beneficial use, and reuse;
 - (b) Public-private partnerships that promote waste diversion, recycling, recycling markets, the beneficial use of discarded materials, or other recycling-related uses;
 - (c) Developing or expanding local economic infrastructure for the sustainable use of discarded materials;
 - (d) Providing local incentives to develop or expand markets for recycled products;
 - (e) Developing or expanding local recycling infrastructure;
 - (f) Undertaking sustainable resource education programs;
 - (g) Developing or implementing sustainable resource plans or programs for the use or collection of organic matter, household hazardous waste, electronic scrap material, or other discarded materials;
 - (h) Providing assistance in connection with the development or improvement of integrated waste management plans by local governments;
 - (i) Cleaning up illegal waste dumping; and
 - (j) Reducing waste tire stockpiles.
- (5) In addition to the purposes specified in subsection (4) of this section, the advisory board may also loan moneys from the fund to public and private entities, both nonprofit and for-profit, including without limitation the department and solid waste disposal sites and facilities and their local affiliates that collect the solid waste user fee pursuant to section 25-16-104.5 (3.9). Moneys may be loaned by the board under this subsection (5) to fund any of the purposes for which the board may award moneys in grants as specified in subsection (4) of this section. Notwithstanding any other provision of this section, for any given state fiscal year, the amount of moneys to be made available in loans pursuant to this subsection (5) shall not be more than ten percent of the amount of moneys allocated to the fund during the immediately previous state fiscal year.
- (6) Any grant award or loan made pursuant to this section shall be made complete by means of a contract entered into between the department and the grant or loan recipient that shall specify the conditions for the grant or loan and the requirements and responsibilities of the grant or loan recipient, as applicable.
- (7) No grant or loan may be made pursuant to this section until on or after July 1, 2008.
- (8) This section is repealed, effective July 1, 2017.

Source: **L. 2007:** Entire section added, p. 1139, § 5, effective July 1. **L. 2010:** (8) amended, (HB 10-1052), ch. 84, p. 282, § 4, effective July 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 2 of chapter 278, Session Laws of Colorado 2007. For the legislative declaration in the 2010 act amending subsection (8), see section 1 of chapter 84, Session Laws of Colorado 2010.

25-16.5-107. Technical assistance program. (1) The advisory board shall develop guidelines on how to allocate the portion of and shall select grant recipients for the moneys in the pollution prevention fund created in section 25-16.5-109 which is available under said section for making grants for the purpose of providing technical assistance to small and medium-sized businesses and to other generators or users of hazardous and toxic substances. Grants may be made to academic institutions, trade associations, and environmental or engineering firms with knowledge of pollution prevention techniques and processes. The

advisory board shall develop guidelines for awarding grants to provide technical assistance. In developing such guidelines, the advisory board shall determine priorities for such assistance, including an emphasis on reducing the production processes that use the largest amounts of hazardous substances and an emphasis on assisting small businesses. The advisory board shall select the grant recipients and shall determine the amount of the grant awarded to each recipient. The department shall then award the grants pursuant to this section through a contract entered into between the department and the grant recipient which details the conditions of the grant and the requirements and responsibilities of the grant recipient.

(2) For the purposes of this article, “technical assistance program” means the following types of activities:

(a) Providing technical assistance and outreach on pollution prevention to small and medium-sized businesses and to other generators or users of toxic substances;

(b) Providing on-site toxics use reduction and waste reduction assistance to small and medium-sized businesses and to other generators or users of toxic substances;

(c) Providing to businesses, trade associations, public entities, and to other generators or users of toxic substances information on the annual toxics use reduction and waste reduction that could be achieved by using pollution prevention techniques, the annual savings and implementation costs of such techniques, and the period of time necessary to recoup the money spent to implement the pollution prevention techniques;

(d) Providing on-site pollution prevention assessments of industrial plant production processes and waste generation, upon request of the affected businesses.

(3) Technical assistance programs shall be offered to small and medium-sized businesses and to public generators or users of toxic substances without charge.

(4) It is the intent of the general assembly that the technical assistance program not be used to document violations of or used in the enforcement of state laws or regulations.

Source: L. 92: Entire article added, p. 1331, § 1, effective July 1.

25-16.5-108. Pollution prevention fees. (1) (a) The department shall charge and collect pollution prevention fees from any reporting facility which is required to file a report with the department pursuant to the federal act as follows:

(I) Facilities required to report pursuant to section 11002 of the federal act shall pay an annual fee not to exceed ten dollars per reporting facility.

(II) Each facility required to report pursuant to section 11022 of the federal act shall be required to pay an annual fee not to exceed ten dollars for every hazardous substance located at the facility in excess of the thresholds adopted by the United States environmental protection agency.

(III) Each facility required to report pursuant to section 11023 of the federal act shall pay an annual fee not to exceed twenty-five dollars for every extremely hazardous substance located at the facility in excess of the thresholds adopted by the United States environmental protection agency.

(a.5) The department shall charge and collect pollution prevention fees from any federal agency from which, pursuant to federal Executive Order No. 12856, as published in 58 Fed. Reg. 41981 (1993), the department has the authority to collect pollution prevention fees.

(b) Any retail motor fuel outlet which is required to report pursuant to the federal act shall pay one-half of the fee set forth in paragraph (a) of this subsection (1).

(c) Any single reporting organization which owns or operates multiple reporting facilities shall not be required to pay more than a total of one thousand dollars for all pollution prevention fees required by this section.

(d) Agricultural businesses which are required to report under the federal act are not required to pay the pollution prevention fees set forth in this subsection (1).

(e) It is the intent of the general assembly that the department of public health and environment collect all fees from any reporting facility required to report under the federal act, including the pollution prevention fee, in a single, centralized billing procedure.

(2) Any moneys collected pursuant to subsection (1) of this section shall be transmitted to the treasurer and credited to the pollution prevention fund created in section 25-16.5-109.

(3) (Deleted by amendment, L. 95, p. 182, § 4, effective April 7, 1995.)

Source: L. 92: Entire article added, p. 1332, § 1, effective July 1. L. 94: (1)(e) amended, p. 2793, § 537, effective July 1. L. 95: (1)(a) and (3) amended and (1)(a.5) added, p.182, § 4, effective April 7.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1)(e), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16.5-109. Pollution prevention fund - created. (1) There is hereby created in the state treasury the pollution prevention fund. Any moneys collected pursuant to section 25-16.5-108 shall be credited to such fund. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) The moneys generated from the pollution prevention fees pursuant to section 25-16.5-108 shall be annually appropriated to the department of public health and environment for allocation to the pollution prevention advisory board created in section 25-16.5-104 for contracting for pollution prevention activities programs as set forth in section 25-16.5-106 and for the purpose of making grants under the technical assistance program as set forth in section 25-16.5-107 and as directed by the pollution prevention advisory board created in section 25-16.5-104. None of the moneys in the fund shall be used for the enforcement of any state law or regulation.

Source: L. 92: Entire article added, p. 1333, § 1, effective July 1. L. 94: (2) amended, p. 2793, § 538, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-16.5-110. Report to the general assembly. (Repealed)

Source: L. 92: Entire article added, p. 1333, § 1, effective July 1. L. 96: Entire section repealed, p. 1261, § 165, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

ARTICLE 17

Waste Diversion and Recycling

PART 1		25-17-107.	Electronic device recycling task force - report - cash fund - repeal. (Repealed)
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25-17-202.5.	Processors and end users fund created - rules - repeal.	25-17-208.	Waste tire advisory committee - repeal.
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25-17-204.	Waste tire haulers - registration - rules - violations.	25-17-304.	State electronic device recycling - rules.
25-17-205.	Decals - manifests.	25-17-305.	Immunity.
25-17-206.	Registration of waste tire facilities - definitions.	25-17-306.	Public education.
25-17-207.	Rules - penalties - enforcement - fund.	25-17-307.	Charitable donations of electronic devices.
		25-17-308.	Rules.

PART 1

RECYCLING OF PRODUCTS

25-17-101. Legislative declaration. (1) The general assembly hereby finds and declares that the recycling of materials and products is a matter of statewide concern and that such recycling should be promoted in cooperation with units of local government in light of its economic and environmental benefits. The general assembly further finds that the recycling of materials and products will decrease the amount of materials and products which is disposed of in landfills and will also spur economic development in the recycling industry in Colorado. It is the intent of the general assembly in adopting this act to encourage the development of the recycling industry and the development of markets for recycled materials and products.

- (2) The general assembly further finds and declares that:
- (a) Proper management of waste in all forms is necessary to protect the public health and environment for the citizens of this state;
 - (b) The diversion of waste from the waste stream by encouraging available, affordable, and innovative alternatives to disposal is a key strategy in any state-local waste management policy;
 - (c) A comprehensive, cooperative, and integrated approach to waste management is necessary to achieve the goal of diverting waste from the municipal waste stream;
 - (d) Such an approach should foster public and private initiatives to reduce and divert waste through: Source reductions; recycling, including the secondary use of waste material or products in all forms; composting as a recycling option for materials such as yard debris, food scraps, and soiled or otherwise unrecyclable paper which are not recovered using traditional recycling methods; and other waste management strategies and disposal alternatives; and
 - (e) The state’s waste management policies should include a combination of tax incentives, procurement policies, and economic development incentives: To encourage government entities and businesses and individuals to reduce sources of waste, recycle, and compost; to encourage the development of the recycling industry; and to encourage the development of markets for reusable, recycled, and composted products and materials.

Source: L. 89: Entire section added, p. 1180, § 1, effective July 1. L. 93: Entire section amended, p. 2133, § 6, effective June 12.

25-17-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Cathode ray tube product” means an item of scientific equipment or a consumer electronic product that contains a glass tube used to provide an electronic visual display. The term includes, but is not limited to, televisions, computer monitors, and oscilloscopes.

(1.5) "Label" means one of the code labels described in section 25-17-103 that is molded into the bottom of a plastic container.

(2) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

(3) "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap-cap, or other closure, and has a capacity of sixteen fluid ounces or more but less than five gallons.

(4) "Rigid plastic container" means any formed or molded container other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

Source: L. 89: Entire article added, p. 1180, § 1, effective July 1. **L. 2001:** (1) amended and (1.5) added, p. 1470, § 1, effective June 6.

25-17-103. Labeling and coding. On or after July 1, 1992, no person shall distribute, sell, or offer for sale in this state any plastic bottle or rigid plastic container manufactured on or after July 1, 1992, unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. Such code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows: 1=PETE (polyethylene terephthalate), 2=HDPE (high density polyethylene), 3=V (vinyl), 4=LDPE (low density polyethylene), 5=PP (polypropylene), 6=PS (polystyrene), 7=OTHER (includes multi-layer).

Source: L. 89: Entire article added, p. 1181, § 1, effective July 1.

25-17-104. Local government preemption. No unit of local government shall require or prohibit the use or sale of specific types of plastic materials or products or restrict or mandate containers, packaging, or labeling for any consumer products.

Source: L. 89: Entire article added, p. 1181, § 1, effective July 1. **L. 93:** Entire section amended, p. 2134, § 7, effective June 12.

25-17-105. Pilot program - recycled plastic and products - rules. (1) The executive director of the department of local affairs may establish a pilot program for the purpose of encouraging private industry to engage in the research and development of new technologies for recycling plastics. The executive director of the department of local affairs may cooperate with any other entity of state government, including institutions of higher education, in developing the pilot program.

(2) The executive director of the department of local affairs may make grants or loans to private industry for the research and development authorized by subsection (1) of this section. Said grants and loans shall be made only to private industries for location or expansion in Colorado.

(3) The executive director of the department of local affairs is hereby authorized to accept any grants or loans from any public or private source for the purpose of encouraging plastics recycling. None of such moneys shall be used for overhead or administrative costs of the department.

(4) The executive director of the department of local affairs may establish a pilot program for the purpose of encouraging private enterprises and state and local government entities to develop and implement waste diversion strategies or programs. The executive

director of such department is hereby authorized to accept grants or loans from any public or private source for the purpose of implementing this section. The executive director may make grants or loans from such moneys to such entities for the development of waste diversion strategies.

Source: L. 89: Entire article added, p. 1181, § 1, effective July 1. **L. 93:** (4) added, p. 2134, § 8, effective June 12.

25-17-105.5. Pilot program - cathode ray tube product recycling. (1) The executive director of the department of public health and environment shall establish a cathode ray tube recycling pilot program, only if the department has received a grant, gift, or bequest pursuant to subsection (3) of this section that is sufficient to do so, for the purpose of:

(a) Minimizing the number of cathode ray tube products that are disposed of within Colorado, including through public education regarding:

- (I) Why the disposal of cathode ray tube products in landfills should be minimized; and
- (II) How to recycle cathode ray tube products.

(b) Developing local markets and business opportunities based on the recycling and reuse of cathode ray tube products;

(c) Encouraging private industry and public-private partnerships to undertake research and development of new technologies for the recycling, waste minimization, and disposal of cathode ray tube products;

(d) Providing businesses and individuals with easy access to cathode ray tube product recycling centers; and

(e) Leveraging public support of cathode ray tube recycling with private grants and in-kind contributions to the pilot program.

(2) The executive director of the department of public health and environment may make grants or loans to private industry and public-private partnerships for the purposes specified in subsection (1) of this section from any moneys in the cathode ray tube recycling fund, which fund is hereby created; except that said grants and loans shall be made only to entities that are located, or will be located, in Colorado.

(3) The executive director of the department of public health and environment is hereby authorized to request, receive, and expend grants, gifts, and bequests, specifically including federal moneys, and other moneys available from any public or private source, excluding appropriations from the general fund, for the purposes specified in subsection (1) of this section, subject to annual appropriation by the general assembly. The executive director shall transmit such moneys to the state treasurer, who shall credit the moneys to the cathode ray tube recycling fund.

(4) The general assembly shall make annual appropriations out of the cathode ray tube recycling fund to the department of public health and environment in an amount equal to the department's direct administrative costs in administering the cathode ray tube recycling pilot program and for purposes consistent with subsections (1) and (2) of this section, including developing and distributing public education materials.

(5) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall transfer the balance of moneys in the cathode ray tube recycling fund to the general fund.

Source: L. 2001: Entire section added, p. 1470, § 2, effective June 6. **L. 2009:** (5) added, (SB 09-208), ch. 149, p. 625, § 26, effective April 20.

25-17-106. Repeal of part. (Repealed)

Source: L. 89: Entire article added, p. 1181, § 1, effective July 1. **L. 93:** Entire section amended, p. 2134, § 9, effective June 12. **L. 98:** Entire section amended, p. 1066, § 2, effective June 1; entire section amended, p. 880, § 3, effective July 1. **L. 2008:** Entire section repealed, p. 177, § 16, effective March 24.

25-17-107. Electronic device recycling task force - report - cash fund - repeal. (Repealed)

Source: L. 2009: Entire section added, (HB 09-1282), ch. 380, p. 2068, § 1, effective June 1.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 2068.)

PART 2

STRATEGIES FOR MOTOR VEHICLE WASTE TIRES

25-17-201. Legislative declaration. The general assembly hereby finds and declares that there is a special need to address problems created by the disposal of waste tires in order to protect the environment and the public health. To that end, it is the intent of the general assembly in adopting this part 2 to encourage the development of techniques for resource recovery, recycling, and reuse of waste tires, to provide for the cleanup of waste tires that have been disposed of illegally, and to study the feasibility and cost-efficiency of creating transportation grants for the purpose of transporting waste tires to other end users.

Source: L. 93: Entire part added, p. 2134, § 10, effective June 12. **L. 95:** Entire section amended, p. 1113, § 1, effective May 31.

25-17-202. Waste tire fees - definitions - repeal. (1) As used in this part 2, unless the context otherwise requires:

(a) "Commission" means the solid and hazardous waste commission created in section 25-15-302.

(b) "Department" means the department of public health and environment.

(c) "End user" means a person who uses a tire-derived product for a commercial or industrial purpose.

(d) "Processor" means a person who processes waste tires in Colorado for recycling or beneficial use.

(e) "Public project" means:

(I) Any publicly funded contract entered into by a governmental body of the executive branch of this state that is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.; and

(II) Any publicly funded contract entered into by any political subdivision of the state.

(f) "Tire" means a tire for any passenger vehicle, including any truck, weighing less than fifteen thousand pounds, and for any truck, including any truck tractor, trailer, or semitrailer, weighing more than fifteen thousand pounds; except that "tire" does not include:

(I) Tires that are recapped or otherwise reprocessed for use; or

(II) Tires that are used for:

(A) Farm equipment exempt from sales and use taxes pursuant to section 39-26-716, C.R.S.; or

(B) A farm tractor or implement of husbandry exempt from registration pursuant to section 42-3-104, C.R.S.

(g) "Tire-derived product" means matter that:

(I) Is derived from a process that uses whole tires as a feedstock, including shredding, crumbing, and chipping; and

(II) Has been sold and removed from the facility of a processor.

(h) (I) "Waste tire" means a tire that is no longer mounted on a motor vehicle and is no longer suitable for use as a tire due to wear, damage, or deviation from the manufacturer's original specifications.

(II) “Waste tire” includes the following types of tires that are not organized for resale by size in a rack or a stack in a manner that allows the inspection of each individual tire: A repairable tire, scrap tire, altered waste tire, and used tire.

(III) “Waste tire” does not include a tire-derived product or crumb rubber.

(i) “Waste tire cleanup program” or “program” means the program created by this part 2.

(j) (I) “Waste tire facility” means:

(A) A waste tire monofill, as that term is defined in section 30-20-1001, C.R.S.;

(B) A facility of an end user or processor;

(C) A facility of a tire retailer or tire wholesaler that is a source of waste tires pursuant to section 30-20-1007 or 30-20-1008, C.R.S.;

(D) A collection facility, as that term is defined by the commission by rule; or

(E) Any other facility at which a quantity of waste tires in excess of a limit established by rule by the commission are stored for at least ninety days, processed, or disposed of.

(II) “Waste tire facility” does not include the facility of a waste tire hauler unless the hauler stores a quantity of waste tires in excess of a limit established by rule by the commission at the facility for at least ninety days.

(k) “Waste tire hauler” means a person who transports waste tires for compensation.

(2) (a) On and after June 10, 2010, retailers of new tires shall collect a waste tire fee of one dollar and fifty cents on the sale of each new tire. The receipt from the retailer to the customer for every new tire shall contain the following statement in the largest bold-faced print capable on existing invoice printers, not to exceed fifteen points: “Section 25-17-202, Colorado Revised Statutes, requires retailers to collect a \$1.50 waste tire fee on the sale of each new motor vehicle tire.”

(b) The retailer shall submit to the department of revenue all fees collected pursuant to this section together with any report required by the department of revenue in conjunction with the remittance of any sales tax in accordance with article 26 of title 39, C.R.S.

(c) A person who fails to comply with this section shall be subject to section 39-21-118, C.R.S. The department of revenue shall notify retailers of new tires concerning the new requirements in this section enacted by Senate Bill 09-289, enacted in 2009.

(3) (a) The department of revenue shall transmit the fees, together with a report of its direct and indirect administrative costs in complying with this section, to the state treasurer at the end of each calendar quarter. The state treasurer shall pay to the department of revenue an amount equal to the department of revenue’s direct and indirect administrative costs specified in this paragraph (a); except that this amount shall not exceed one and two-thirds percent of the total amount of fees credited pursuant to this paragraph (a). The state treasurer shall, subject to paragraph (b) of this subsection (3), credit the remaining fees as follows:

(I) (A) Thirty and thirty-three one-hundredths percent to the processors and end users fund created in section 25-17-202.5 and six and sixty-seven one-hundredths percent to the innovative higher education research fund created in section 23-19.7-104, C.R.S. This sub-subparagraph (A) is repealed, effective July 1, 2014.

(B) Effective July 1, 2014, thirty-seven percent to the processors and end users fund created in section 25-17-202.5;

(II) Thirty-nine and sixty-six one-hundredths percent to the waste tire cleanup fund created in section 25-17-202.6;

(III) (A) Repealed.

(B) Effective July 1, 2011, eight percent to the waste tire fire prevention fund created in section 25-17-202.8;

(IV) Effective July 1, 2011, six and sixty-seven one-hundredths percent to the waste tire market development fund created in section 25-17-202.9; and

(V) Effective July 1, 2011, eight and sixty-seven one-hundredths percent to the law enforcement grant fund created in section 25-17-207 (4).

(VI) Repealed.

(b) The department may reallocate uncommitted moneys among funding categories described in this subsection (3) at the end of each fiscal quarter.

(4) Notwithstanding any other law to the contrary, the department shall distribute, whether by grant, reimbursement, or otherwise, fees collected pursuant to this section only to a person or entity that is located in and has operations in Colorado, and shall not distribute any such fees to a person or entity located outside of Colorado.

Source: **L. 93:** Entire part added, p. 2135, § 10, effective June 12. **L. 94:** (1)(b) amended, p. 2564, § 74, effective January 1, 1995. **L. 95:** (3) amended and (3.5) added, p. 1113, § 2, effective May 31. **L. 96:** (3) amended, p. 814, § 4, effective May 23. **L. 98:** (3.5)(a) amended, p. 1066, § 3, effective June 1; (1)(b), (3), and (3.5)(a) amended and (3.2) added, p. 421, § 2, effective August 5; (3.5)(a) amended, p. 1067, § 4, effective August 5. **L. 2000:** (1)(b), (3), and (3.2) amended, p. 806, § 1, effective May 24; (1)(a) and (3) amended, p. 1541, § 2, effective June 1. **L. 2001:** (3)(a), (3)(b), and (3.5) amended, p. 797, § 1, effective June 1. **L. 2002:** (3)(d) added, p. 672, § 4, effective May 28. **L. 2003:** (3)(b)(II) amended, p. 1544, § 4, effective May 1; (1)(a)(III) added, p. 1968, § 1, effective January 1, 2004. **L. 2005:** (3)(a) amended, p. 707, § 2, effective June 1; (1)(a)(I), (1)(a)(II), and (1)(a)(III)(A) amended, p. 288, § 35, effective August 8. **L. 2006:** (1)(a)(III), (3)(a)(II), and (3)(b) amended, pp. 174, 175, §§ 1, 2, effective July 1. **L. 2007:** (3)(b)(II)(A) amended and (3)(b)(III) added, p. 1603, § 4, effective May 31; (1)(a)(I), (1)(b)(II), and (2) amended and (1)(a)(IV) added, pp. 1141, 1142, §§ 6, 7, effective July 1. **L. 2008:** (3)(b)(III) amended, p. 1908, § 106, effective August 5. **L. 2009:** (3)(e) added, (SB 09-279), ch. 367, p. 1930, § 17, effective June 1; (1)(a)(I), IP(1)(a)(IV), (1)(b), (2)(a), and (4) amended, (SB 09-289), ch. 314, p. 1698, § 1, effective August 5; IP(3)(b) and (3)(b)(I) amended, (SB 09-292), ch. 369, p. 1972, § 90, effective August 5. **L. 2010:** Entire section R&RE, (HB 10-1018), ch. 421, p. 2165, § 5, effective June 10. **L. 2012:** (1)(c) amended, (HB 12-1034), ch. 169, p. 593, § 1, effective May 9.

Editor's note: (1) Amendments to subsection (3) by House Bill 00-1430 and House Bill 00-1167 were harmonized.

(2) Subsections (3)(a)(III)(A) and (3)(a)(VI) provided for the repeal of subsections (3)(a)(III)(A) and (3)(a)(VI), respectively, effective July 1, 2011. (See L. 2010, p. 2165.)

Cross references: For the legislative declaration contained in the 1998 act amending subsections (1)(b), (3), and (3.5)(a) and enacting subsection (3.2), see section 1 of chapter 146, Session Laws of Colorado 1998. For the legislative declaration contained in the 2007 act amending subsections (1)(a)(I), (1)(b)(II), and (2) and enacting subsection (1)(a)(IV), see section 2 of chapter 278, Session Laws of Colorado 2007.

25-17-202.5. Processors and end users fund created - rules - repeal. (1) There is hereby created, in the state treasury, the processors and end users fund. Such fund shall consist of the fee revenue credited pursuant to section 25-17-202 (3) (a) (I) and year-end surpluses transferred pursuant to sections 25-17-202.6 (1), 25-17-202.8 (1), 25-17-202.9 (1), and 25-17-207 (4). All interest or any other return on the investment of moneys in the fund shall be deposited in the fund. The general assembly shall appropriate moneys in the fund for monthly partial reimbursement to processors and end users, up to a maximum of sixty-five dollars for each ton of raw Colorado waste tires that are processed or used. The purpose of the partial reimbursements is to assist new and existing waste tire recycling technologies to become economically feasible and to thereby encourage the use of waste tires and reduce the storage of waste tires in Colorado. The department shall not reimburse a processor for processing waste tires unless the processor has end used the tire-derived product or if the tire-derived product has been sold for an end use and moved off-site.

(1.5) Notwithstanding section 25-17-202.9, the department shall identify other markets in the state that are able, without taxpayer or waste tire clean up funds, to eliminate illegal tire dumping and to recycle or reuse waste tires in newer technologies.

(2) This section is repealed, effective July 1, 2020.

Source: **L. 2003:** Entire section added, p. 1968, § 2, effective January 1, 2004. **L. 2006:** (2) amended, p. 175, § 3, effective July 1. **L. 2007:** IP(1) amended, p. 1142, § 8, effective July 1. **L. 2010:** (1.5) added, (HB 10-1327), ch. 135, p. 450, § 6, effective April

15; (1) amended, (HB 10-1018), ch. 421, p. 2168, § 6, effective June 10. **L. 2012:** Entire section amended, (HB 12-1034), ch. 169, p. 593, § 2, effective May 9.

Cross references: For the legislative declaration contained in the 2007 act amending the introductory portion to subsection (1), see section 2 of chapter 278, Session Laws of Colorado 2007.

25-17-202.6. Waste tire cleanup fund - rules. (1) There is hereby created in the state treasury the waste tire cleanup fund, referred to in this section as the “fund”, consisting of revenues credited pursuant to section 25-17-202 (3) (a) (II). All interest or any other return on the investments shall be deposited in the fund. At the end of each fiscal year, the state treasurer shall transfer all unexpended and unencumbered moneys in the fund to the processors and end users fund created in section 25-17-202.5, except for an amount equal to thirty-three percent of the department’s prior year direct and indirect costs. The general assembly shall make annual appropriations out of the fund to the department in an amount equal to the department’s direct and indirect administrative costs incurred pursuant to this part 2, not to exceed twenty percent of the annual income to the fund and to the division of fire prevention and control in the department of public safety for its administrative costs pursuant to section 25-17-206 (3).

(2) The department shall use the remaining moneys in the fund as follows:

(a) Up to two-thirds may be expended to provide grants to counties and municipalities for the disposal, recycling, or reuse of waste tires that have been illegally dumped or abandoned or are otherwise not eligible for reimbursements from a fund created in this article and allow for partial reimbursement to processors and end users up to a maximum of sixty-five dollars for each ton of Colorado raw waste tires that are processed or used at a waste tire facility;

(b) (I) Up to one-third may be expended to provide for tire reuse or recycling incentives in public projects for products that contain or make use of recycled, recapped, and other previously used waste tires, including tire-derived products. The department shall determine how moneys for such incentives shall be distributed among projects. Any state agency is authorized to expend tire reuse or recycling incentive moneys distributed pursuant to this section.

(II) The general assembly hereby finds that the purpose of the tire reuse or recycling incentives under this paragraph (b) is to encourage the beneficial reuse and recycling of Colorado waste tires and is not intended to usurp functions properly performed by the private sector or to compete unfairly with private businesses.

(III) For the purpose of expending tire reuse or recycling incentives under this paragraph (b), the state purchasing director and any purchasing agent have the authority to purchase tire-derived products unless any of the following conditions exist:

(A) The product is not available within a reasonable period of time;

(B) The product fails to meet existing purchasing rules, including any applicable specifications; or

(C) The product fails to meet federal or state health or safety standards as set forth in the code of federal regulations or the Colorado code of regulations.

(c) Per diem expenses for the advisory committee created in section 25-17-208. For each member, per diem payments are capped at ninety-nine dollars per day.

(3) All moneys encumbered by June 30 of a fiscal year shall roll forward for expenditure in the following fiscal year.

(4) In providing assistance to counties pursuant to this section, the department shall give primary consideration to the number of illegal waste tire dumps or storage facilities other than monofills in each county and whether facilities are available to recycle such waste tires.

(5) (a) Counties and municipalities receiving grants pursuant to this section may use such grants to fund the removal and disposal or recycling of waste tires with county or municipal personnel or may contract with private entities, other local governments, or other governmental agencies for such activities if such contracts are otherwise in accordance with law. The use of inmate labor shall be pursued whenever feasible, at the sole discretion of the board of county commissioners or the governing body of the municipality.

(b) In awarding contracts for services pursuant to this section, a county or municipality may give preferential bidding treatment to individuals or entities that will recycle, pursuant to rules of the department concerning recycling, and reuse, rather than dispose of, the waste tires.

(c) The general assembly hereby finds and declares that it is the policy of this state to pursue proposals for recycling and making other beneficial use of waste tires, in lieu of storage or landfill disposal, whenever feasible.

(6) (a) No later than January 1, 2011, and biennially thereafter, each county and municipality in the state that has received funds pursuant to this section shall submit a report to the department concerning:

(I) The quantity, expressed in weight or as a number, of tires removed from illegal dumps or storage facilities in the county or municipality and disposed of at approved facilities or in recycling or reuse projects;

(II) The method in which such disposal was accomplished and the method of recycling or reuse, if any; and

(III) The quantity of waste tires in the county or municipality remaining to be legally disposed of or recycled in future years.

(b) (I) The department shall create a priority abatement list of waste tire storage or disposal facilities and coordinate the list with the ten-year monofill tire landfill elimination plan required by section 30-20-121 (4), C.R.S. Abatement projects shall be ranked based on the potential environmental damage of the individual waste tire facilities. The department shall provide an annual update to the general assembly of the abatement projects.

(II) The department, in conjunction with the waste tire advisory committee created in section 25-17-208, either itself or through a contractor:

(A) Shall provide educational programs to counties and the public regarding methods for proper disposal of tires and the use and availability of tire-derived products; and

(B) May conduct feasibility studies, including site-specific feasibility studies and life cycle assessments, on potential uses of waste tires, including as soil absorption media, lightweight fill used in roadbeds and other types of civil engineering projects, substitute material for aggregate or soil materials, rubberized asphalt for road construction projects, geosynthetic lined landfills, and tire-derived fuel at electric utilities in conjunction with bottom ash, existing portland cement plants, and coal-fired boilers.

(7) The commission may promulgate rules to implement this section.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2169, § 7, effective June 10. **L. 2012:** (1) amended, (HB 12-1283), ch. 240, p. 1135, § 50, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsection (1), see section 1 of chapter 240, Session Laws of Colorado 2012.

25-17-202.7. Reports - repeal. (1) On and after July 1, 2005, and each July 1 thereafter, the department of public health and environment shall report to the transportation legislation review committee, created in section 43-2-145, C.R.S., the total number of waste tires recycled in this state according to the information submitted to the department of public health and environment pursuant to section 30-20-109, C.R.S.

(2) The provisions of section 24-1-136, C.R.S., shall not apply to reports generated pursuant to this section.

(3) This section is repealed, effective July 1, 2014.

Source: L. 2004: Entire section added, p. 1785, § 2, effective July 1.

25-17-202.8. Waste tire fire prevention fund. (1) There is hereby created in the state treasury the waste tire fire prevention fund, referred to in this section as the “fund”, consisting of revenues credited pursuant to section 25-17-202 (3) (a) (III). All interest or any other return on the investment of moneys in the fund shall be deposited in the fund. At the end of each fiscal year, the state treasurer shall transfer all unexpended and unencumbered

moneys in the fund to the processors and end users fund created in section 25-17-202.5, except for an amount equal to thirty-three percent of the department's prior year direct and indirect costs.

(2) The department shall use the fund for:

(a) Training fire departments in and purchasing equipment and supplies for the prevention of, preparation for, and response to and proper handling of waste tire fires; and

(b) Training for and enforcement by the state patrol, sheriffs' offices, police departments, and local departments of health to enforce waste tire disposal, registration, decal, and manifest requirements of sections 25-17-204 to 25-17-206, 30-20-121 (3), and 30-20-1006, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2169, § 7, effective June 10.

25-17-202.9. Waste tire market development fund. (1) There is hereby created in the state treasury the waste tire market development fund, referred to in this section as the "fund", consisting of revenues credited pursuant to section 25-17-202 (3) (a) (IV). All interest or any other return on the investment of moneys in the fund shall be deposited in the fund. At the end of each fiscal year, the state treasurer shall transfer all unexpended and unencumbered moneys in the fund to the processors and end users fund created in section 25-17-202.5.

(2) The department shall use the fund to encourage waste tire market development pursuant to a market development plan developed by the waste tire advisory committee created in section 25-17-208. The department may use the fund to hire a contractor in connection with implementation of the plan.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2169, § 7, effective June 10.

25-17-203. Repeal of part. (Repealed)

Source: L. 93: Entire part added, p. 2135, § 10, effective June 12. **L. 95:** Entire section amended, p. 1113, § 3, effective May 31. **L. 98:** Entire section amended, p. 1067, § 5, effective June 1; entire section amended, p. 880, § 4, effective July 1. **L. 2008:** Entire section repealed, p. 177, § 17, effective March 24.

25-17-204. Waste tire haulers - registration - rules - violations. (1) No person shall transport a quantity of waste tires in excess of a limit established by the commission by rule for storage or disposal to any location in this state:

(a) Other than to a waste tire storage site, waste tire landfill site, or municipal or privately owned solid waste landfill site for which a city, county, or city and county has issued a permit and such site is operating in compliance with the requirements of applicable law.

(b) On or after January 1, 2006, if the person has not registered with the department of public health and environment pursuant to rules promulgated pursuant to this section.

(c) Unless the person:

(I) Has affixed to the vehicle used for such transportation a decal acquired from the department pursuant to section 25-17-205; and

(II) Complies with the manifest requirements of section 25-17-205.

(2) Nothing in this section shall prohibit a person from transporting a quantity of waste tires that is not in excess of a limit established by the commission by rule during any one trip to a beneficial user, a waste tire recycling facility, or a facility that possesses a valid air quality permit if the permit allows for an approved beneficial use of the waste tires and the facility is in compliance with section 25-17-206 (4) (b). No person shall transport a quantity of waste tires in excess of the limit established by the commission by rule during any one trip unless the person is registered pursuant to this section.

(3) The commission shall promulgate rules to implement this section, including:

(a) Requirements that persons who transport a certain number or more of waste tires for storage or disposal:

(I) Create and maintain records, including the manifest required by section 25-17-205 (2), relating to such transportation and report to the department;

(II) Register with the department and annually provide a copy of the currently valid registration to each retailer of motor vehicle tires from whom the person accepts a waste tire for hauling;

(III) Post a bond in a form and an amount set by the commission, not to exceed ten thousand dollars; and

(IV) Affix a decal required pursuant to section 25-17-205 (1) on each vehicle used to transport waste tires.

(b) Measures required for the department of public health and environment to enforce the requirements of this section.

(4) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. Nothing in this section shall preclude or preempt a municipality from enforcement of its local ordinances. Each day of violation shall be deemed a separate offense under this section. Fines shall be transmitted to the state treasurer, who shall deposit them in the general fund.

Source: L. 2005: Entire section added, p. 706, § 1, effective June 1. **L. 2008:** IP(3) and (3)(a)(III) amended, p. 432, § 5, effective August 5. **L. 2009:** (3)(a)(II) amended, (SB 09-289), ch. 314, p. 1700, § 3, effective August 5. **L. 2010:** IP(1), (2), IP(3), and (3)(a) amended and (1)(c) added, (HB 10-1018), ch. 421, p. 2172, §§ 8, 9, effective June 10.

25-17-205. Decals - manifests. (1) **Decals.** (a) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), no person shall store a quantity of waste tires in excess of a limit established by the commission in Colorado for any purpose unless:

(I) The department has issued to the person a decal pursuant to this section; and

(II) The person has, pursuant to rules promulgated pursuant to section 25-17-207 (1), affixed the decal to a uniform location at the address used to store the waste tires.

(b) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), no person shall transport a quantity of waste tires in excess of a limit established by the commission in Colorado unless:

(I) The department has issued to the person a decal pursuant to this section; and

(II) The person has, pursuant to rules promulgated pursuant to section 25-17-207 (1), affixed the decal to the vehicle used to transport waste tires at a uniform location.

(c) The department shall issue a decal to a person if the person has submitted an application to the department containing all information required by the commission by rule promulgated pursuant to section 25-17-207 (1).

(d) Decals shall be valid for a period determined by the commission by rule, not to exceed five years. A decal issued pursuant to this section shall contain the information required by rule promulgated pursuant to section 25-17-207 (1), including at least an expiration date and the decal number.

(2) **Uniform manifests.** (a) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), no person shall accept for transportation a quantity of waste tires in excess of a limit established by the commission by rule unless the person has completely filled out in triplicate a uniform manifest, available from the department's web site, in a form established by the department containing the information specified by rule promulgated pursuant to section 25-17-207 (1), including at least the following:

(I) The manifest number;

(II) The decal number of the vehicle used to transport the tires;

(III) The person's signature under penalty of perjury, name, address, and telephone number;

(IV) The current date; the waste tire facility registration number, name, address, and telephone number of the source of the tires; and the waste tire facility registration number, name, address, and telephone number of the waste tire facility to which the waste tires will be transported; and

(V) The number or weight of tires in the load.

(b) The person shall retain one copy of the manifest and shall provide one copy of the manifest to:

(I) The source of the waste tire; and

(II) The waste tire facility to which the waste tires are transported.

(c) (I) The person, the source of the waste tire, and the waste tire facility to which the waste tires are transported shall each keep a copy of the manifest for at least three years after the date stated on the manifest.

(II) The department may enter and inspect the facility of any of the entities named on the manifest during normal working hours and may request a copy of the manifest. Failure to keep the manifest as required by this paragraph (c) or to produce the manifest upon request by the department or the department's agent is a violation of this section.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2173, § 10, effective June 10.

25-17-206. Registration of waste tire facilities - definitions. (1) For purposes of this section, unless the context otherwise requires, "local fire authority" means either:

(a) The chief of a fire department, if the waste tire facility is located in a fire protection district;

(b) The sheriff of the county in which the waste tire facility is located, acting as fire warden, if the facility is located in the unincorporated portion of a county and is not located in a fire protection district;

(c) The chief of a municipal fire department, if the waste tire facility is located in the incorporated portion of a county that is protected by a municipal fire department; or

(d) The governing body of a municipality, if the waste tire facility is located in the incorporated portion of a county and is not located in a fire protection district or protected by a municipal fire department.

(2) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), no person shall construct or maintain a waste tire facility unless the person has registered with the department.

(3) (a) (I) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), a waste tire facility shall have a fire prevention, training, and firefighting program as determined by the commission by rule; except that this subsection (3) shall not apply to:

(A) A waste tire facility that is operating with an existing certificate of designation and that is in compliance with all local, state, and federal regulations and laws on June 10, 2010; except that, upon the renewal of or reapplication for a certificate of designation by a waste tire facility, the waste tire facility shall be required to comply with this subsection (3); or

(B) A tire retailer or tire wholesaler that is a source of waste tires pursuant to section 30-20-1007 or 30-20-1008, C.R.S.

(II) (A) The local fire authority shall review the program in accordance with rules and, if appropriate, recommend changes necessary to approve the program.

(B) Upon request of the local fire authority, the director of the division of fire prevention and control in the department of public safety shall hire a contractor to provide technical assistance in the review of the program and, if appropriate, recommend changes necessary for the local fire authority to approve the program.

(b) If the local fire authority approves the program, it shall certify that fact to the department. If the local fire authority recommends changes necessary to approve the program and the waste tire facility fails to implement the changes, it shall certify that fact to the department. The department shall revoke the registration of a waste tire facility that does not have an approved fire prevention, training, and firefighting program.

(4) (a) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), each waste tire monofill shall:

(I) By an annual date established by rule, submit to the department a waste tire inventory reduction plan that complies with rules established by the commission. The department shall hold any information or data submitted to it by a waste tire monofill or facility of an end user or processor pursuant to this subparagraph (I) as confidential business information upon request of the submitting entity if the information or data satisfies the definition of trade secret as specified in sections 7-74-102 and 18-4-408 (2), C.R.S. The burden of proving that the information or data is protected as a trade secret shall be upon the party asserting the claim.

(II) Comply with the inventory reduction plan as approved by the department by the end of the following year.

(b) On and after a date specified by rule promulgated pursuant to section 25-17-207 (1), during each calendar year, and as determined by rule:

(I) A processor shall process into tire-derived product at least seventy-five percent of the three-year rolling average annual amount, by weight or number, of waste tires that the processor accepted during the previous three calendar years;

(II) An end user shall convert into an end product at least seventy-five percent of the three-year rolling average annual amount by weight of tire-derived product that the end user accepted during the previous three calendar years;

(III) A waste tire monofill shall arrange for the processing into tire-derived product of at least seventy-five percent of the three-year rolling average annual amount, by weight or number, of waste tires that the waste tire monofill accepted during the previous three calendar years.

(c) The department shall revoke the registration of a waste tire facility that violates this subsection (4), and such facility is ineligible for reimbursements from the processors and end users fund created in section 25-17-202.5 and the waste tire cleanup fund created in section 25-17-202.6 until the department reinstates the registration.

(5) (a) Except as specified in paragraph (b) of this subsection (5), on and after a date specified by rule promulgated pursuant to section 25-17-207 (1), a waste tire facility shall:

(I) Have an operations plan, including site security measures that include locked gates and at least a six-foot fence surrounding the facility;

(II) Have an emergency response plan;

(III) Have a facility closure plan;

(IV) Post a bond in a form and amount set by the solid and hazardous waste commission, using one or more of the following financial mechanisms, to cover reclamation of the facility, if applicable, and to financially assure full payment of all closure, post-closure, and, if applicable, corrective action estimated costs:

(A) Trust fund;

(B) Letter of credit;

(C) Surety bond;

(D) Insurance;

(E) Corporate financial test;

(F) Local government financial test;

(G) Corporate guarantee;

(H) Local government guarantee; or

(I) One of the following state-approved mechanisms: Certificate of deposit; multiple financial mechanisms; or other methods as approved by the department and the governing body having jurisdiction;

(V) Have an adequate water supply available for use by the local fire authority in the event of a fire. Owners and operators of waste tire facilities may demonstrate compliance with this requirement through alternative methods as approved by the local fire authority.

(VI) Meet the standards and conditions for the safeguarding of life and property from fire as determined by the local fire authority. In making such determination, the fire code adopted pursuant to section 24-33.5-1203.5, C.R.S., by the division of fire prevention and control within the department of public safety shall be used as the minimum fire safety standard for waste tire facilities.

(b) The requirements of paragraph (a) of this subsection (5):

(I) Shall be implemented by the department in consultation with the local fire officials and in accordance with the adopted minimum fire safety standards; and

(II) Shall not apply to:

(A) A waste tire facility that is operating with an existing certificate of designation and that is in compliance with all local, state, and federal regulations and laws on June 10, 2010; except that, upon the renewal of or reapplication for a certificate of designation by a waste tire facility, the waste tire facility shall be required to comply with paragraph (a) of this subsection (5); or

(B) A tire retailer or tire wholesaler that is a source of waste tires pursuant to section 30-20-1007 or 30-20-1008, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2173, § 10, effective June 10. **L. 2012:** (3)(a)(II)(B) and (5)(a)(VI) amended, (HB 12-1283), ch. 240, p. 1135, § 51, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsections (3)(a)(II)(B) and (5)(a)(VI), see section 1 of chapter 240, Session Laws of Colorado 2012.

25-17-207. Rules - penalties - enforcement - fund. (1) (a) The commission shall adopt rules as necessary and convenient for the administration of this part 2.

(b) Once the rules have been promulgated, the department shall report to the transportation legislation review committee, created in section 43-2-145, C.R.S., on the promulgation of the rules.

(c) The department shall annually report to the house transportation and energy committee and the senate transportation committee, or their successor committees, on the status of the waste tire cleanup program.

(2) A peace officer and the department shall enforce the requirements of this part 2 in connection with sections 30-20-113 and 30-20-114, C.R.S.

(3) The department shall develop an on-line complaint form and processes for law enforcement, fire departments, and citizens to report potential waste tire violations.

(4) There is hereby created in the state treasury the law enforcement grant fund, consisting of the fee revenue credited pursuant to section 25-17-202 (3) (a) (V) and all penalties assessed pursuant to this part 2. All interest or any other return on the investments shall be paid into the fund. At the end of each fiscal year, the state treasurer shall transfer all unexpended and unencumbered moneys in the fund to the processors and end users fund created in section 25-17-202.5. The department shall use the fund for grants to and educational programs for county sheriffs, the state patrol, police departments, fire departments, and local health departments for enforcement, fire prevention and suppression, training, and oversight of waste tire facilities.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2173, § 10, effective June 10.

25-17-208. Waste tire advisory committee - repeal. (1) There is hereby created, under the commission, a waste tire advisory committee consisting of the following nine members:

(a) The executive director of the department or the executive director's designee; and

(b) The following eight members appointed by the governor with the consent of the senate:

(I) One member representing law enforcement from jurisdictions that have a waste tire facility;

(II) One member representing tire retailers;

(III) One member representing end users;

(IV) One member representing tire manufacturers;

(V) One member representing waste tire haulers;

(VI) One member representing waste tire processors;

(VII) One member representing waste tire monofills that are operating in compliance with their certificates of designation; and

(VIII) One member representing local fire authorities that have a waste tire facility within their jurisdiction.

(2) The advisory committee shall meet once per quarter for the first four years after July 1, 2010, to provide input and assessment of the waste tire cleanup program, propose new rules, and recommend to the department and commission potential rules to effectively manage the waste tire cleanup program. The advisory committee shall advise the commission and the department on criteria and priorities for waste tire-related funding; report to the transportation and energy committee of the house of representatives and the transportation committee of the senate, or their successor committees, with recommendations regarding penalties for waste tire disposal, storage, and transportation violations by January 1, 2011, and regarding allocation of the waste tire fee by January 1, 2013, and as appropriate thereafter; make recommendations to the department concerning educational programs and feasibility studies as contemplated by section 25-17-202.6 (6) (b) (II); and assist the department as needed with making grants related to waste tire clean up. The committee shall determine the frequency of its meetings after July 1, 2014. The focus for the committee is to:

(a) Protect the safety and welfare of the citizens, wildlife, and environment adjacent to waste tire facilities;

(b) Develop sound enforcement practices and risk mitigation practices to prevent the loss of life, property, and the environment caused by waste tires;

(c) Prevent the illegal transportation and disposal of waste tires;

(d) Develop markets for tire-derived products; and

(e) Provide a long-term plan to reduce waste tire stockpiles and a waste tire market development plan.

(3) The advisory committee shall have a chair and vice-chair and shall report to the commission, on an annual basis, concerning the progress of the waste tire cleanup program. The advisory committee shall track the violations alleged pursuant to this part 2 and report a summary of the complaints in the annual report to the commission. The department shall provide staff support, as appropriate, to the advisory committee.

(4) Appointed members of the advisory committee shall serve three-year terms; except that, of the initial appointees, two shall be appointed for one-year terms; three shall be appointed for two-year terms; and three shall be appointed for three-year terms. The governor shall designate the length of terms for each of the members first appointed in accordance with this subsection (4). Vacancies shall be filled by appointment for the duration of the unexpired term.

(5) Members of the advisory committee shall hold their first meeting no later than October 10, 2010.

(6) This section is repealed, effective July 1, 2020. Prior to such repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1018), ch. 421, p. 2173, § 10, effective June 10.

PART 3

ELECTRONIC DEVICE RECYCLING

Editor's note: Section 2 of chapter 127, Session Laws of Colorado 2012, provides that the act adding this part 3 applies to acts occurring on or after August 8, 2012.

25-17-301. Short title. This part 3 shall be known and may be cited as the "Electronic Recycling Jobs Act".

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 434, § 1, effective August 8.

25-17-302. Definitions. As used in this part 3, unless the context otherwise requires:
(1) “Commission” means the solid and hazardous waste commission created in section 25-15-302.

(2) “Consumer” means a person who has purchased an electronic device primarily for personal or home business use.

(3) (a) “Electronic device” means a device that is marketed by a manufacturer for use by a consumer and that is:

(I) A computer, peripheral, printer, facsimile machine, digital video disc player, video cassette recorder, or other electronic device specified by rule promulgated by the commission; or

(II) A video display device or computer monitor, including a laptop, notebook, ultrabook, or netbook computer, television, tablet or slate computer, electronic book, or other electronic device specified by rule promulgated by the commission that contains a cathode ray tube or flat panel screen with a screen size that is greater than four inches, measured diagonally.

(b) “Electronic device” does not include:

(I) A device that is part of a motor vehicle or any component part of a motor vehicle, including replacement parts for use in a motor vehicle;

(II) A device, including a touch-screen display, that is functionally or physically part of or connected to a system or equipment designed and intended for use in any of the following settings, including diagnostic, monitoring, or control equipment:

(A) Industrial;

(B) Commercial, including retail;

(C) Library checkout;

(D) Traffic control;

(E) Security, sensing, monitoring, or counterterrorism;

(F) Border control;

(G) Medical; or

(H) Governmental or research and development;

(III) A device that is contained within any of the following:

(A) A clothes washer or dryer;

(B) A refrigerator, freezer, or refrigerator and freezer;

(C) A microwave oven or conventional oven or range;

(D) A dishwasher;

(E) A room air conditioner, dehumidifier, or air purifier; or

(F) Exercise equipment;

(IV) A device capable of using commercial mobile radio service, as defined in 47 CFR 20.3, that does not contain a video display area greater than four inches, measured diagonally; or

(V) A telephone.

(4) “Landfill” means a solid wastes disposal site and facility, as that term is defined in section 30-20-101 (8), C.R.S.

(5) “Peripheral” means a keyboard, mouse, or other device that is sold exclusively for external use with a computer and provides input or output into or from a computer.

(6) “Processing for reuse” means a method, technique, or process by which electronic devices that would otherwise be disposed of or discarded are instead separated, processed, and returned to their original intended purposes or to other useful purposes as electronic devices.

(7) “Recycle” or “recycling” means processing, including disassembling, dismantling, shredding, and smelting, an electronic device or its components to recycle a useable component, commodity, or product, including processing for reuse. “Recycling”, with respect to electronic devices, does not include any process defined as incineration under applicable laws or rules.

(8) “State agency” means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

(9) (a) “Video display device” means:

(I) An electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion; or

(II) An electronic device with a viewable screen of four inches or larger, measured diagonally, that contains a tuner that locks on to a selected carrier frequency or cable signal and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite.

(b) “Video display device” includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen. A video display device may use a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image-projection technology.

(c) “Video display device” does not include a device that is part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 434, § 1, effective August 8.

25-17-303. Landfill ban - rules. By July 1, 2013, a person shall not dispose of an electronic device or a component of an electronic device in a landfill in this state; except that a board of county commissioners for a county that does not have at least two electronic waste recycling events per year or an ongoing electronic waste recycling program that serves residents of the county may, by majority vote of the commissioners and in compliance with the requirements of this section, exempt its residents from the ban established by this section. A county shall make a good faith effort to secure the electronic waste recycling services before the board of commissioners may exempt the county’s residents from the landfill ban. An exemption from the landfill ban is valid for two years, after which the board may vote on another two-year exemption after again making a good faith effort to secure a vendor to provide the recycling services. A county is not required to pay for the recycling services. Counties that currently do not have such services are encouraged to work with the department of public health and environment and other entities, such as the Colorado association for recycling, or its successor organization, to find an electronics recycling vendor that will serve that county.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 437, § 1, effective August 8.

25-17-304. State electronic device recycling - rules. (1) Effective July 1, 2013, each state agency shall recycle its electronic devices. The agency shall use only a recycler that is certified to a national environmental certification standard such as the R2 or e-steward standards or other comparable recycling or disposal standard; except that this certification requirement does not apply to processing for reuse conducted on behalf of state agencies as stipulated in section 17-24-106.6, C.R.S., by the division of correctional industries created in section 17-24-104, C.R.S. The commission may adopt rules to avoid the use of certifications that are not comparable.

(2) Upon receipt of a device, a recycler that accepts an electronic device from a state agency shall provide the agency with appropriate documentation verifying the recycler’s certification as required in subsection (1) of this section.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 437, § 1, effective August 8.

25-17-305. Immunity. (1) A recycler is not liable for personal or financial data or other information that a consumer or state agency may leave on an electronic device that is collected, processed, or recycled unless the recycler acted in a grossly negligent manner.

(2) A waste hauler, as that term is defined in section 30-20-1001 (16), C.R.S., or owner or operator of a landfill or transfer station does not violate this part 3 if the hauler, owner, or operator has made a good-faith effort to comply with this part 3 by posting and maintaining, in a conspicuous location at the waste hauler's facility, transfer station, or the landfill, a sign stating that electronic devices will not be accepted at the facility, transfer station, or landfill.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 437, § 1, effective August 8.

25-17-306. Public education. The department of public health and environment shall coordinate with existing public and private efforts regarding the development and implementation of a public education program about the recycling of electronic devices, the removal of data from an electronic device being offered for recycling, the benefits of electronic device recycling, how to find electronic device recyclers, and implementation of the landfill ban pursuant to section 25-17-303. The department shall perform these functions within its existing resources.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 438, § 1, effective August 8.

25-17-307. Charitable donations of electronic devices. (1) A charitable organization, as defined in section 6-16-103 (1), C.R.S., may:

- (a) Refuse to accept a donation of an electronic device; and
- (b) Establish a surcharge for acceptance of a donation of an electronic device.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 438, § 1, effective August 8.

25-17-308. Rules. The commission shall adopt rules necessary to implement this part 3.

Source: L. 2012: Entire part added, (SB 12-133), ch. 127, p. 438, § 1, effective August 8.

ARTICLE 18

Underground Storage Tanks

25-18-101 to 25-18-109. (Repealed)

Source: L. 95: Entire article repealed, p. 420, § 12, effective July 1.

Editor's note: This article was added in 1989. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to article 20.5 of title 8. For the location of specific provisions, see the editor's notes following each section in said article.

ARTICLE 18.5

Illegal Drug Laboratories

Law reviews: For article, "Meth Labs: New Colorado Cleanup Mandate and Regulation", see 34 Colo. Law. 105 (December 2005).

25-18.5-101.	Definitions.		cleanup - liability.
25-18.5-102.	Illegal drug laboratories - rules.	25-18.5-104.	Entry into illegal drug laboratories.
25-18.5-103.	Discovery of illegal drug laboratory - property owner -	25-18.5-105.	Drug laboratories - governing body - authority.

25-18.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Board” means the state board of health in the department of public health and environment.

(2) (Deleted by amendment, L. 2009, (SB 09-060), ch. 140, p. 600, § 1, effective April 20, 2009.)

(2.5) “Governing body” means the agency or office designated by the city council or board of county commissioners where the property in question is located. If there is no such designation, the governing body shall be the county, district, or municipal public health agency, building department, and law enforcement agency with jurisdiction over the property in question.

(2.7) “Illegal drug laboratory” means the areas where controlled substances, as defined by section 18-18-102, C.R.S., have been manufactured, processed, cooked, disposed of, used, or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposal, use, or storing.

(3) “Property” means anything that may be the subject of ownership, including, but not limited to, land, buildings, structures, and vehicles.

(4) “Property owner”, for the purposes of real property, means the person holding record fee title to real property. “Property owner” also means the person holding the title to a manufactured home.

Source: L. 2004: Entire article added, p. 532, § 1, effective April 21. L. 2005: (2.5) added, p. 1495, § 1, effective June 9. L. 2009: (2) amended and (2.7) added, (SB 09-060), ch. 140, p. 600, § 1, effective April 20. L. 2010: (2.5) amended, (HB 10-1422), ch. 419, p. 2106, § 125, effective August 11.

25-18.5-102. Illegal drug laboratories - rules. The board shall promulgate health-protective rules that establish procedures for testing and evaluation of contamination and the acceptable standards for the cleanup of illegal drug laboratories involving methamphetamine.

Source: L. 2004: Entire article added, p. 533, § 1, effective April 21. L. 2009: Entire section amended, (SB 09-060), ch. 140, p. 600, § 2, effective April 20.

25-18.5-103. Discovery of illegal drug laboratory - property owner - cleanup - liability. (1) (a) Upon notification from a peace officer that chemicals, equipment, or supplies indicative of an illegal drug laboratory are located on a property, or when an illegal drug laboratory used to manufacture methamphetamine is otherwise discovered and the property owner has received notice, the owner of any contaminated property shall meet the clean-up standards for property established by the board in section 25-18.5-102; except that a property owner may, at his or her option and subject to paragraph (b) of this subsection (1), elect instead to demolish the contaminated property. If the owner elects to demolish the contaminated property, the governing body or, if none has been designated, the county, district, or municipal public health agency, building department, or law enforcement agency with jurisdiction over the area where the property is located may require the owner to fence off the property or otherwise make it inaccessible to persons for occupancy or intrusion.

(b) An owner of any personal property within a structure or vehicle contaminated by illegal drug laboratory activity shall have ten days after the date of discovery of the laboratory or contamination to remove or clean his or her personal property according to board rules. If the personal property owner fails to remove the personal property within ten days, the owner of the structure or vehicle may dispose of the personal property during the clean-up process without liability to the owner of the personal property for such disposition.

(2) Once a property owner has met the clean-up standards and documentation requirements established by the board, as evidenced by a copy of the results provided to the governing body, or has demolished the property, compliance with subsection (1) of this section shall establish immunity for the property owner from a suit for alleged health-based civil actions brought by any future owner, renter, or other person who occupies such property, or a neighbor of such property, in which the alleged cause of the injury or loss is the existence of the illegal drug laboratory used to manufacture methamphetamine; except that immunity from a civil suit is not established for the person convicted for the production of methamphetamine.

(3) A person who removes personal property or debris from a drug laboratory shall secure the property and debris to prevent theft or exposing another person to any toxic or hazardous chemicals until the property and debris is appropriately disposed of or cleaned according to board rules.

Source: **L. 2004:** Entire article added, p. 533, § 1, effective April 21. **L. 2005:** Entire section amended, p. 1495, § 2, effective June 9. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2106, § 126, effective August 11.

25-18.5-104. Entry into illegal drug laboratories. If a structure or vehicle has been determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination, the owner of the structure or vehicle shall not permit any person to have access to the structure or vehicle unless the person is trained or certified to handle contaminated property pursuant to board rules or federal law.

Source: **L. 2005:** Entire section added, p. 1496, § 3, effective June 9.

25-18.5-105. Drug laboratories - governing body - authority. (1) An illegal drug laboratory that has not met the clean-up standards set by the board in section 25-18.5-102 shall be deemed a public health nuisance.

(2) Governing bodies may enact ordinances or resolutions to enforce this article, including, but not limited to, preventing unauthorized entry into contaminated property; requiring contaminated property to meet clean-up standards before it is occupied; notifying the public of contaminated property; coordinating services and sharing information between law enforcement, building, public health, and social services agencies and officials; and charging reasonable inspection and testing fees.

Source: **L. 2005:** Entire section added, p. 1496, § 3, effective June 9.

ARTICLE 18.7

Industrial Hemp Remediation Pilot Program

25-18.7-101.	Definitions.	25-18.7-104.	Gifts, grants, and donations -
25-18.7-102.	Industrial hemp - permitted growth.		authority to accept - cash fund - notice of funding through gifts, grants, and donations - repeal.
25-18.7-103.	Industrial hemp remediation pilot program committee - appointments - duties.	25-18.7-105.	Repeal of article.

25-18.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Committee” means the industrial hemp remediation pilot program committee established in section 25-18.7-103.

(2) “Executive director” means the executive director of the department of public health and environment.

(3) “Industrial hemp” means any variety of the plant cannabis sativa L. containing no more than three-tenths of one percent of tetrahydrocannabinols, whether growing or not.

(4) “Phytoremediation” means the mitigation of pollutant concentrations, including

metals, pesticides, solvents, explosives, and crude oil and its derivatives, in contaminated soils, water, and air making soils more conducive to crop production through the growth of industrial hemp.

(5) "Tetrahydrocannabinols" has the same meaning set forth in section 12-22-303 (32), C.R.S.

Source: L. 2012: Entire article added, (HB 12-1099), ch. 253, p. 1262, § 1, effective July 1.

25-18.7-102. Industrial hemp - permitted growth. (1) Growing and possessing industrial hemp for the purposes of this article is permitted in this state.

(2) Notwithstanding any other provision of law, an individual is not subject to any civil or criminal actions for growing industrial hemp or otherwise participating in the industrial hemp remediation pilot program if the individual's actions are in compliance with the pilot program established in this article.

Source: L. 2012: Entire article added, (HB 12-1099), ch. 253, p. 1263, § 1, effective July 1.

25-18.7-103. Industrial hemp remediation pilot program committee - appointments - duties. (1) The chair of the agriculture, livestock, and natural resources committee in the house of representatives and the chair of the agriculture, natural resources, and energy committee in the senate shall jointly appoint seven members to the industrial hemp remediation pilot program committee, which is hereby established.

(2) (a) The committee shall establish an industrial hemp remediation pilot program, referred to in this section as the "pilot program", in order to determine how soils and water may be made more pristine and healthy by phytoremediation, removal of contaminants, and rejuvenation through the growth of industrial hemp. The committee shall choose a secure, indoor growing site for the pilot program.

(b) The committee shall study and include in a final report to the executive director the following components as part of the pilot program:

- (I) The rate of contamination uptake from soil and water;
- (II) The mode of efficient uptake from soil and water;
- (III) The rate of carbon fixation in the Calvin cycle;
- (IV) The locations in the roots, stems, leaves, and flowers of the plants at which contaminant are fixated;
- (V) What contaminants are stabilized in the plants;
- (VI) What contaminants on the site need additional treatment in order to make the soil or water healthy and pristine;
- (VII) What disposal method is best for the different contaminants, including petrification, encasement, incineration, burial, and composting;
- (VIII) Set a baseline for the plants cultivated in a clean soil to set a standard; and
- (IX) Other data deemed important to the pilot program.

(c) The committee shall submit a report to the executive director no later than six months after the conclusion of the pilot program that outlines the findings of the committee.

Source: L. 2012: Entire article added, (HB 12-1099), ch. 253, p. 1263, § 1, effective July 1.

25-18.7-104. Gifts, grants, and donations - authority to accept - cash fund - notice of funding through gifts, grants, and donations - repeal. (1) The committee is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this article; except that the committee shall not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this article or any other law of the state. The committee shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the hemp

remediation pilot program cash fund, which fund is hereby created and referred to in this article as the “fund”. The moneys in the fund are subject to annual appropriation by the general assembly to the department of public health and environment for appropriation to the committee for the direct and indirect costs associated with implementing this article.

(2) (a) In seeking or accepting a gift, grant, or donation, the committee shall notify the legislative council staff when it has received adequate funding through gifts, grants, or donations for the industrial hemp remediation pilot program and shall include in the notification the information specified in section 24-75-1303 (3), C.R.S.

(b) This subsection (2) is repealed, effective July 1, 2015.

Source: L. 2012: Entire article added, (HB 12-1099), ch. 253, p. 1264, § 1, effective July 1.

25-18.7-105. Repeal of article. This article is repealed, effective July 1, 2022.

Source: L. 2012: Entire article added, (HB 12-1099), ch. 253, p. 1264, § 1, effective July 1.

ENVIRONMENT - SMALL COMMUNITIES

ARTICLE 19

Small Community Environmental Flexibility Act

Law reviews: For article, “Using Local Police Powers to Protect the Environment”, see 24 Colo. Law. 1063 (1995).

25-19-101.	Short title.		compliance agreements.
25-19-102.	Legislative declaration.	25-19-106.	Planning assistance.
25-19-103.	Definitions.	25-19-107.	Mentoring.
25-19-104.	Environmental priorities plan.	25-19-108.	Implementation within exist-
25-19-105.	Integrated environmental		ing resources.

25-19-101. Short title. This article shall be known and may be cited as the “Small Community Environmental Flexibility Act”.

Source: L. 95: Entire article added, p. 1005, § 1, effective July 1.

25-19-102. Legislative declaration. (1) The general assembly hereby finds and determines that small communities throughout the state are struggling to identify adequate resources, particularly for infrastructure improvements, to comply with the numerous environmental requirements that have been established by federal and state laws.

(2) The general assembly further finds and determines that citizens in small communities, as well as all citizens of the state, are entitled to the benefits of appropriate measures for public health and environmental protection.

(3) The general assembly therefore declares that the provisions of this article are enacted to provide maximum flexibility for small communities to comply with the environmental laws of this state without diminishing the public health and environmental protection provided to the citizens of Colorado.

Source: L. 95: Entire article added, p. 1005, § 1, effective July 1.

25-19-103. Definitions. As used in this article, unless the context otherwise requires: (1) “Department” means the department of public health and environment created by section 25-1-102.

(2) “Environmental priorities plan” means a plan prepared in accordance with section 25-19-104.

(3) "Integrated environmental compliance agreement" means an agreement entered into between a small community and the department pursuant to section 25-19-105.

(4) "Small community" means a municipality, county, or special district with a population of less than two thousand five hundred persons or a combination of two or more such municipalities, counties, or special districts working together pursuant to an intergovernmental agreement for purposes of participation in the program established pursuant to this article.

Source: L. 95: Entire article added, p. 1006, § 1, effective July 1.

25-19-104. Environmental priorities plan. (1) Any small community wishing to enter into an integrated environmental compliance agreement pursuant to section 25-19-105 shall submit to the department on or before July 1, 1998, an environmental priorities plan prepared in accordance with the provisions of this section; except that an environmental priorities plan may be submitted by a small community after July 1, 1998, if the department finds that the small community did not become aware of and could not have reasonably anticipated the environmental compliance concerns of the community in time to meet the deadline of July 1, 1998.

(2) An environmental priorities plan shall:

(a) Identify the environmental requirements enumerated in section 25-19-105 that pose an existing compliance problem or a near term compliance problem for the small community;

(b) Demonstrate the resource limitations that make it difficult for the small community to achieve and sustain compliance within the established statutory or regulatory deadlines;

(c) Set forth the small community's proposed environmental compliance priorities, including the identified actions to be taken, anticipated expenditures required for such actions, and a proposed schedule that would result in compliance with all individual environmental requirements as soon as practicable, within an overall period not to exceed ten years, without adversely impacting public health or the environment outside of the small community; and

(d) Describe the public process that has resulted in the formulation of the environmental compliance priorities for the small community.

(3) A small community participating in the program created by this article shall take reasonable steps to provide the public affected by its actions with a meaningful opportunity to participate in the preparation of an environmental priorities plan, through whatever combination of public meetings or hearings or opportunity for written input is most practical for the particular community.

(4) A small community participating in the program created by this article shall provide a copy of its proposed plan to any person who has so requested prior to the small community's submission of its plan to the department.

(5) The multi-media environmental integration advisory committee established pursuant to section 25-1-108 may, following notice to associations of political subdivisions eligible to participate in the program created by this article, develop guidance documents that provide more specific criteria for the preparation of an environmental priorities plan if the advisory committee determines that such criteria would further the purposes of this article.

(6) An environmental priorities plan submitted to the department shall be approved if the plan meets the requirements of this section and is consistent with any criteria for the preparation of such plans set forth in guidance documents developed by the multi-media environmental integration advisory committee.

Source: L. 95: Entire article added, p. 1006, § 1, effective July 1.

25-19-105. Integrated environmental compliance agreements. (1) The department is authorized to enter into integrated environmental compliance agreements with small communities in accordance with the provisions of this section.

(2) The environmental requirements that may be addressed in an integrated environmental compliance agreement are the requirements established by or pursuant to article 7, 8, 11, or 15 of this title, article 20.5 of title 8, C.R.S., or article 20 of title 30, C.R.S. An integrated environmental compliance agreement may address environmental requirements applicable to a solid waste disposal site and facility only if such site and facility receives twenty tons per day or less of solid waste.

(3) Any integrated environmental compliance agreement with a small community shall:

(a) Identify actions to be taken by the small community, including a schedule with interim deadlines, that will result in compliance with each of the applicable individual environmental requirements as soon as practicable, within an overall period not to exceed ten years;

(b) Be consistent with an approved environmental priorities plan for the small community;

(c) Contain a provision directing that the agreement will not take effect until the community's registered electors have approved any creation of a multiple-fiscal year debt or other financial obligation for which an election is required by section 20 of article X of the Colorado constitution and which is required to implement the terms of the agreement;

(d) Be structured as a formal enforcement agreement to ensure continued compliance or to resolve an existing compliance issue involving a small community; and

(e) Be enforceable pursuant to the provisions of the statutes governing the individual environmental requirements addressed in the agreement with respect to any of the agreement deadlines that are not met.

(4) A small community participating in the program created by this article shall provide a copy of its proposed agreement to any person who has so requested in writing prior to the small community's submission of its plan to the department. Before the agreement is approved by the department, the department shall allow at least twenty days within which any person may review and submit written comments on the agreement to the small community and the department.

(5) An integrated environmental compliance agreement may be amended by agreement of the small community and the department to address compliance concerns not anticipated at the time of the original agreement. The amended agreement shall require compliance with any new requirement added to the amended agreement as soon as practicable, within an overall period not to exceed ten years from the date of the amendment. The deadline for any requirement addressed in the original agreement may be extended as a part of the amendment of the agreement, but the deadline may not be extended beyond ten years after the date of the original agreement.

(6) An integrated environmental compliance agreement entered into under this article shall not be deemed to impair, modify, or otherwise affect prior agreements entered into between a small community and any entity other than the department.

(7) Any provision of an integrated compliance agreement implementing a requirement that, absent such agreement, would no longer be applicable as the result of repeal or modification of a statutory or regulatory requirement shall be unenforceable.

(8) No component of an integrated environmental compliance agreement that would result in an increased regulatory compliance burden on any other entity shall be approved without such entity's consent.

(9) Paragraph (e) of subsection (3) of this section notwithstanding, if requested by the small community, the department may file in district court a complaint and a proposed consent order embodying the requirements of the integrated environmental compliance agreement to require compliance with any applicable standard, limitation, or order.

Source: L. 95: Entire article added, p. 1007, § 1, effective July 1. L. 96: (2) amended, p. 1473, § 24, effective June 1.

25-19-106. Planning assistance. The department of local affairs shall provide assistance to small communities in the preparation of environmental priorities plans upon request.

Source: L. 95: Entire article added, p. 1009, § 1, effective July 1.

25-19-107. Mentoring. The department, in cooperation with the department of local affairs, is authorized to identify opportunities for small communities with similar compliance problems to share information or for larger communities to work with small communities in addressing the technical and other issues involved in preparing an environmental priorities plan.

Source: L. 95: Entire article added, p. 1009, § 1, effective July 1.

25-19-108. Implementation within existing resources. Any department of state implementing any provision of this article shall do so without additional appropriations of state moneys and without additional personnel.

Source: L. 95: Entire article added, p. 1009, § 1, effective July 1.

SAFETY - DISABLED PERSONS

ARTICLE 20

Duties Owed Disabled Persons - Identification

25-20-101.	Short title.	25-20-105.	Duty of medical practitioners.
25-20-102.	Definitions.	25-20-106.	Duty of others.
25-20-103.	Identifying devices for persons having certain conditions.	25-20-107.	Falsifying identification or misrepresenting condition.
25-20-104.	Duty of peace officer.	25-20-108.	Uniformity of application and construction.

25-20-101. Short title. This article shall be known and may be cited as the “Uniform Duties to Disabled Persons Act”.

Source: L. 73: p. 753, § 1. **C.R.S. 1963:** § 66-39-1.

25-20-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Disabled condition” means the condition of being unconscious, semiconscious, incoherent, or otherwise incapacitated to communicate.

(2) “Disabled person” means a person in a disabled condition.

(3) “Emergency symbol” means the caduceus inscribed within a six-barred cross used by the American medical association to denote emergency information.

(4) “Identifying device” means an identifying bracelet, necklace, metal tag, or similar device bearing the emergency symbol and the information needed in an emergency.

(5) “Medical practitioner” means a person licensed or authorized to practice medicine pursuant to article 36 of title 12, C.R.S.

(6) “Peace officer” means any county sheriff, undersheriff, deputy sheriff, or coroner, any municipal police officer or marshal, or any Colorado state patrol officer.

Source: L. 73: p. 753, § 1. **C.R.S. 1963:** § 66-39-2. **L. 94:** (4) amended, p. 2564, § 75, effective January 1, 1995. **L. 2005:** (4) amended, p. 651, § 24, effective May 27.

25-20-103. Identifying devices for persons having certain conditions. (1) A person who suffers from epilepsy, diabetes, a cardiac condition, or any other type of illness that causes temporary blackouts, semiconscious periods, or complete unconsciousness, or who suffers from a condition requiring specific medication or medical treatment, is allergic to certain medications or items used in medical treatment, wears contact lenses, has religious objections to certain forms of medication or medical treatment, or is unable to communicate

coherently or effectively in the English language, is authorized and encouraged to wear an identifying device.

(2) Any person may carry an identification card bearing his name, type of medical condition, physician's name, and other medical information.

(3) By wearing an identifying device a person gives his consent for any peace officer or medical practitioner who finds him in a disabled condition to make a reasonable search of his clothing or other effects for an identification card of the type described in subsection (2) of this section.

Source: L. 73: p. 754, § 1. C.R.S. 1963: § 66-39-3.

25-20-104. Duty of peace officer. (1) A peace officer shall make a diligent effort to determine whether any disabled person he finds is an epileptic or a diabetic, or suffers from some other type of illness that would cause the condition. Whenever feasible, this effort shall be made before the person is charged with a crime or taken to a place of detention.

(2) In seeking to determine whether a disabled person suffers from an illness, a peace officer shall make a reasonable search for an identifying device and an identification card of the type described in section 25-20-103 (2) and examine them for emergency information. The peace officer may not search for an identifying device or an identification card in a manner or to an extent that would appear to a reasonable person in the circumstances to cause an unreasonable risk of worsening the disabled person's condition.

(3) A peace officer who finds a disabled person without an identifying device or identification card is not relieved of his duty to that person to make a diligent effort to ascertain the existence of any illness causing the disabled condition.

(4) A claim for relief against a peace officer does not arise from his making a reasonable search of the disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card.

(5) A peace officer who determines or has reason to believe that a disabled person is suffering from an illness causing his condition shall promptly notify the person's physician, if practicable. If the officer is unable to ascertain the physician's identity or to communicate with him, the officer shall make a reasonable effort to cause the disabled person to be transported immediately to a medical practitioner or to a facility where medical treatment is available. If the officer believes it unduly dangerous to move the disabled person, he shall make a reasonable effort to obtain the assistance of a medical practitioner.

Source: L. 73: p. 754, § 1. C.R.S. 1963: § 66-39-4.

25-20-105. Duty of medical practitioners. (1) A medical practitioner, in discharging his duty to a disabled person whom he has undertaken to examine or treat, shall make a reasonable search for an identifying device or identification card of the type described in section 25-20-103 (2) and examine them for emergency information.

(2) A claim for relief against a medical practitioner does not arise from his making a reasonable search of a disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card.

Source: L. 73: p. 754, § 1. C.R.S. 1963: § 66-39-5.

25-20-106. Duty of others. (1) A person, other than a peace officer or medical practitioner, who finds a disabled person shall make a reasonable effort to notify a peace officer. If a peace officer or medical practitioner is not present, a person who finds a disabled person may make a reasonable search for an identifying device, and, if the identifying device is found, may make a reasonable search for an identification card of the type described in section 25-20-103 (2). If a device or card is located, the person making the search shall attempt promptly to bring its contents to the attention of a peace officer or medical practitioner.

- (2) A claim for relief does not arise from a reasonable search to locate an identifying device or identification card as authorized by subsection (1) of this section.
- (3) The duties imposed by this article are in addition to, and not in limitation of, other duties existing under the laws of this state.

Source: L. 73: p. 755, § 1. C.R.S. 1963: § 66-39-6.

25-20-107. Falsifying identification or misrepresenting condition. Any person who, with intent to deceive, provides, wears, uses, or possesses a false identifying device or identification card of the type described in section 25-20-103 (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than three hundred dollars, or by both such fine and imprisonment.

Source: L. 73: p. 755, § 1. C.R.S. 1963: § 66-39-7.

25-20-108. Uniformity of application and construction. This article shall be so applied and construed as to make uniform the law with respect to the subject matter among those states which enact it.

Source: L. 73: p. 755, § 1. C.R.S. 1963: § 66-39-8.

PREVENTION, INTERVENTION, AND TREATMENT SERVICES

ARTICLE 20.5

**Prevention, Intervention, and Treatment Services
for Children and Youth**

PART 1		PART 2	
ADMINISTRATION		TONY GRAMPSAS YOUTH SERVICES PROGRAM	
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25-20.5-103.	Prevention services division - creation.	25-20.5-203.	Colorado Youth Mentoring Services Act.
25-20.5-104.	Functions of division.	25-20.5-204.	Colorado student dropout prevention and intervention program.
25-20.5-105.	State plan for delivery of prevention, intervention, and treatment services to children and youth - contents.	25-20.5-205.	Colorado student before-and-after-school project - creation - funding.
25-20.5-106.	State board of health - rules - program duties.	PART 3	
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25-20.5-108.	Prevention, intervention, and treatment program requirements - reports - reviews - annual review summary.	25-20.5-301.	Definitions.
25-20.5-109.	Programs not included.		
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25-20.5-302.	Program.	25-20.5-502.	Definitions.
25-20.5-303.	Cancer, cardiovascular disease, and chronic pulmonary dis- ease program review com- mittee.	25-20.5-503.	School-based health center grant program - creation - funding - grants.
25-20.5-304.	Grant program.	PART 6	
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PART 4

CHILD FATALITY PREVENTION ACT

25-20.5-401.	Short title.
25-20.5-402.	Legislative declaration.
25-20.5-403.	Definitions.
25-20.5-404.	Local review teams - creation - membership - authority.
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25-20.5-407.	State review team - duties.
25-20.5-408.	Access to records.
25-20.5-409.	Administration - funding - cash fund.

PART 5

SCHOOL-BASED HEALTH CENTER
GRANT PROGRAM

25-20.5-501.	Legislative declaration.
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25-20.5-601.	Legislative declaration.
25-20.5-602.	Definitions.
25-20.5-603.	Primary care office - creation.
25-20.5-604.	Primary care office - powers and duties.
25-20.5-605.	Visa waiver program fund.

PART 7

STATE HEALTH CARE PROFESSIONAL
LOAN REPAYMENT PROGRAM

25-20.5-701.	Legislative declaration.
25-20.5-702.	Definitions.
25-20.5-703.	Colorado health service corps - program - creation - condi- tions.
25-20.5-704.	Colorado health service corps advisory council - creation - membership - duties - repeal.
25-20.5-705.	Advisory council - report.
25-20.5-706.	Colorado health service corps fund - created - acceptance of grants and donations.

PART 1

ADMINISTRATION

25-20.5-101. Legislative declaration. (1) The general assembly hereby finds that:

(a) The state operates or state agencies provide funding for a wide variety of preven-
tion, intervention, and treatment programs designed to assist children and youth in achiev-
ing an education, in making informed choices about their health and well-being, in avoiding
the juvenile and criminal justice systems, and, generally, in becoming healthy, law-abiding,
contributing members of society;

(b) These prevention, intervention, and treatment programs are operated by or funded
through several departments within the executive branch, and this high degree of decen-
tralization often makes communications between and among these departments and pro-
grams difficult;

(c) There is some overlap among prevention, intervention, and treatment programs,
sometimes resulting in the potentially inefficient use of state resources which may result in
the provision of fewer services to children and youth;

(d) The dispersion of prevention, intervention, and treatment programs among state
departments makes it difficult for both state employees and the public to determine what
programs are available and what services are provided through prevention, intervention, and
treatment programs that are operated by or funded through state agencies;

(e) The term limitations placed on persons who serve in public office, including
members of the general assembly, make it increasingly important that information concern-
ing the existence, funding, and operation of prevention, intervention, and treatment pro-
grams for youth be readily accessible;

(f) In the area of prevention, intervention, and treatment services, there is a critical need
for local and state programs to overcome barriers and the categorical requirements of

various funding sources in order to design and implement programs that provide a more comprehensive response to the needs of Colorado youth;

(g) Research demonstrates that program coordination among multiple systems for the purpose of improving prevention, intervention, and treatment services results in significant positive outcomes;

(h) A unified, coordinated response to community-based programs for the delivery of prevention, intervention, and treatment services has proven to be an effective and efficient state response to local programs and their needs.

(2) The general assembly therefore finds that it is in the best interests of the children, youth, and families of the state to create a single division in the department of public health and environment to operate prevention and intervention programs and to oversee the provision of prevention, intervention, and treatment services through federally and state-funded prevention, intervention, and treatment programs to ensure collaboration among programs and the availability of a continuum of services for children and youth.

Source: L. 2000: Entire article added, p. 561, § 1, effective May 18.

25-20.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Department” means the department of public health and environment, created pursuant to section 25-1-102.

(2) “Division” means the prevention services division created in section 25-20.5-103.

(3) “Executive director” means the executive director of the department of public health and environment.

(4) “Prevention, intervention, and treatment program” means a program that provides prevention, intervention, or treatment services.

(5) “Prevention, intervention, and treatment services” means services that are designed to promote the well-being of children and youth and their families by decreasing high-risk behaviors, strengthening healthy behaviors, and promoting family stability.

(6) “State plan” means the state plan for delivery of prevention, intervention, and treatment services to children and youth throughout the state adopted by the division pursuant to section 25-20.5-105.

Source: L. 2000: Entire article added, p. 562, § 1, effective May 18. **L. 2004:** (2) amended, p. 113, § 2, effective August 4.

25-20.5-103. Prevention services division - creation. (1) There is hereby created within the department of public health and environment a prevention services division. The division shall be headed by the director of prevention services appointed by the executive director of the department of public health and environment in accordance with section 13 of article XII of the state constitution.

(2) The division shall exercise its powers and perform its duties and functions specified in this article under the department of public health and environment as if it were transferred to the department by a **type 2** transfer as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

Source: L. 2000: Entire article added, p. 563, § 1, effective May 18. **L. 2004:** (1) amended, p. 114, § 3, effective August 4.

25-20.5-104. Functions of division. (1) The division has the following functions:

(a) On or before February 1, 2001, to submit to the executive director, to the Tony Grampsas youth services board, and to the governor for approval a state plan for delivery of prevention, intervention, and treatment services to children and youth throughout the state as provided in section 25-20.5-105, and to biennially review the state plan and submit revisions as provided by rule of the state board of health to the executive director, the Tony Grampsas youth services board, and the governor for approval;

(b) To identify performance indicators for prevention, intervention, and treatment programs based on the standards adopted by the state board of health pursuant to section 25-20.5-106 (2) (d), and to review, as provided in section 25-20.5-108, all prevention, intervention, and treatment programs operated by the division and by other state departments;

(c) To act as a liaison with communities throughout the state and assist the communities in their efforts to assess their needs with regard to prevention, intervention, and treatment services and to provide information to assist the communities in obtaining funding for appropriate prevention, intervention, and treatment programs;

(d) To provide technical assistance to communities and to entities that provide prevention, intervention, and treatment services;

(e) To operate the prevention and intervention programs specified in this article and such other prevention and intervention programs as may be created in or transferred to the division by executive order to be funded solely by nonstate moneys, including but not limited to reviewing applications submitted by entities to receive funding through said programs, awarding grants based on such applications, and notifying the state board of health of the grants awarded and the amounts of said grants; except that the Tony Grampsas youth services board shall review applications and award grants for the programs specified in part 2 of this article;

(f) To solicit and accept grants from the federal government and to solicit and accept contributions, grants, gifts, bequests, and donations from individuals, private organizations, and foundations for the operation of any prevention and intervention programs under the authority of the division;

(g) To periodically review the federal funding guidelines for federal prevention, intervention, and treatment programs and to seek the maximum flexibility in the use of federal moneys in funding prevention, intervention, and treatment programs provided through the state plan;

(h) To seek such federal waivers as may be necessary to allow the division to combine federal moneys available through various federal prevention, intervention, and treatment programs and to combine said moneys with moneys appropriated by the general assembly to fund state prevention, intervention, and treatment programs to allow the greatest flexibility in awarding combined program funding to community-based prevention, intervention, and treatment programs;

(i) Repealed.

(2) In addition to any prevention and intervention programs created in or transferred to the division by executive order and any prevention and intervention programs transferred to the division by the executive director pursuant to subsection (4) of this section, the division shall operate the following prevention and intervention programs:

(a) The Tony Grampsas youth services program created in section 25-20.5-201;

(b) The Colorado youth mentoring services program created in section 25-20.5-203;

(c) The Colorado student dropout prevention and intervention program created in section 25-20.5-204;

(d) The Colorado children's trust fund created in article 3.5 of title 19, C.R.S.;

(e) The family resource center program created in section 26-18-104, C.R.S.;

(f) The school-based health center grant program created in part 5 of this article.

(3) In operating prevention and intervention programs, on receipt of an application for funding through any of said prevention and intervention programs, the division shall review the application and determine whether there are other prevention, intervention, and treatment programs operated by state agencies within this state through which funding may be available to the applicant. With the applicant's consent, the division shall forward a copy of the application to any such program for consideration.

(4) The executive director shall transfer any prevention and intervention programs operated by the department to the division, as he or she deems appropriate. The division shall collaborate with any other division within the department that operates a prevention, intervention, and treatment program in the same manner that it collaborates with other state agencies that operate prevention, intervention, and treatment programs.

Source: L. 2000: Entire article added, p. 563, § 1, effective May 18. L. 2001: (2)(e) amended, p. 251, § 6, effective March 29. L. 2006: (2)(f) added, p. 1597, § 2, effective July 1.

Editor's note: Subsection (1)(i)(II) provided for the repeal of subsection (1)(i), effective July 1, 2004. (See L. 2000, p. 563.)

25-20.5-105. State plan for delivery of prevention, intervention, and treatment services to children and youth - contents. (1) On or before February 1, 2001, the division shall submit to the governor, the Tony Grampsas youth services board, and the executive director for approval a state plan for delivery of prevention, intervention, and treatment services to children and youth throughout the state. The state plan shall apply to all prevention, intervention, and treatment programs that receive state or federal funds and are operated within the state. The state plan shall be designed to coordinate and provide direction for the delivery of prevention, intervention, and treatment services through the various prevention and intervention programs operated by the division and the prevention, intervention, and treatment programs operated by other state departments and to ensure collaboration among programs that results in a continuum of services available to children and youth throughout the state. At a minimum, the state plan shall:

(a) Target and prioritize community prevention, intervention, and treatment services needs throughout the state;

(b) Specify the standards for and measurable outcomes anticipated to be achieved by prevention, intervention, and treatment programs that receive state and federal funds and the outcomes to be achieved through the coordination of said prevention, intervention, and treatment programs;

(c) Identify all state- and community-based prevention, intervention, and treatment programs that are receiving state and federal funds during the fiscal years for which the plan is submitted and the schedule for review of said prevention, intervention, and treatment programs;

(d) Identify the methods by which the division shall encourage collaboration at the local level among public and private entities, including but not limited to private for-profit and nonprofit providers and faith-based services providers, in providing prevention, intervention, and treatment services;

(e) Include any other information required by rule of the state board of health.

(2) The division shall biennially review and revise the state plan as necessary to ensure the most efficient and effective delivery of prevention, intervention, and treatment services throughout the state. The division shall submit any revised state plan as provided by rule of the state board of health to the governor, the Tony Grampsas youth services board, and the executive director for approval.

(3) In preparing the state plan and biennial revisions to the state plan, the division shall hold at least two public meetings to receive input from members of the public and from state agencies and entities operating prevention, intervention, and treatment programs.

(4) On or before March 15, 2001, the governor and the executive director shall submit copies of the approved state plan to the general assembly, to each state department that operates a prevention, intervention, and treatment program, and to each entity that will receive state or federal funds for the operation of a prevention, intervention, and treatment program during the fiscal years for which the state plan is prepared. The division shall provide copies of the approved state plan to any person upon request. The governor and the executive director shall submit copies of any approved revised state plans as provided by rule of the state board of health.

Source: L. 2000: Entire article added, p. 565, § 1, effective May 18.

25-20.5-106. State board of health - rules - program duties. (1) The state board of health created in section 25-1-103 shall promulgate rules as necessary for the operation of the division, including but not limited to rules establishing the time frames for review of the

state plan and submittal of any revised state plan to the governor, the Tony Grampsas youth services board, and the executive director and to the entities specified in section 25-20.5-105 (4).

(2) The state board of health also shall adopt rules for the uniform operation of federally and state-funded prevention, intervention, and treatment programs. In adopting such rules, the board shall take into account prevention, intervention, and treatment programs' need for responsiveness and flexibility and their need for procedures and standards that will ensure the provision of programs that meet a high standard of excellence. At a minimum such rules shall include:

(a) Standardized procedures for the operation of prevention, intervention, and treatment programs, including but not limited to:

(I) The use of a system whereby entities may use a single application to seek funding from a variety of prevention, intervention, and treatment programs;

(II) The use of uniform application forms promulgated by rule of the state board of health;

(III) Uniform standards regarding the information to be submitted by entities applying for funding for community-based prevention, intervention, and treatment programs;

(IV) Uniform application dates to the extent possible for all prevention, intervention, and treatment programs;

(V) Uniform standards for selecting community-based prevention, intervention, and treatment programs that receive funding through state prevention, intervention, and treatment programs;

(VI) Uniform monitoring and reporting forms, including rules to ensure that no prevention, intervention, and treatment program is required to submit more than one annual report;

(VII) A standard database of service providers by location;

(VIII) Internet access to each prevention, intervention, and treatment program;

(IX) The ability to submit applications and report submissions through the internet; and

(X) The use of contracts to combine multiple state and federal funding sources provided by or through various state agencies as a single funding grant to a prevention, intervention, and treatment program;

(b) Uniform, minimum standards for prevention, intervention, and treatment programs, including but not limited to requirements that each prevention, intervention, and treatment program that receives state or federal funds:

(I) Provide research-based prevention, intervention, and treatment services that have been previously implemented in one or more communities with demonstrated success or that otherwise demonstrate a reasonable potential for success; and

(II) Provide outcome-based prevention, intervention, and treatment services, specifying the outcomes to be achieved; and

(III) Work collaboratively with other public and private prevention, intervention, and treatment programs in the community and with local governments, county, district, and municipal public health agencies, county departments of social services, and faith-based organizations in the community;

(c) Uniform standards and procedures for reviewing state and local prevention, intervention, and treatment programs that receive state or federal funds;

(d) Performance standards and measurable outcomes for state and local prevention, intervention, and treatment programs that receive state or federal funds;

(e) Criteria for determining whether a program operated by a state agency constitutes a prevention, intervention, and treatment program;

(f) A formula for calculating the amount forwarded to the division by each prevention, intervention, and treatment program to offset the costs incurred by the division in reviewing the programs.

(3) The state board of health shall act as the program board for the oversight of the prevention and intervention programs operated by the division; except that the Tony Grampsas youth services board shall act as the program board for the programs specified in part 2 of this article and for any additional programs specified by executive order.

(4) In addition to any other duties specified in law, the state board of health shall have the following duties:

- (a) Repealed.
- (b) To assist division personnel in working with communities and local elected officials to identify the communities' prevention, intervention, and treatment services needs;
- (c) To assist division personnel in reviewing the performance of prevention, intervention, and treatment programs created in this article.

Source: **L. 2000:** Entire article added, p. 566, § 1, effective May 18. **L. 2002:** (4)(a) repealed, p. 222, § 1, effective April 3. **L. 2010:** (2)(b)(III) amended, (HB 10-1422), ch. 419, p. 2106, § 127, effective August 11.

25-20.5-107. Memoranda of understanding - duties of executive director - program meetings. (1) The executive director shall enter into a memorandum of understanding, as described in subsection (2) of this section, with each state agency that operates a prevention, intervention, and treatment program, as identified by the division pursuant to criteria adopted by rule of the state board of health.

(2) On or before July 1, 2001, each state agency that operates a prevention, intervention, and treatment program, as identified by the division based on criteria adopted by rule of the state board of health, shall enter into a memorandum of understanding with the executive director and the division through which, at a minimum, the state agency shall agree to:

(a) Comply with the rules for the operation of prevention, intervention, and treatment programs adopted by the state board of health pursuant to section 25-20.5-106;

(b) Upon receipt of a grant application, forward a copy of the application to other appropriate prevention, intervention, and treatment programs operated by state agencies for consideration and to collaborate in providing combined program grants to appropriate community-based prevention, intervention, and treatment programs;

(c) Comply with the prevention, intervention, and treatment program reporting requirements specified in section 25-20.5-108, and to forward a percentage of the program operating funds, as determined by rule, to the division to offset the costs incurred in reviewing the program;

(d) Seek such federal waivers as may be necessary to allow the agency to combine federal moneys available through various federal prevention, intervention, and treatment programs and to combine said moneys with moneys appropriated to fund state prevention, intervention, and treatment programs to allow the greatest flexibility in awarding combined program funding to community-based prevention, intervention, and treatment programs.

(3) Any state agency that fails to enter into and comply with a memorandum of understanding as described in subsection (2) of this section shall be ineligible for state funding for operation of a prevention, intervention, and treatment program until such time as the agency enters into and complies with the memorandum of understanding.

(4) The governor is strongly encouraged to deny federal funding for prevention, intervention, and treatment programs to any state agency that fails to enter into and comply with a memorandum of understanding as described in subsection (2) of this section.

(5) Beginning July 1, 2001, the office of legislative legal services shall annually review all bills enacted during a regular or special legislative session and identify any bills that appear to create a prevention, intervention, and treatment program in a state agency other than the division. The office of legislative legal services shall notify the division in writing of the enactment of such bill. Upon receipt of such notice, the division shall determine whether the identified program meets the criteria for a prevention, intervention, and treatment program adopted by rule of the state board of health. If the division determines based on such criteria that the program is a prevention, intervention, and treatment program, it shall notify in writing the state agency in which the program is created of the requirements of this section.

(6) (a) The executive director shall meet at least annually with the governor, or his or her designee, and with the executive directors specified in paragraph (b) of this subsection (6) to review the activities and progress of the division and its interaction with the

prevention, intervention, and treatment programs provided by other state agencies. The purpose of the meetings shall be to identify and streamline the prevention, intervention, and treatment programs operated by state agencies, as appropriate to achieve greater efficiencies and effectiveness for the state, for local communities, and for persons receiving services.

(b) The following executive directors shall attend the meetings required under this subsection (6):

(I) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)

(II) The commissioner of education;

(III) and (IV) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)

(V) The executive director of the department of human services;

(VI) and (VII) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)

(VIII) The executive director of the department of public safety; and

(IX) The executive director of the department of transportation.

Source: L. 2000: Entire article added, p. 568, § 1, effective May 18. L. 2002: (6)(a) and (6)(b) amended, p. 222, § 2, effective April 3.

25-20.5-108. Prevention, intervention, and treatment program requirements - reports - reviews - annual review summary. (1) Each state agency that operates a prevention, intervention, and treatment program, as identified by the division based on criteria adopted by rule of the state board of health, annually shall submit to the division the following information:

(a) The name of, statutory authority for, and funding source for each prevention, intervention, and treatment program operated by the state agency;

(b) The parameters of each prevention, intervention, and treatment program, including but not limited to the specific, measurable outcomes to be achieved by each prevention, intervention, and treatment program;

(c) The entities that are receiving funding through each prevention, intervention, and treatment program operated by the state agency, the amount awarded to each entity, and a description of the population served and prevention, intervention, and treatment services provided by each entity.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), each state agency using state or federal moneys to fund local prevention and intervention programs shall submit an annual report concerning these programs to the division. The state board of health by rule shall specify the time frames, procedures, and form for submittal of the report and the information to be included in the report, which at a minimum shall include:

(I) A description of the prevention, intervention, and treatment program, including but not limited to the population served, the prevention, intervention, and treatment services provided, and the goals and specific, measurable outcomes to be achieved by the prevention, intervention, and treatment program;

(II) Evidence of the prevention, intervention, and treatment program's progress in meeting its stated outcomes and goals during the preceding fiscal year and in previous fiscal years, depending on how long the prevention, intervention, and treatment program has been in operation;

(III) The sources from which the prevention, intervention, and treatment program receives funding and the amount received from each source;

(IV) A list of any entities that are collaborating in the delivery of prevention, intervention, and treatment services through the program.

(b) If a community-based prevention, intervention, and treatment program is required to submit an annual report that is comparable to the report described in paragraph (a) of this subsection (2) to a state agency other than the division, the state agency, in lieu of submittal of a report by the prevention, intervention, and treatment program as required in paragraph (a) of this subsection (2), shall forward a copy of the comparable report to the division in accordance with rules adopted by the state board of health. If a forwarded report does not include all of the information specified in paragraph (a) of this subsection (2), the division shall obtain such information directly from the community-based prevention, intervention, and treatment program.

(3) (a) The division, in accordance with the time frames adopted by rule of the state board of health, but at least every four years, shall review, or cause to be reviewed under a contract entered into pursuant to subsection (5) of this section, each state and community-based prevention, intervention, and treatment program operated within this state that receives state or federal funds. The division may establish a schedule for the review of prevention, intervention, and treatment programs pursuant to this subsection (3). The review shall be designed to determine whether the prevention, intervention, and treatment program is meeting its identified goals and outcomes and complying with all requirements of the agency overseeing the operation of the prevention, intervention, and treatment program and the applicable rules adopted by the state board of health pursuant to this article.

(b) If the division determines that a community-based prevention, intervention, and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the program or is otherwise failing to comply with statutory or regulatory requirements, the division shall revoke the grant issued to the program, if it was issued by the division, or recommend revocation to the state agency that issued the grant. The entity operating any program for which the grant is revoked may appeal as provided in the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(c) If the division determines that a state-operated prevention, intervention, and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the prevention, intervention, and treatment program or is otherwise failing to comply with statutory or regulatory requirements, the division shall recommend to the governor or to the general assembly, whichever is appropriate, that the prevention, intervention, and treatment program cease receiving state or federal funding.

(4) The division shall receive a percentage, as determined by rule, of the operating cost of each state prevention, intervention, and treatment program reviewed pursuant to this section to offset the costs incurred by the division in performing such review.

(5) The division may contract with one or more public or private entities to conduct the reviews of prevention, intervention, and treatment programs and assist in preparing the annual executive summary report as required in this section.

(6) The division shall annually prepare or oversee the preparation of an executive summary of the prevention, intervention, and treatment program reviews conducted during the preceding year and submit such summary to the governor, to the general assembly, to each state department that operates a prevention, intervention, and treatment program, and to each entity that received state or federal funds for operation of a prevention, intervention, and treatment program during the fiscal year for which the summary is prepared. In addition, the division shall provide copies of the summary to any person upon request.

Source: L. 2000: Entire article added, p. 570, § 1, effective May 18. **L. 2002:** IP(2)(a) amended, p. 223, § 3, effective April 3.

25-20.5-109. Programs not included. (1) Notwithstanding any other provisions of this article to the contrary, the following programs are not subject to the requirements of this article:

(a) Any juvenile programs operated by the division of youth corrections in the department of human services;

(b) Any program operated for juveniles in connection with the state judicial system;

(c) Any program pertaining to out-of-home placement of children pursuant to title 19, C.R.S.

Source: L. 2000: Entire article added, p. 572, § 1, effective May 18.

25-20.5-110. Coordinated comprehensive community-based prevention and intervention services - pilot program - reports - repeal. (Repealed)

Source: L. 2000: Entire article added, p. 573, § 1, effective May 18. **L. 2002:** (2)(b)(III) amended, p. 223, § 4, effective April 3.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 2004. (See L. 2000, p. 573.)

25-20.5-111. Colorado Homeless Youth Services Act. (Repealed)

Source: L. 2002: Entire section added, p. 1572, § 1, effective June 7. **L. 2004:** Entire section repealed, p. 862, § 4, effective May 21.

PART 2

TONY GRAMPSAS YOUTH SERVICES PROGRAM

25-20.5-201. Tony Grampsas youth services program - creation - standards - applications. (1) (a) The youth crime prevention and intervention program created in part 28 of article 32 of title 24, C.R.S., as it existed prior to August 1, 2000, is hereby transferred to the division and is renamed the Tony Grampsas youth services program. All program grants in existence as of July 1, 2000, shall continue to be valid through July 31, 2001. Persons appointed to the youth crime prevention and intervention program board, hereby renamed the Tony Grampsas youth services board, shall continue serving until completion of their terms and may be reappointed as provided in section 25-20.5-202.

(b) The Tony Grampsas youth services program is established to provide state funding for community-based programs that target youth and their families for intervention services in an effort to reduce incidents of youth crime and violence. In addition, the Tony Grampsas youth services program shall promote prevention and education programs that are designed to reduce the occurrence and reoccurrence of child abuse and neglect and to reduce the need for state intervention in child abuse and neglect prevention and education.

(2) (a) The Tony Grampsas youth services program shall be administered through the division. Subject to the designation in paragraph (b) of this subsection (2), the Tony Grampsas youth services board created in section 25-20.5-202 shall choose those entities that will receive grants through the Tony Grampsas youth services program and the amount of each grant. In addition, the division shall monitor the effectiveness of programs that receive funds through the Tony Grampsas youth services program.

(b) Any grant awarded through the Tony Grampsas youth services program shall be paid from moneys appropriated pursuant to paragraph (c) of this subsection (2) or out of the general fund for such program. Each year, no less than twenty percent of the appropriation shall be designated and used exclusively for programs designed for children younger than nine years of age. The board, in accordance with the timelines adopted pursuant to section 25-20.5-202 (3), shall submit a list of the entities chosen to receive grants to the governor for approval. The governor shall either approve or disapprove the entire list of entities by responding to the board within twenty days. If the governor has not responded to the board within twenty days after receipt of the list, the list shall be deemed approved. No grants shall be awarded through the Tony Grampsas youth services program without the prior approval of the governor.

(c) Pursuant to section 24-75-1104.5 (1) (i), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2004-05 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the general assembly shall appropriate to the division for the Tony Grampsas youth services program four percent of the amount of moneys transmitted to the state treasurer in accordance with the master settlement agreement, other than attorney fees and costs, for the preceding fiscal year; except that the amount so appropriated to the division in any fiscal year shall not exceed five million dollars. The general assembly shall appropriate the amount specified in this paragraph (c) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(3) To participate in the Tony Grampsas youth services program, an entity may apply to the board in accordance with timelines and guidelines adopted by the board pursuant to section 25-20.5-202.

(4) For purposes of this part 2, “entity” means any local government, Colorado public or nonsectarian secondary school, including charter schools, group of public or nonsectarian secondary schools, school district or group of school districts, board of cooperative services, institution of higher education, the Colorado National Guard, state agency, or state-operated program or any private nonprofit or not-for-profit community-based organization.

(5) Entities seeking to provide youth mentoring services or to enhance existing youth mentoring programs are encouraged to submit an application to the board for grants directly from the Tony Grampas youth services program, in addition to any funding the entities may be seeking from the youth mentoring services cash fund pursuant to section 25-20.5-203 (6), to establish or enhance youth mentoring programs. Entities submitting applications for grants directly from the Tony Grampas youth services program pursuant to this section need not meet the requirements of section 25-20.5-203 (5) (b).

Source: L. 2000: Entire article added, p. 575, § 1, effective May 18. **L. 2004:** (2)(b) amended and (2)(c) added, p. 1710, § 9, effective June 4. **L. 2009:** (2)(c) amended, (SB 09-269), ch. 333, p. 1767, § 7, effective June 1.

25-20.5-202. Tony Grampas youth services board - members - duties - student dropout prevention and intervention fund - creation. (1) (a) There is hereby created the Tony Grampas youth services board, referred to in this part 2 as the “board”, consisting of four members appointed by the governor, three members appointed by the speaker of the house of representatives, and two members appointed by the president of the senate and one member appointed by the minority leader of the senate. For the initial appointments, the governor shall appoint members to the board after the speaker of the house of representatives and the president and the minority leader of the senate have made appointments. No more than six of the members appointed to the board shall be members of the same political party.

(b) In addition to the appointed board members, the executive director shall serve as a member of the board.

(c) At the first meeting of the board, the members of the board shall choose a chairperson and a vice-chairperson.

(d) (I) In appointing members to the board, the governor, the speaker of the house of representatives, and the president and the minority leader of the senate shall choose persons who have a knowledge and awareness of innovative strategies for youth crime prevention and intervention services and for reducing the occurrence and reoccurrence of child abuse and neglect.

(II) In appointing members of the board, the governor, the speaker of the house of representatives, and the president and the minority leader of the senate shall appoint one or more persons who possess knowledge and awareness of early childhood care and education. In addition, the speaker of the house of representatives and the president of the senate shall each appoint at least one person who has a knowledge and awareness of student issues, including the causes of student dropout in secondary schools, as well as innovative strategies for reducing the dropout rate among secondary school students. For purposes of this subparagraph (II), “early childhood” means younger than nine years of age.

(III) In appointing members, the governor shall appoint at least one member to the board who is representative of a minority community.

(IV) Beginning with the members appointed to terms beginning July 1, 2001, the governor, in appointing members, shall appoint at least one person who is knowledgeable in the area of child abuse prevention and at least one person who is knowledgeable in the area of community planning for youth violence prevention.

(e) The appointed members of the board shall serve three-year terms; except that, of the members first appointed, one of the members appointed by the governor shall serve a two-year term, two of the members appointed by the governor shall serve one-year terms, one of the members appointed by the speaker of the house of representatives shall serve a two-year term, and one of the members appointed by the president of the senate shall serve a two-year term. The respective appointing person shall choose those members who shall serve initial shortened terms. If a vacancy arises in one of the appointed offices, the

authority making the original appointment shall fill the vacancy for the remainder of the term. Members of the board shall serve without compensation but shall be reimbursed out of available appropriations for all actual and necessary expenses incurred in the performance of their duties.

(f) The board is authorized to meet, when necessary, via telecommunications.

(2) (a) The board shall develop and make available program guidelines including but not limited to:

(I) Guidelines for proposal design;

(II) Local public-to-private funding match requirements; and

(III) Processes for local review and prioritization of program applications.

(b) In addition to the guidelines developed pursuant to paragraph (a) of this subsection (2), the board shall develop criteria for awarding grants under the Tony Grampsas youth services program, including but not limited to the following requirements:

(I) That the program is operated in cooperation with a local government, a local governmental agency, or a local nonprofit or not-for-profit agency;

(II) That the program is community-based, receiving input from organizations in the community such as schools, community mental health centers, local nonprofit or not-for-profit agencies, local law enforcement agencies, businesses, and individuals within the community; and

(III) (A) That the program is directed at providing intervention services to youth and their families in an effort to decrease incidents of crime and violence or that the program is directed at providing services to at-risk students and their families in an effort to reduce the dropout rate in secondary schools pursuant to section 25-20.5-204.

(B) If an entity is seeking a grant from the board for a student dropout prevention and intervention program pursuant to section 25-20.5-204, one of the criteria that the board shall consider is whether the program has been implemented elsewhere, if known, and, if so, the relative success of the program. It shall not be required, however, that the program be previously implemented for the board to award a grant to the entity.

(C) If an entity is seeking a grant from the board for a program directed at providing intervention services to youth and their families in an effort to decrease incidents of crime and violence, one of the criteria that the board shall consider is whether the program includes restorative justice components. It shall not be required, however, that the program include restorative justice components for the board to award a grant to the entity.

(c) In addition to the guidelines and criteria developed pursuant to paragraphs (a) and (b) of this subsection (2), the board shall develop result-oriented criteria for measuring the effectiveness of programs that receive grants under the Tony Grampsas youth services program as deemed appropriate to the nature of each program including, but not limited to, requiring grantees to evaluate the impact of the services provided by the program. Any criteria developed pursuant to this paragraph (c) for measuring the effectiveness of student dropout prevention and intervention programs established pursuant to section 25-20.5-204 shall include the implementation of a method by which to track the students served by the program to evaluate the impact of the services provided, which tracking shall continue, if possible, for at least two years or through graduation from a secondary school, whichever occurs first.

(3) (a) In addition to the guidelines and criteria developed pursuant to subsection (2) of this section, the board shall establish timelines for submission and review of applications for grants through the Tony Grampsas youth services program. The board shall also adopt timelines for submission to the governor of the list of entities chosen to receive grants. If the governor disapproves the list, the board may submit a replacement list within thirty days after such disapproval.

(b) Repealed.

(4) The board shall review all applications received pursuant to section 25-20.5-201 for grants from the Tony Grampsas youth services program and choose those entities that shall receive grants through the Tony Grampsas youth services program and the amount of each grant.

(5) In addition to the duties relating specifically to the Tony Grampsas youth services program specified in this section, the board shall operate the prevention, intervention, and

treatment programs specified in this part 2 and such other prevention, intervention, and treatment programs as may be assigned to the board by executive order to be funded solely by federal funds.

Source: **L. 2000:** Entire article added, p. 576, § 1, effective May 18. **L. 2005:** (3)(b) repealed, p. 288, § 36, effective August 8. **L. 2007:** (2)(b)(III) amended, p. 278, § 4, effective March 29.

25-20.5-203. Colorado Youth Mentoring Services Act. (1) **Short title.** This section shall be known and may be cited as the “Colorado Youth Mentoring Services Act”.

(2) **Legislative declaration.** (a) The general assembly hereby finds and declares that mentoring programs such as big brothers, big sisters, and partners have been active in Colorado for many years. The general assembly finds that national research has indicated that structured mentoring programs are effective tools in combating youth substance abuse and youth crime and violence. The general assembly further finds, based upon recent national research results, that at-risk youth who are matched in a minimum of year-long mentoring relationships are less likely to become involved in substance and alcohol abuse, less likely to be truant, less likely to commit violent acts against other persons, and more likely to show improvements in academic performance and positive peer relations.

(b) The general assembly further finds that, despite the positive results that may be achieved through structured youth mentoring programs, as many as thirty-eight counties in the state of Colorado do not have the organizational resources necessary to carry out successful mentoring programs or lack the adult volunteers to establish such programs or both. The general assembly finds that even counties in which there are established youth mentoring programs, such programs are unable to meet the demand for mentors and that such established programs have waiting lists that exceed two thousand youths.

(c) The general assembly therefore declares and determines that the provision of youth mentoring services that would use public and private entities to recruit, train, screen, and supervise adult volunteers to serve as mentors for at-risk youth would be beneficial and in the best interests of the citizens of the state of Colorado.

(3) **Definition.** For purposes of this section, “at-risk youth” means a person who is at least five years of age but who is less than eighteen years of age and who is challenged by such risk factors as poverty, residence in a substance-abusing household, family conflict, association with peers who commit crimes, residence in a single-parent household, exhibition of indicia of delinquent behavior, or being the victim of child abuse.

(4) **Provision of youth mentoring services.** There is hereby created the Colorado youth mentoring program for the purpose of providing state funding for the provision of community-based youth mentoring services that target at-risk youths in an effort to reduce substance abuse and to decrease the incidents of youth crime and violence. Such funding shall be used to provide new mentoring services in communities that do not have existing mentoring programs as well as to enhance established community-based youth mentoring programs that are already in existence.

(5) **Administration - duties of contracting entities.** (a) To be eligible for moneys from the youth mentoring services cash fund created in subsection (6) of this section, for the provision of youth mentoring services, an entity shall apply to the board in accordance with the timelines and guidelines adopted by the board pursuant to section 25-20.5-202 and shall meet the requirements of paragraph (b) of this subsection (5).

(b) The entities that are selected by the board to provide community-based youth mentoring services shall be responsible for:

(I) Actively recruiting qualified and appropriate adult volunteers who are willing to serve as youth mentors for a period of not less than one year and to commit to spending an average of three hours per week with the at-risk youth;

(II) Effectively screening adult volunteers to serve as mentors, including but not limited to conducting criminal background checks of such adult volunteers;

(III) Providing training and ongoing support to adult volunteers to prepare them to serve in one-year mentoring relationships with at-risk youths;

(IV) Carefully matching each adult volunteer with an at-risk youth based upon the unique qualifications of the adult volunteer and the specific needs of the youth;

(V) Supervising closely and through case managers the activities of the adult volunteer and the mutual benefits and effectiveness of the mentoring relationship;

(VI) Making available life skill workshops, recreational activities, and community service opportunities to the at-risk youth and adult volunteer;

(VII) Implementing a method of evaluating the effectiveness of the community-based youth mentoring program and tracking the youths served by the program to evaluate the impact of the services provided through the program; and

(VIII) Reporting annually to the board concerning the results of the entity's evaluation of youths served by the community-based youth mentoring program as well as the fiscal contributions made by the entity to the program and such other information that the board may require.

(c) Community-based organizations may obtain private and public funds, grants, gifts, or donations for youth mentoring programs. The executive director is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section; except that no grant or donation shall be accepted if the conditions attached to the grant or donation require the expenditure thereof in a manner contrary to law.

(d) Entities selected to receive grants pursuant to this section for the provision of youth mentoring services shall match any grant received with a contribution that is the equivalent of twenty percent of the grant awarded.

(6) **Youth mentoring services cash fund.** (a) There is hereby created in the state treasury the youth mentoring services cash fund. The moneys in the youth mentoring services cash fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this section. The executive director is authorized to accept on behalf of the state any grants, gifts, or donations from any private or public source for the purpose of this section. All private and public funds received through grants, gifts, or donations shall be transmitted to the state treasurer, who shall credit the same to the youth mentoring services cash fund. All investment earnings derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(b) Notwithstanding any provision of paragraph (a) of this subsection (6) to the contrary, on April 20, 2009, the state treasurer shall transfer the balance of moneys in the youth mentoring services cash fund to the general fund.

Source: L. 2000: Entire article added, p. 579, § 1, effective May 18. L. 2009: (6) amended, (SB 09-208), ch. 149, p. 625, § 27, effective April 20.

25-20.5-204. Colorado student dropout prevention and intervention program.

(1) **Short title.** This section shall be known and may be cited as the "Colorado Student Dropout Prevention and Intervention Act".

(2) **Legislative declaration.** The general assembly hereby finds that:

(a) During the last decade, over one hundred thousand students in Colorado left school without successfully completing a high school program;

(b) In 1996, three million six hundred thousand young adults in the United States were neither enrolled in school nor had they completed a high school program;

(c) In the 1995-1996 academic year, approximately thirteen thousand students withdrew from Colorado schools prior to receiving a diploma, resulting in a four percent dropout rate;

(d) Of those students who withdrew from Colorado schools prior to receiving a diploma, approximately five thousand nine hundred were minority students;

(e) The dropout rate of minority students in Colorado is significantly greater than that of nonminority students;

(f) Numerous factors, including socioeconomic background, lack of adult support, and the inability to communicate well in English, influence a student's decision to drop out of school;

(g) Research has shown that, compared with high school graduates, relatively more dropouts are unemployed, and those dropouts who do succeed in finding work tend to earn less money than high school graduates; and

(h) High school dropouts are more likely to apply for and receive public assistance than high school graduates.

(3) **Definitions.** For purposes of this section:

(a) “At-risk students” means students in secondary schools who are at risk of dropping out of school because of their socioeconomic background, lack of adult support, language barriers, or other identified indicators that cause students to drop out of school.

(b) “Entity” means any local government, Colorado public or nonsectarian secondary school, including charter schools, group of public or nonsectarian secondary schools, school district or group of school districts, board of cooperative services, institution of higher education, the Colorado National Guard, state agency, or state-operated program or any private nonprofit or not-for-profit community-based organization.

(4) **Colorado student dropout prevention and intervention program.** There is hereby created the Colorado student dropout prevention and intervention program in the Tony Grampsas youth services program for the purpose of providing services to at-risk students and their families in an effort to reduce the dropout rate in secondary schools through an appropriate combination of academic and extracurricular activities designed to enhance the overall education and edification of students in secondary schools.

(5) **Administration.** (a) The student dropout prevention and intervention program shall be administered through the division. Subject to the designation in paragraph (b) of this subsection (5), the Tony Grampsas youth services board created in section 25-20.5-202 shall select those entities that will receive grants through the student dropout prevention and intervention program and the amount of each grant. In addition, the division shall monitor the effectiveness of programs that receive funds through the student dropout prevention and intervention program. To be eligible for grants from the Tony Grampsas youth services board for the provision of student dropout prevention and intervention programs targeting at-risk students, an entity shall apply to the board in accordance with the timelines and guidelines adopted by the board pursuant to section 25-20.5-202.

(b) Any moneys awarded by the Tony Grampsas youth services board shall be paid from moneys appropriated out of the general fund for such program. Each year no less than ten percent of the total appropriation from the general fund shall be designated and used exclusively for programs specifically designed to prevent students from dropping out of secondary schools; except that, commencing in fiscal year 2004-05 and in each fiscal year thereafter, no less than twenty percent of the total appropriation shall be designated and used exclusively for such purpose.

(6) **Receipt of moneys.** (a) The executive director is authorized to accept on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing student dropout prevention and intervention programs pursuant to this article; except that no funds, grants, gifts, or donations shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(b) (I) All private and public moneys received through funds, grants, gifts, or donations pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the student dropout prevention and intervention fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this article. The executive director may expend moneys appropriated to the department from the fund for purposes of providing a grant for the implementation and administration of a student dropout prevention and intervention program. All investment earnings derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (b) to the contrary, on April 20, 2009, the state treasurer shall transfer the balance of moneys in the student dropout prevention and intervention fund to the general fund.

Source: L. 2000: Entire article added, p. 581, § 1, effective May 18. L. 2009: (6)(b) amended, (SB 09-208), ch. 149, p. 626, § 28, effective April 20.

25-20.5-205. Colorado student before-and-after-school project - creation - funding. (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) “Before-and-after-school program” means a program that meets before regular school hours or after regular school hours or during a period when school is not in session.

(b) “Fund” means the Colorado student before-and-after-school project fund created in subsection (4) of this section.

(c) “Project” means the Colorado before-and-after-school project created in subsection (2) of this section.

(2) **Colorado student before-and-after-school project.** There is hereby created, in the Tony Grampas youth services program, the Colorado student before-and-after-school project for the purpose of providing grants to entities to provide high-quality before-and-after-school programs that may include an alcohol or drug abuse prevention and education component. Entities that receive grants pursuant to this section shall apply the grants to creating and implementing before-and-after-school programs that primarily serve youth enrolled in grades six through eight or youth who are twelve to fourteen years of age. The before-and-after-school programs shall be designed to help youth develop their interests and skills in the areas of sports and fitness, character and leadership, or arts and culture and may provide education regarding the dangers of the use of alcohol and drugs. Before-and-after-school programs that are designed primarily to increase academic achievement or that provide religious instruction are not eligible for funding pursuant to this section.

(3) **Administration.** (a) The division shall administer the project. The board shall select the entities that will receive grants through the project and the amount of each grant. In addition, the division shall monitor the effectiveness of before-and-after-school programs that receive moneys through the project. To be eligible for grants through the project, an entity shall apply to the board in accordance with the timelines and guidelines adopted by the board pursuant to section 25-20.5-202. Notwithstanding any provision of this part 2 or any criteria for awarding grants adopted by the board pursuant to section 25-20.5-202 (2) (b) to the contrary, an entity may be eligible to receive a grant pursuant to this section regardless of whether the before-and-after-school program to which the grant would apply serves youth who are eligible for free or reduced-cost lunch pursuant to the “National School Lunch Act”, 42 U.S.C. sec. 1751 et seq.

(b) The grants awarded through the project shall be paid from moneys appropriated from the fund to the division. The board and grant recipients are encouraged to apply moneys awarded through the project to leverage additional funding as matching funds from private and federal sources.

(4) **Colorado student before-and-after-school project fund.** There is hereby created in the state treasury the Colorado student before-and-after-school project fund that shall consist of moneys that may be appropriated by the general assembly to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly to the division for the purpose of providing grants as provided in this section and the direct and indirect costs associated with the implementation of this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2007: Entire section added, p. 1484, § 2, effective July 1.

PART 3

CANCER, CARDIOVASCULAR DISEASE, AND CHRONIC PULMONARY DISEASE PREVENTION, EARLY DETECTION, AND TREATMENT PROGRAM

Cross references: For the legislative declaration contained in the 2005 act enacting this part 3, see section 1 of chapter 241, Session Laws of Colorado 2005.

25-20.5-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Health disparities" means an unequal burden of cancer, cardiovascular disease, or chronic pulmonary disease impacting specific populations, including but not limited to racial and ethnic populations, minority populations, rural populations, urban populations, low-income populations, or any other underserved population.

(2) "Program" means the cancer, cardiovascular disease, and chronic pulmonary disease prevention, early detection, and treatment program created in section 25-20.5-302.

(3) "Review committee" means the cancer, cardiovascular disease, and chronic pulmonary disease program review committee created pursuant to section 25-20.5-303.

Source: L. 2005: Entire part added, p. 936, § 27, effective June 2.

25-20.5-302. Program. (1) There is hereby created, in the prevention services division of the department, the cancer, cardiovascular disease, and chronic pulmonary disease prevention, early detection, and treatment program for the purpose of assisting in the implementation of the state's strategic plans regarding cancer and cardiovascular disease. The program shall fund competitive grants to provide a cohesive approach to cancer, cardiovascular disease, and chronic pulmonary disease prevention, early detection, and treatment in Colorado. The division shall administer the program with the goal of developing a comprehensive approach that will bring together stakeholders at the community and state level who are interested in impacting cancer, cardiovascular disease, or chronic pulmonary disease. Grant applications shall address at least one of the following program criteria:

(a) Translating evidence-based strategies regarding the prevention and early detection of cancer, cardiovascular disease, and chronic pulmonary disease into practical application in healthcare, workplace, and community settings;

(b) Providing appropriate diagnosis and treatment services for anyone who has abnormalities discovered in screening and early detection programs;

(c) Implementing education programs for the public and health care providers regarding the prevention, early detection, and treatment of cancer, cardiovascular disease, and chronic pulmonary disease; and

(d) Providing evidence-based strategies to overcome health disparities in the prevention and early detection of cancer, cardiovascular disease, and chronic pulmonary disease.

Source: L. 2005: Entire part added, p. 937, § 27, effective June 2.

25-20.5-303. Cancer, cardiovascular disease, and chronic pulmonary disease program review committee. (1) There is hereby created the cancer, cardiovascular disease, and chronic pulmonary disease program review committee. The review committee is established in the prevention services division of the department. The review committee is responsible for overseeing program strategies and activities and ensuring compliance with section 25-20.5-302.

(2) The review committee shall consist of the director of the disease prevention services division of the department, or the director's designee, and fifteen members appointed as follows:

(a) The executive director of the department or the executive director's designee.

(b) The executive director shall appoint three members, all of whom are department staff with expertise in cancer, cardiovascular disease, or chronic pulmonary disease.

(c) The state board shall appoint:

(I) One member who is a member of the state board;

(II) One member who is a chronic pulmonary disease professional;

(III) One member who is cardiovascular disease professional;

(IV) One member who is a cancer professional;

(V) Two members who are public health professionals;

(VI) One member who is a recognized expert in health disparities;

(VII) One member who represents the rural interest in regard to the prevention, early detection, and treatment of cancer, cardiovascular disease, and chronic pulmonary disease; and

(VIII) One member who is a primary care provider.

(d) The president of the senate shall appoint one member of the senate.

(e) The speaker of the house of representatives shall appoint one member of the house of representatives.

(3) (a) Except as provided in paragraph (b) of this subsection (3), members of the review committee shall serve three-year terms; except that, of the members initially appointed to the review committee, five members appointed by the state board shall serve two-year terms. Members of the review committee appointed pursuant to paragraph (c) of subsection (2) of this section shall not serve more than two consecutive terms.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in paragraphs (d) and (e) of subsection (2) of this section. Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(4) The composition of the review committee shall reflect, to the extent practical, Colorado's ethnic, racial, and geographical diversity.

(5) The review committee shall elect from its membership a chair and a vice-chair of the committee.

(6) The division shall provide staff support to the review committee.

(7) Members of the review committee shall serve without compensation but shall be reimbursed from moneys deposited in the prevention, early detection, and treatment fund created in section 24-22-117, C.R.S., for their actual and necessary expenses incurred in the performance of their duties pursuant to this part 3.

(8) If a member of the review committee has an immediate personal, private, or financial interest in any matter pending before the review committee, the member shall disclose the fact and shall not vote upon such matter.

Source: L. 2005: Entire part added, p. 937, § 27, effective June 2. **L. 2007:** (3) amended, p. 188, § 24, effective March 22.

25-20.5-304. Grant program. (1) The program shall fund programs and initiatives that provide evidence-based education and intervention strategies for cancer, cardiovascular disease, and chronic pulmonary disease prevention, early detection, and treatment through a competitive grant program which shall be overseen by the review committee. The state board, upon recommendations of the review committee, shall adopt rules that specify, but need not be limited to, the following:

(a) The procedures and timelines by which an entity may apply for program grants;

(b) Grant application contents;

(c) Criteria for selecting the entities that shall receive grants and determining the amount and duration of the grants;

(d) Reporting requirements for entities that receive grants pursuant to this section; and

(e) The qualifications of an adequate proposal.

(2) The review committee shall review the applications received pursuant to this section and submit to the state board and the executive director of the department recommended grant recipients, grant amounts, and the duration of each grant. Within thirty days after receiving the review committee's recommendations, the executive director shall

submit his or her recommendations to the state board. The review committee's recommendations regarding grants for projects impacting rural areas shall be submitted to the state board and the executive director of the department of local affairs. Within thirty days after receiving the review committee's recommendations, the executive director of the department of local affairs shall submit his or her recommendations to the state board. The state board shall have the final authority to approve the grants under this part 3. If the state board disapproves a recommendation for a grant recipient, the review committee may submit a replacement recommendation within thirty days. In making grant recommendations, the review committee shall follow the intent of the program as outlined in section 25-20.5-302. The state board shall award grants to the entities selected by the review committee, specifying the amount and duration of each grant award. In reviewing and approving grant applications, the review committee and the state board shall ensure that grants are distributed statewide and address the needs of Colorado's disparate populations, as well as the needs of both urban and rural residents of Colorado. Grants providing for treatment services shall not exceed ten percent of the total amount of grant funds distributed in any given year.

(3) (a) For the prevention, early detection, and treatment of cardiovascular disease, the review committee and the state board are encouraged to consider programs that address the major risk factors of cardiovascular disease including but not limited to blood pressure, cholesterol, and diabetes screenings.

(b) For the prevention, early detection, and treatment of cancer, the review committee and the state board are encouraged to consider programs to increase screening for cancer including but not limited to colorectal cancer screening.

(c) For the prevention, early detection, and treatment of chronic pulmonary disease, the review committee and the state board are encouraged to consider programs to expand the prevention, early detection, and treatment of chronic pulmonary diseases.

(4) A minimum of ten percent of the moneys awarded through the grant program shall be directed to projects impacting rural areas as part of the governor's rural healthcare initiative and a minimum of ten percent of the moneys awarded through the grant program shall be directed to each of the following three disease areas: Cancer; cardiovascular disease; and chronic pulmonary disease; except that, if the review committee determines that there are no adequate proposals in a given disease or geographic area for a particular grant cycle, the review committee may waive the ten percent requirement.

Source: L. 2005: Entire part added, p. 939, § 27, effective June 2.

25-20.5-305. Evaluation. Commencing with the 2006-07 fiscal year, and each fiscal year thereafter, the state board shall select a grant recipient to evaluate the effectiveness of the program and the health disparities grant program established pursuant to part 22 of article 4 of this title. Costs for the evaluation shall be adequately funded from the amount annually appropriated by the general assembly to the division from the prevention, early detection, and treatment fund.

Source: L. 2005: Entire part added, p. 940, § 27, effective June 2.

25-20.5-306. Administration - limitation. (1) Except as provided in subsection (2) of this section, the prevention services division of the department may receive up to five percent of the moneys annually appropriated by the general assembly to the division from the prevention, early detection, and treatment fund created in section 24-22-117, C.R.S., for the actual costs incurred in administering the program, including the hiring of sufficient staff within the division to effectively administer the program and the reimbursement of review committee members pursuant to section 25-20.5-303 (4).

(2) For fiscal year 2011-12, and for any fiscal year in which a declaration of a state fiscal emergency is declared pursuant to section 21 (7) of article X of the state constitution, the prevention services division of the department may receive up to five percent of the moneys annually appropriated by the general assembly from the prevention, early detection,

and treatment fund created in section 24-22-117, C.R.S., for the actual costs incurred in administering the program, including the hiring of sufficient staff within the division to effectively administer the program and the reimbursement of review committee members pursuant to section 25-20.5-303 (4).

Source: L. 2005: Entire part added, p. 940, § 27, effective June 2. **L. 2011:** Entire section amended, (SB 11-211), ch. 145, p. 504, § 5, effective June 3.

PART 4

CHILD FATALITY PREVENTION ACT

25-20.5-401. Short title. This part 4 shall be known and may be cited as the “Child Fatality Prevention Act”.

Source: L. 2005: Entire part added, p. 974, § 1, effective June 2.

25-20.5-402. Legislative declaration. (1) The general assembly hereby finds and declares that protection of the health and welfare of the children of this state is an important goal of the citizens of this state, and the injury and death of infants and children are serious public health concerns that require legislative action. The general assembly further finds that the prevention of the abuse, neglect, and death of children is a community responsibility; that professionals from disparate disciplines have responsibilities to children and have expertise that can promote the safety and well-being of children; and that multidisciplinary reviews of the abuse, neglect, and death of children can lead to a greater understanding of the causes of, and methods of preventing, the abuse, neglect, and death of children.

(2) It is, therefore, the intent of the general assembly in enacting this part 4 to establish a statewide multidisciplinary, multi-agency child fatality prevention system. The purpose of the system is to:

(a) Review specified deaths of children from birth to eighteen years of age occurring in Colorado involving circumstances in which the children are receiving services from a county department or in which there has been a report of suspected abuse or neglect in order to develop a community approach to the problem of child abuse and neglect;

(b) Review the records of all other unexpected and unexplained deaths of children from birth to eighteen years of age occurring in Colorado in order to develop a community approach to the prevention of childhood fatalities;

(c) Understand the incidence and causes of childhood deaths;

(d) Identify services provided by public agencies to children and their families that are designed to prevent child abuse, neglect, or death, and that are effective in preventing child abuse, neglect, or death;

(e) Identify any gaps or deficiencies that may exist in the delivery of services provided by public agencies to children and their families that are designed to prevent child abuse, neglect, or death; and

(f) Make recommendations for, act as a catalyst for, and implement any changes to laws, rules, and policies that will support the safe and healthy development of the children in this state and prevent child abuse, neglect, and death.

Source: L. 2005: Entire part added, p. 974, § 1, effective June 2.

25-20.5-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “County department” means the county or district department of social services.

(2) “Local review team” means a local child fatality prevention review team established pursuant to section 25-20.5-404.

(3) “State review team” means the Colorado state child fatality prevention review team created pursuant to section 25-20.5-406.

(4) “Unexpected and unexplained death” means a death that, prior to investigation, appears to have been caused by trauma, suspicious or obscure circumstances, or child abuse or neglect. An “unexpected and unexplained death” includes, but is not limited to, death from vehicular trauma, fire, drowning, abuse, suicide, and unknown causes.

Source: L. 2005: Entire part added, p. 975, § 1, effective June 2.

25-20.5-404. Local review teams - creation - membership - authority. (1) Each judicial district may establish, subject to available appropriations, a local child fatality prevention review team. The first meeting of a local review team shall be called by the district attorney of the judicial district in which the local review team is located.

(2) Each local review team shall consist of representatives of public and nonpublic agencies in the judicial district that provide services to children and their families and of other individuals who represent the community.

(3) (a) Local review teams shall include representatives from the following entities located in the judicial district:

- (I) Each county department;
- (II) Local law enforcement agencies;
- (III) The district attorney’s office;
- (IV) School districts;
- (V) Each county department of public health;
- (VI) Each coroner’s office or county medical examiner’s office; and
- (VII) Each county attorney’s office.

(b) Local review teams may include but are not limited to representatives from the following entities or groups located in the judicial district:

- (I) Hospitals, trauma centers, or other providers of emergency medical services;
- (II) Each county board of social services;
- (III) Mental health professionals;
- (IV) Medical professionals specializing in pediatrics;
- (V) Each court-appointed special advocate program;
- (VI) Child advocacy centers;
- (VII) Private out-of-home placement providers;
- (VIII) Victim advocates associated with law enforcement agencies; and
- (IX) The community at large.

(4) Each local review team has the authority to establish committees to review specific types of childhood deaths.

Source: L. 2005: Entire part added, p. 975, § 1, effective June 2.

25-20.5-405. Local review teams - duties - authority. (1) Each local review team shall review the following types of cases:

(a) A case of unexpected and unexplained death of a child eighteen years of age or younger occurring in the judicial district of the local review team;

(b) A case occurring in the judicial district involving the death of a child eighteen years of age or younger who was:

(I) In the custody of the department of human services or the county department at the time of death;

(II) The subject of an open child welfare case maintained by a county department of social services; or

(III) Reported as a child involved in an investigation of suspected abuse or neglect by a county department of social services or a law enforcement agency at any time during the twelve months preceding the child’s death.

(2) With respect to each case reviewed, the local review team shall:

(a) Review the cause and manner of the child’s death as determined by the local coroner, pathologist, or medical examiner, and attempt to determine whether the local review team concurs with the coroner’s, pathologist’s, or medical examiner’s findings;

(b) In cases in which the local review team does not concur with the cause or manner of death as determined by the local coroner, pathologist, or medical examiner, forward a report of the local review team's analysis of the cause and manner of the child's death to the local coroner, pathologist, or medical examiner for his or her consideration;

(c) Evaluate means by which the death might have been prevented;

(d) Report case review findings to public and private agencies that have responsibilities for children and make recommendations to these agencies that may help to reduce the number of child deaths;

(e) Request from an agency a plan of action for improvements to prevent child deaths based upon a report submitted to the agency pursuant to paragraph (d) of this subsection (2) when the case review involves a child in the custody of the agency at the time of death or involves identified system problems at the agency;

(f) Submit to the state review team the following information:

(I) Information about each death reviewed;

(II) A listing of any system issues identified through the review process and recommendations to the state review team and the appropriate agencies for system improvements and needed resources, training, and information dissemination where gaps and deficiencies may exist;

(III) Any changes, positive or negative, that appear to have resulted from implementation of previous recommendations made by the local review team to the state review team and appropriate agencies;

(IV) Examples of services known by the local review team to be provided by public agencies to children and their families that are designed to prevent child abuse, neglect, or death and that are effective in preventing child abuse, neglect, or death; and

(V) Any additional information requested by the state review team.

(3) Each local review team may, within existing appropriations and community resources:

(a) Promote continuing education for professionals involved in investigating, treating, and preventing child abuse and neglect as a means of preventing child deaths due to abuse or neglect; and

(b) Promote public education related to preventing unexpected and unexplained child deaths and deaths related to abuse or neglect.

Source: L. 2005: Entire part added, p. 976, § 1, effective June 2.

25-20.5-406. State review team - creation - membership - vacancies. (1) There is hereby created the Colorado state child fatality prevention review team in the department of public health and environment.

(2) (a) On or before September 1, 2005, the governor shall appoint the seventeen voting members of the state review team specified in this paragraph (a), as follows:

(I) Two members who represent the county sheriffs within the state, one of whom represents a rural area of the state;

(II) Two members who represent the county coroners within the state;

(III) Two members who represent peace officers within the state who specialize in crimes against children;

(IV) Two members who represent the district attorneys within the state, one of whom represents a rural area of the state;

(V) Six members who represent members of the medical profession within the state who specialize in traumatic injury or children's health, including four physicians and two nurses;

(VI) One member who represents local fire department employees within the state;

(VII) One member who represents county attorneys within the state who practice in the area of dependency and neglect; and

(VIII) One member who represents county commissioners within the state.

(b) The executive director of the department of human services shall appoint six ex officio nonvoting members, as follows:

(I) Two members who represent the unit within the department of human services that is responsible for child welfare;

(II) One member who represents the unit within the department of human services that is responsible for mental health services;

(III) One member who represents the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse;

(IV) One member who represents the division of youth corrections; and

(V) One member who represents the directors of county departments of social services.

(c) The executive director of the department of public health and environment shall appoint eight ex officio nonvoting members who represent the department of public health and environment, one of whom represents county or district public health agencies.

(d) The commissioner of education shall appoint one ex officio nonvoting member who represents the department of education.

(e) The executive director of the department of public safety shall appoint one ex officio nonvoting member who represents the department of public safety.

(f) A member of the department of public health and environment shall call a preliminary meeting of the members of the state review team specified in paragraphs (a) to (e) of this subsection (2), and the voting members appointed pursuant to said paragraphs may, by a majority vote, select an additional twelve nonvoting members of the state review team as follows:

(I) Four members who represent injury prevention or safety specialists from hospitals within the state;

(II) One member who represents organizations specializing in auto safety or driver safety within the state;

(III) One member who represents sudden infant death specialists within the state;

(IV) One member who represents the state network of child advocacy centers within the state;

(V) One member who represents a state domestic violence coalition;

(VI) One member who represents the court-appointed special advocate program directors, described in section 19-1-203, C.R.S., within the state;

(VII) One member who represents the office of the child's representative, established in section 13-91-104, C.R.S.;

(VIII) One member who represents a private out-of-home placement provider; and

(IX) One member of the community with experience in childhood death.

(3) Members shall be appointed for three-year terms and shall be eligible for reappointment upon the expiration of the terms. Vacancies in the appointed membership shall be filled by the appointing entity.

Source: **L. 2005:** Entire part added, p. 978, § 1, effective June 2. **L. 2010:** (2)(c) amended, (HB 10-1422), ch. 419, p. 2107, § 128, effective August 11. **L. 2011:** (2)(b)(III) amended, (HB 11-1303), ch. 264, p. 1168, § 64, effective August 10.

25-20.5-407. State review team - duties. (1) The state review team shall:

(a) Form committees to review, at a minimum, childhood deaths in the state of Colorado related to the following causes:

(I) Natural causes;

(II) Unintentional injury;

(III) Violence;

(IV) Motor vehicle incidents;

(V) Child abuse or neglect; and

(VI) Sudden infant death syndrome;

(b) Outline trends and patterns of childhood death in Colorado;

(c) Identify and investigate risk factors that may lead to childhood death;

(d) Characterize groups of children who are at risk for childhood death;

(e) Evaluate the services offered and the system responses to children who are at risk of childhood death, review recommendations of local review teams, if any, and plans of

action submitted by agencies for improvements to prevent childhood deaths, if any, offer recommendations for improvement to these services and system responses, and request plans of action for improvement from agencies, when necessary;

(f) Take steps to improve the quality and scope of data obtained through investigations and review of childhood deaths;

(g) Report to the governor and to the health and human services committees and the judiciary committees of the house of representatives and the senate of the Colorado general assembly concerning any recommendations for changes to any law, rule, or policy that the state review team has determined will promote the safety and well-being of children. The state review team shall report annually within the first week of convening or reconvening the general assembly.

(h) Subject to available appropriations and community resources, distribute information to the public concerning risks to children and recommendations for promoting the safety and well-being of children;

(i) Serve as a link with child death review teams throughout the country and participate in national child death review team activities; and

(j) Perform any other functions necessary to enhance the capability of the state of Colorado to reduce and prevent childhood injuries and death.

Source: L. 2005: Entire part added, p. 980, § 1, effective June 2.

25-20.5-408. Access to records. (1) **Review team access to records.** (a) Notwithstanding any other state law to the contrary but subject to the requirements of applicable provisions of federal law, the state review team and the local review teams shall have access to all records and information in the possession of the department of human services and the county departments of social services that are relevant to the review of a child death, including records and information related to previous reports and investigations of suspected child abuse or neglect.

(b) Except as otherwise provided in paragraph (c) of this subsection (1), notwithstanding any other state law to the contrary, but subject to the requirements of applicable provisions of federal law, the state review team and the local review teams shall have access to all other records and information that are relevant to a review of a child death and that are in the possession of a state or local governmental agency. These records include, but are not limited to, birth certificates, records of coroner or medical examiner investigations, and records of the department of corrections.

(c) Mental health and substance abuse treatment records may be accessed only with the written consent of appropriate parties in accordance with applicable federal and state law.

(2) **Public access to records and information.** (a) **Open meetings.** Meetings of the state review team and local review teams shall be subject to the provisions of section 24-6-402, C.R.S.

(b) **Confidentiality.** Each member of the state review team, each member of a local review team, and each invited participant at a meeting shall sign a statement indicating an understanding of and adherence to confidentiality requirements. A person who knowingly violates confidentiality requirements commits a class 3 misdemeanor and, upon conviction, shall be punished as provided in section 18-1.3-501, C.R.S.

(c) **Release of information.** (I) Members of the state review team, members of the local review teams, a person who attends a review team meeting, and a person who presents information to a review team may release information to governmental agencies as necessary to fulfill the requirements of this part 4.

(II) Members of the state review team, members of the local review teams, a person who attends a review team meeting, and a person who presents information to a review team shall not be subject to examination, in any civil or criminal proceeding, concerning information presented to members of the review team or opinions formed by the review team based on that information. A person may, however, be examined concerning information reviewed by the state review team or a local review team that is otherwise available to the public or that is required to be revealed by that person in another official capacity.

(III) Information, documents, and records of the state review team and the local review teams shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; except that information, documents, and records that would otherwise be available from a person serving on the state review team or a local review team or that would otherwise be required to be revealed by law shall not be immune from subpoena, discovery, or introduction into evidence solely because the information was presented at or became available due to a proceeding of the state review team or a local review team.

(IV) Information received by the state review team or a local review team that contains information exculpatory to a person charged with a criminal offense shall be subject to release pursuant to the rules of criminal procedure.

Source: L. 2005: Entire part added, p. 981, § 1, effective June 2.

25-20.5-409. Administration - funding - cash fund. (1) To the extent funds are available, the state review team and the local review teams may hire staff or consultants to assist them in completing their duties.

(2) Staff and consultants of the state review team or the local review teams shall receive reimbursement for travel and expenses to offset the costs incurred in fulfilling their duties, which shall be paid from moneys appropriated to implement this part 4 and within the limits of those moneys.

(3) The division of prevention services in the department of public health and environment, on behalf of the state review team, is authorized to receive contributions, grants, services, and donations from any public or private entity for any direct or indirect costs associated with the duties of the state review team set forth in this part 4.

(4) All private and public funds received by the state review team through grants, contributions, and donations pursuant to this part 4 shall be transmitted to the state treasurer, who shall credit the same to the child fatality prevention cash fund, which fund is hereby created and referred to in this section as the “fund”. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this part 4. All moneys in the fund not expended for the purpose of this part 4 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2005: Entire part added, p. 982, § 1, effective June 2.

PART 5

SCHOOL-BASED HEALTH CENTER GRANT PROGRAM

25-20.5-501. Legislative declaration. (1) The general assembly hereby finds that:

(a) Access to school-based primary health care for children and adolescents has been shown to increase the use of primary care, reduce the use of emergency rooms, and result in fewer hospitalizations;

(b) High-risk students who use school-based health centers are more likely to stay in school and be available for instruction;

(c) School-based health centers are effective at managing health conditions, such as asthma;

(d) School-based health centers serve primarily low-income schools. The majority of students who attend schools with on-site health centers are from low-income families, are medically uninsured or underinsured, and qualify for free or reduced-cost school lunch.

Source: L. 2006: Entire part added, p. 1595, § 1, effective July 1.

25-20.5-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "School-based health center" means a clinic established and operated within a public school building, including charter schools and state sanctioned GED programs associated with a school district, or on public school property by the school district. School-based health centers are operated by school districts in cooperation with hospitals, public or private health care organizations, licensed medical providers, public health nurses, community health centers, and community mental health centers. The term "school-based health center" includes clinics or facilities authorized to provide clinic services under section 26-4-513, C.R.S., or authorized to apply for and receive medical assistance payments under a contract entered into pursuant to section 26-4-531, C.R.S.

Source: L. 2006: Entire part added, p. 1596, § 1, effective July 1.

25-20.5-503. School-based health center grant program - creation - funding - grants. (1) There is hereby created, in the prevention services division of the department of public health and environment, the school-based health center grant program, referred to in this part 5 as the "grant program", for the purpose of assisting the establishment, expansion, and ongoing operations of school-based health centers in Colorado. The grant program shall be funded by moneys annually appropriated by the general assembly specifically for said program.

(2) Operators of school-based health centers may apply for grants for the benefit of school-based health centers. The grant program shall provide grants for school-based health centers selected by the division. The division, in consultation with school-based health centers, shall develop criteria under which the grants are distributed and evaluated. In developing the criteria for grants, the division shall give priority to centers that serve a disproportionate number of uninsured children or a low-income population or both and may award grants to establish new school-based health centers, to expand primary health services, behavioral health services, or oral health services offered by existing school-based health centers, to expand enrollment in the children's basic health plan, or to provide support for ongoing operations of school-based health centers. None of the grants shall be awarded to provide abortion services in violation of section 50 of article V of the state constitution.

(3) The division shall specify and provide to potential grant recipients the following information:

(a) Procedures and timelines by which an operator of a school-based health center may apply for a grant;

(b) Grant application contents;

(c) Criteria for selection, reporting, evaluation, and other criteria as necessary;

(d) Criteria for determining the amount and duration of the grants;

(e) Reporting requirements for grant recipients; and

(f) Any other information the division deems necessary.

(4) Grant recipients shall submit reports to the division as outlined in the reporting requirements summarizing the use of the grant moneys.

(5) A grant awarded by the division shall be used for the school-based health center for the purposes stated in this part 5. The grants shall supplement existing funding sources for the school-based health center, such as federal funds, patient fees, public and private insurance, and grants and donations, including in-kind donations received from community hospitals, foundations, local governments, and private sources.

Source: L. 2006: Entire part added, p. 1596, § 1, effective July 1.

PART 6

PRIMARY CARE OFFICE

25-20.5-601. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) There is a shortage of qualified health care professionals in most areas of the state, particularly in rural and low-income communities;

(b) Lack of access to health care increases health inequities in Colorado and increases the overall cost of health care services;

(c) Communities designated as health professional shortage areas, medically underserved areas, or medically underserved populations may benefit from federal, state, and private programs that enhance reimbursement for medical services, provide grants for health service infrastructure, and create incentives for the placement of additional health care professionals in those communities;

(d) Communities designated as health professional shortage areas, medically underserved areas, or medically underserved populations may benefit from the placement of physicians through federal waiver programs such as the national interest waiver program, the Conrad 30 J-1 visa waiver program, and the national health service corps; and

(e) Assessing the health service needs of the state and coordinating workforce programs to address those needs is an important strategy for increasing access to health services in Colorado.

(2) The general assembly therefore finds that it is in the best interests of the citizens of the state of Colorado to create the primary care office within the department of public health and environment for the purpose of identifying the areas within the state that lack sufficient health care resources and coordinating available resources to maximize medical reimbursements, grants, and placements of health care professionals within those areas.

Source: L. 2009: Entire part added, (HB 09-1111), ch. 396, p. 2132, § 1, effective June 2.

25-20.5-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “Conrad 30 J-1 visa waiver program” means the program established in 8 U.S.C. sec. 1184 (l) (1) (D) (ii), allowing foreign-trained physicians who meet certain criteria to practice in communities designated as medically underserved areas, medically underserved populations, or health professional shortage areas.

(2) “Health care professional” means a licensed physician, an advanced practice nurse registered pursuant to section 12-38-111.5, C.R.S., a mental health practitioner, a licensed physician assistant, or any other licensed health care provider for which the federal government authorizes participation in a federally matched state loan repayment program to encourage health care professionals to provide services in underserved communities.

(3) “Health professional shortage area” shall have the same meaning as provided in 42 U.S.C. sec. 254e.

(4) “Medically underserved area” means a medically underserved community as defined in 42 U.S.C. sec. 295p.

(5) “Medically underserved population” shall have the same meaning as provided in 42 U.S.C. sec. 254b.

(6) “National health service corps” means the program established in 42 U.S.C. sec. 254d.

(7) “National interest waiver program” means the program established in 8 U.S.C. sec. 1153 (b) (2) (B) (ii) allowing foreign-trained physicians who meet certain criteria to practice in communities designated as medically underserved areas, medically underserved populations, or health professional shortage areas.

(8) “State board” means the state board of health created in section 25-1-103.

Source: L. 2009: Entire part added, (HB 09-1111), ch. 396, p. 2133, § 1, effective June 2.

25-20.5-603. Primary care office - creation. (1) There is hereby created in the prevention services division of the department the primary care office for the purpose of assessing and addressing unmet needs concerning health care professionals, resources, and infrastructure across the state. The executive director of the department, subject to the

provisions of section 13 of article XII of the state constitution, shall appoint the director of the primary care office, who shall be the head of the office.

(2) The primary care office and the director of the office shall exercise their powers and perform their duties and functions specified in this part 6 under the department as if the same were transferred to the department by a type 2 transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

(3) The primary care office shall include the Colorado health service corps advisory council created in section 25-20.5-704.

Source: L. 2009: Entire part added, (HB 09-1111), ch. 396, p. 2134, § 1, effective June 2. L. 2010: (3) amended, (HB 10-1138), ch. 142, p. 485, § 9, effective July 1.

25-20.5-604. Primary care office - powers and duties. (1) The primary care office shall have, at a minimum, the following powers and duties:

(a) To assess the health care professional needs of areas throughout the state;

(b) To apply to the United States department of health and human services, when appropriate, for designation of communities in the state as medically underserved areas, medically underserved populations, or health professional shortage areas or as any other designations necessary to participate in a federal program to address health care professional shortages;

(c) To maximize the placement of health care professionals who serve communities designated as medically underserved areas, medically underserved populations, or health professional shortage areas, or any other communities eligible for participation in a federal, state, or private program to address health care professional shortages, for the purpose of qualifying said communities for increased reimbursements, grants, and health care professional placements;

(d) To administer the Colorado health service corps pursuant to the provisions of part 7 of this article;

(e) To administer or provide technical assistance to participants in applicable federal programs intended to address health care professional shortages, including the Conrad 30 J-1 visa waiver program, the national interest waiver program, and the national health service corps. The state board may promulgate rules as necessary for the administration of these programs and shall establish by rule application fees for the Conrad 30 J-1 visa waiver program and the national interest waiver program. The primary care office shall transfer the fee amounts collected to the state treasurer for crediting to the visa waiver program fund established in section 25-20.5-605.

(f) To seek and accept public or private gifts, grants, or donations to apply to the costs incurred in fulfilling the duties specified in this section and otherwise administering the programs within the office;

(g) To administer nursing and health care professional faculty loan repayment pursuant to part 7 of this article.

Source: L. 2009: Entire part added, (HB 09-1111), ch. 396, p. 2134, § 1, effective June 2. L. 2010: (1)(d) amended, (HB 10-1138), ch. 142, p. 485, § 10, effective July 1. L. 2011: (1)(g) added, (HB 11-1281), ch. 180, p. 683, § 1, effective May 19.

25-20.5-605. Visa waiver program fund. There is hereby created in the state treasury the visa waiver program fund, referred to in this section as the “fund”, that shall consist of the application fees collected pursuant to section 25-20.5-604 (1) (e) and any additional moneys that the general assembly may appropriate to the fund. In addition, for the 2009-10 fiscal year, the fund shall include the moneys transferred to the fund from the AIDS and HIV prevention fund pursuant to section 25-4-1415 (4). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the direct and indirect costs incurred by the department in performing its duties under this part 6. Any moneys in the fund not expended for the purpose of this part 6 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and

deposit of moneys in the fund shall be credited to the fund. Any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2009: Entire part added, (HB 09-1111), ch. 396, p. 2135, § 1, effective June 2.

PART 7

STATE HEALTH CARE PROFESSIONAL LOAN REPAYMENT PROGRAM

Editor's note: This part 7 was added with relocations in 2009. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

25-20.5-701. Legislative declaration. (1) The general assembly hereby finds that there are areas of Colorado that suffer from a lack of health care professionals to serve, and a lack of nursing or other health care professional faculty to train health care professionals to meet, the medical needs of communities. The general assembly further finds that the state needs to implement incentives to encourage health care professionals to practice in these underserved areas and to encourage nursing faculty and other health care professional faculty to teach these health care professionals.

(2) It is therefore the intent of the general assembly in enacting this part 7 to create a state health service corps program that uses state moneys, federal moneys, when permissible, and contributions from communities and private sources to help repay the outstanding education loans that many health care professionals, nursing faculty, and health care professional faculty hold. In exchange for repayment of loans incurred for the purpose of obtaining education in their chosen health care professions, the health care professionals will commit to provide health care services in communities with underserved health care needs throughout the state, and the nursing and health care professional faculty will commit to providing a specified period of service in a qualified faculty position.

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2135, § 2, effective June 2. **L. 2010:** (2) amended, (HB 10-1138), ch. 142, p. 479, § 1, effective July 1. **L. 2011:** Entire section amended, (HB 11-1281), ch. 180, p. 683, § 2, effective May 19.

Editor's note: This section is similar to former § 23-3.6-201 as it existed prior to 2009.

25-20.5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Advisory council" means the Colorado health service corps advisory council created pursuant to section 25-20.5-704.

(1.5) "Colorado health service corps" means the loan repayment program created and operated pursuant to this part 7.

(1.7) "Colorado health service corps fund" or "fund" means the Colorado health service corps fund created in section 25-20.5-706.

(2) "Federally designated health professional shortage area" means a health professional shortage area as defined in 42 U.S.C. sec. 254e.

(3) "Health care professional" means a licensed physician, an advanced practice nurse registered pursuant to section 12-38-111.5, C.R.S., a mental health practitioner, a licensed physician assistant, or any other licensed health care provider for which the federal government authorizes participation in a federally matched state loan repayment program to encourage health care professionals to provide services in underserved communities.

(3.5) "Health care professional faculty member" means a person who has an advanced degree in a health care professional field and is employed in a qualified faculty position.

(4) and (5) (Deleted by amendment, L. 2010, (HB 10-1138), ch. 142, p. 479, § 2, effective July 1, 2010.)

(6) “National health service corps program” means the program established in 42 U.S.C. sec. 254d.

(6.5) “Nursing faculty member” means a person who has an advanced degree in nursing and is employed in a qualified faculty position.

(7) “Primary care office” means the primary care office created pursuant to part 6 of this article.

(8) “Primary health services” means health services regarding family medicine, general practice, general internal medicine, pediatrics, general obstetrics and gynecology, oral health, or mental health that are provided by health care professionals.

(9) “Qualified faculty position” means a part-time or full-time teaching position at an educational institution with accredited nursing or health care professional training programs, which position requires an advanced degree that meets national accreditation standards and is approved by the primary care office.

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2136, § 2, effective June 2. L. 2010: (1), (4), (5), and (8) amended and (1.5) and (1.7) added, (HB 10-1138), ch. 142, p. 479, § 2, effective July 1. L. 2011: (3.5), (6.5), and (9) added, (HB 11-1281), ch. 180, p. 684, § 3, effective May 19.

Editor’s note: This section is similar to former § 23-3.6-202 as it existed prior to 2009.

25-20.5-703. Colorado health service corps - program - creation - conditions.

(1) (a) (I) (A) Beginning July 1, 2009, the primary care office shall maintain and administer, subject to available appropriations, the Colorado health service corps. Subject to available appropriations, the Colorado health service corps shall provide loan repayment for certain eligible health care professionals who provide primary health services. Beginning July 1, 2011, the Colorado health service corps shall also provide loan repayment for certain eligible nursing faculty or health care professional faculty members in qualified faculty positions.

(B) All contracts entered into by or on behalf of collegeinvest pursuant to part 2 of article 3.6 of title 23, C.R.S., as it existed prior to June 2, 2009, or the primary care office on behalf of the state health care professional loan repayment program pursuant to this part 7, as it existed prior to July 1, 2010, are hereby validated as obligations of the primary care office on behalf of the Colorado health service corps.

(II) Under the Colorado health service corps, subject to the limitations specified in subsection (2) of this section, upon entering into a loan contract, the state may either:

(A) Make payments on the education loans of the health care professional, nursing faculty member, or health care professional faculty member; or

(B) Agree to make an advance payment in a lump sum of all or part of the principal, interest, and related expenses of the education loans of health care professionals, nursing faculty members, or health care professional faculty members, subject to the limitations specified in subsection (2) of this section.

(III) In consideration for receiving repayment of all or part of his or her education loan, the health care professional shall agree to provide primary health services in federally designated health professional shortage areas in Colorado.

(IV) In consideration for receiving repayment of all or part of his or her education loan, the nursing or other health care professional faculty member shall agree to serve two or more consecutive academic years in a qualified faculty position.

(b) Repayment of loans under the Colorado health service corps may be made using moneys in the Colorado health service corps fund. The primary care office is authorized to receive and expend gifts, grants, and donations or moneys appropriated by the general assembly for the purpose of implementing the Colorado health service corps. In administering the Colorado health service corps, the primary care office shall collaborate with the university of Colorado health sciences center and other appropriate partners as needed to maximize the federal moneys available to the state for state loan repayment programs

through the federal department of health and human services. The selection of health care professionals, nursing faculty members, and health care professional faculty members for participation in the Colorado health service corps is exempt from the competitive bidding requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S.

(c) Health care professionals practicing in nonprimary care specialties shall not be eligible for loan repayments through the Colorado health service corps.

(d) (I) As a condition of receiving a loan repayment through the Colorado health service corps, a health care professional shall enter into a contract pursuant to which the health care professional agrees to practice for at least two years in a community that is located in a federally designated health professional shortage area. The health care professional, the primary care office, and the community employer with which the health care professional is practicing shall be parties to the contract.

(II) As a condition of receiving a loan repayment through the Colorado health service corps, a nursing faculty or health care professional faculty member shall enter into a contract pursuant to which he or she agrees to serve at least two consecutive academic years or their equivalent in a qualified faculty position. The nursing faculty or health care professional faculty member, the primary care office, and the educational institution where the qualified faculty position is located shall be parties to the contract.

(2) Subject to available appropriations, the primary care office shall annually select health care professionals, nursing faculty members, and health care professional members from the list provided by the advisory council pursuant to section 25-20.5-704 (6) to participate in the Colorado health service corps.

(2.5) The primary care office, after consulting with the advisory council and accredited health care professional training programs in the state, shall develop loan forgiveness criteria for nursing faculty and other health care professional faculty members. In determining whether to forgive the loan of a faculty member, the primary care office shall consider the following criteria:

(a) The faculty positions available at the educational institution at which the health care professional works;

(b) Documented recruiting efforts by the educational institution;

(c) The attributes of the educational or training program that are designed with the intent to address known shortages of health care professionals in Colorado;

(d) The type of programs offered at the educational institution, including associate, bachelor's, master's, or doctoral degrees in the health care professions, and the need for those programs in the state.

(2.7) In soliciting private grants to fund loan repayments, the primary care office shall give priority to soliciting grants to fund repayments of loans for nursing faculty.

(3) A health care professional participating in the Colorado health service corps shall not practice with a for-profit private group or solo practice or at a proprietary hospital or clinic.

(4) A contract for loan repayment entered into pursuant to this part 7 shall not include terms that are more favorable to health care professionals than the most favorable terms that the secretary of the federal department of health and human services is authorized to grant under the national health services corps program. In addition, each contract shall include penalties for breach of contract that are at least as stringent as those available to the secretary of the federal department of health and human services. In the event of a breach of contract for a loan repayment entered into pursuant to this part 7, the primary care office shall be responsible for enforcing the contract and collecting any damages or other penalties owed.

(5) (Deleted by amendment, L. 2009, (HB 09-1111), ch. 396, p. 2136, § 2, effective June 2, 2009.)

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2136, § 2, effective June 2. L. 2010: (1), (2), and (3) amended, (HB 10-1138), ch. 142, p. 480, § 3, effective July 1. L. 2011: (1)(a)(I)(A), (1)(a)(II), (1)(b), (1)(d), and (2) amended and (1)(a)(IV), (2.5), and (2.7) added, (HB 11-1281), ch. 180, pp. 684, 685, §§ 4, 5, effective May 19.

Editor's note: This section is similar to former § 23-3.6-203 as it existed prior to 2009.

25-20.5-704. Colorado health service corps advisory council - creation - membership - duties - repeal. (1) There is hereby created in the primary care office the Colorado health service corps advisory council to review applications for participation in the Colorado health service corps and make recommendations to the primary care office pursuant to section 25-20.5-703 (2).

(2) The advisory council shall consist of fifteen members appointed by the governor as provided in this subsection (2) and in subsection (3) of this section. In appointing members of the advisory council, the governor shall ensure that the advisory council includes:

(a) At least one representative from each of the following organizations:

(I) A public institution of higher education in the state that has experience in administering education loan repayment programs for health care professionals serving in health professional shortage areas;

(II) (Deleted by amendment, L. 2009, (HB 09-1111), ch. 396, p. 2138, § 2, effective June 2, 2009.)

(III) The commission on family medicine created pursuant to part 9 of article 1 of this title;

(IV) A nonprofit statewide membership organization that provides programs and services to enhance rural health care in Colorado;

(V) A membership organization representing federally qualified health centers in Colorado; and

(VI) A statewide membership organization representing physicians in Colorado; and

(b) Not more than four persons with expertise in providing health care in health professional shortage areas of the state, including but not limited to a representative from a public institution of higher education in the state that provides health care professional education programs.

(3) On and after July 1, 2009, in addition to the members specified in subsection (2) of this section, the governor shall appoint representatives to the advisory council as follows:

(a) A representative of a foundation that funds a health care professional loan forgiveness program in Colorado;

(b) A representative of an economic development organization that operates in Colorado;

(c) A representative of a behavioral health organization that operates in Colorado;

(c.5) At least two representatives of a professional organization, designated by the department, that represents nurses in Colorado;

(d) At least two advanced practice nurses in faculty positions at no less than two educational institutions with health care professional programs, each of whom is licensed to practice in Colorado;

(d.5) An advanced practice nurse in a faculty position at a two-year educational institution with health care professional programs who is licensed to practice in Colorado;

(e) A representative of a state loan forgiveness program for oral health professionals in Colorado; and

(f) An actively practicing primary care physician serving in a rural community in Colorado.

(4) (a) Members appointed to the advisory council shall serve terms of three years; except that:

(I) Of the members initially appointed to the advisory council pursuant to subsection (2) of this section, the governor shall select three members who shall serve one-year terms and three members who shall serve two-year terms; and

(II) Of the members initially appointed to the advisory council pursuant to subsection (3) of this section, the governor shall select two members who shall serve one-year terms and two members who shall serve two-year terms.

(b) The governor may appoint the same person to serve as a member of the advisory council for consecutive terms.

(5) (a) Advisory council members shall serve without compensation and without reimbursement for expenses.

(b) The primary care office shall provide staff assistance to the advisory council as necessary for the advisory council to complete the duties specified in this section.

(6) The advisory council shall review applications received from health care professionals, nursing faculty members, and health care professional faculty members to participate in the Colorado health service corps. Subject to available appropriations and federal requirements concerning eligibility for federal loan repayment matching funds, the advisory council shall annually select health care professionals, nursing faculty members, and health care professional faculty members to participate in the Colorado health service corps and shall forward its list of selected participants to the primary care office.

(7) (a) This section is repealed, effective July 1, 2017.

(b) Prior to said repeal, the advisory council shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2138, § 2, effective June 2. L. 2010: (1), IP(2), IP(3), (4), (5), (6), and (7)(b) amended, (HB 10-1138), ch. 142, p. 481, § 4, effective July 1. L. 2011: IP(3), (3)(d), and (6) amended and (3)(c.5) and (3)(d.5) added, (HB 11-1281), ch. 180, p. 686, § 6, effective May 19.

Editor's note: This section is similar to former § 23-3.6-204 as it existed prior to 2009.

25-20.5-705. Advisory council - report. (1) On or before December 1, 2011, and on or before December 1 every two years thereafter, the advisory council shall submit to the governor, the health and human services committee of the senate, and the health and environment committee of the house of representatives, or any successor committees, a report that includes, at a minimum, the following information:

(a) Identification and a summary of successful loan forgiveness programs for health care professionals and best practices in health care professional loan forgiveness programs across the country;

(b) A description of the programmatic goals of the Colorado health service corps, including the present status of and any barriers to meeting those goals;

(c) Existing efforts and potential future projects to overcome any barriers to meeting the programmatic goals of the Colorado health service corps;

(d) An analysis of the impact of the Colorado health service corps program;

(e) If applicable, results of any surveys conducted of state health professional incentive programs in primary care and any recommendations to individually enhance, improve coordination among, and potentially consolidate existing or potential programs to better address Colorado's primary care workforce issues; and

(f) The number of nursing faculty or other health care professional faculty members who receive moneys from the Colorado health service corps and the number of educational institutions where the recipients teach.

(2) (Deleted by amendment, L. 2010, (HB 10-1138), ch. 142, p. 482, § 5, effective July 1, 2010.)

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2140, § 2, effective June 2. L. 2010: Entire section amended, (HB 10-1138), ch. 142, p. 482, § 5, effective July 1. L. 2011: IP(1), (1)(d), and (1)(e) amended and (1)(f) added, (HB 11-1281), ch. 180, p. 687, § 7, effective May 19.

25-20.5-706. Colorado health service corps fund - created - acceptance of grants and donations. (1) The Colorado health service corps fund is hereby created in the state treasury, which fund consists of:

(a) All general fund moneys appropriated by the general assembly for the Colorado health service corps, the first five hundred thousand dollars of which shall be used solely for loan repayments for nursing faculty;

(b) Grants available from the federal department of health and human services for the purpose of operating loan repayment programs;

- (c) For the 2011-12 fiscal year and each fiscal year thereafter, two hundred fifty thousand dollars transferred pursuant to section 24-75-1104.5 (1.5) (a) (XI), C.R.S.;
- (d) Contributions from communities; and
- (e) (Deleted by amendment, L. 2010, (HB 10-1138), ch. 142, p. 484, § 6, effective July 1, 2010.)
- (f) For the 2009-10 fiscal year, moneys transferred to the fund from the AIDS and HIV prevention fund pursuant to section 25-4-1415 (4).
- (2) (a) The moneys in the fund, other than any federal moneys credited to the fund and the moneys described in paragraph (c) of subsection (1) of this section, are hereby continuously appropriated to the primary care office for the Colorado health service corps. Any moneys in the fund not expended for the purpose of this part 7 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.
- (b) The moneys described in paragraph (c) of subsection (1) of this section are subject to annual appropriation by the general assembly to the primary care office for the Colorado health service corps.
- (3) The primary care office is authorized to receive contributions, grants, and services from public and private sources to carry out the purposes of this part 7.

Source: L. 2009: Entire part added with relocations, (HB 09-1111), ch. 396, p. 2141, § 2, effective June 2. L. 2010: IP(1), (1)(a), (1)(e), (2), and (3) amended, (HB 10-1138), ch. 142, p. 484, § 6, effective July 1. L. 2011: IP(1), (1)(a), (1)(c), and (2) amended, (HB 11-1281), ch. 180, p. 687, § 8, effective May 19.

Editor’s note: This section is similar to former § 23-3.6-205 as it existed prior to 2009.

HEALTH CARE

ARTICLE 21

Dental Care

25-21-101.	Short title.	25-21-107.	Records - complaints.
25-21-102.	Legislative declaration.	25-21-107.5.	Dental advisory committee - creation - repeal.
25-21-103.	Definitions.		Program funding.
25-21-104.	Dental assistance program for seniors.	25-21-107.7.	Dental care for infirm people unable to travel to dental offices - limitation on ap-
25-21-105.	Copayments - fees - rules.	25-21-108.	propriation.
25-21-106.	Operation period of program - review - reports.		

25-21-101. Short title. This article shall be known and may be cited as the “Colorado Dental Care Act of 1977”.

Source: L. 77: Entire article added, p. 1301, § 1, effective July 13.

- 25-21-102. Legislative declaration.** (1) It is the purpose of this article to promote the public health and welfare of the people of Colorado by providing an alternative to the present medicaid system which will furnish necessary dental appliances and services to individuals sixty years of age or older whose income and resources are insufficient to meet the costs of such appliances and services, thereby enabling individuals and families to attain or retain their capabilities for independence and self-care.
- (2) The objectives of this article shall be implemented through various executive departments, agencies, and political subdivisions of the state in cooperation with private individuals and organizations.

Source: L. 77: Entire article added, p. 1301, § 1, effective July 13.

25-21-103. Definitions. As used in this article, unless the context otherwise requires:
(1) “Advisory committee” means the dental advisory committee created in section 25-21-107.5.

(2) “Department” means the department of public health and environment.

(3) “Eligible senior” means an adult who:

(a) Is sixty years of age or older; and

(b) (I) Is eligible for old age pension assistance as defined in section 26-2-111 (2), C.R.S.; or

(II) Is eligible for medical assistance pursuant to section 25.5-5-101 (1) (I), C.R.S., but is not eligible for long-term care services pursuant to article 6 of title 25.5, C.R.S.

(4) “Qualified grantee” means an entity that either provides comprehensive dental and oral health services or that can administer funds for such services through sub-grants, awards, or reimbursement processes that comply with the federal “Health Insurance Portability and Accountability Act of 1996”, 42 U.S.C. sec. 1320d to 1320d-9.

(5) “Service grant” means a grant awarded by the department to a qualified grantee pursuant to this article.

Source: L. 77: Entire article added, p. 1301, § 1, effective July 13. **L. 94:** (1) amended, p. 2794, § 541, effective July 1. **L. 2003:** Entire section amended, p. 2040, § 1, effective July 1. **L. 2010:** (4) amended, (HB 10-1422), ch. 419, p. 2107, § 129, effective August 11. **L. 2012:** (3) amended, (HB 12-1326), ch. 195, p. 776, § 2, effective May 22.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in the 2012 act amending subsection (3), see section 1 of chapter 195, Session Laws of Colorado 2012.

25-21-104. Dental assistance program for seniors. (1) Subject to available appropriations, the department shall award service grants to qualified grantees for the purpose of providing dental and oral health services, including relief for pain and infection, oral cancer screening, dentures, denture maintenance and repair, and related dental services to eligible seniors in Colorado. In awarding service grants, the department shall consider the recommendations and advice of the advisory committee. If the department decides not to accept the recommendations of the advisory committee, the department shall state, in writing, the reasons for not accepting the recommendations.

(2) The department shall:

(a) Develop rules, procedures, and application forms to govern how service grants shall be awarded. Such rules shall include:

(I) Outreach requirements;

(II) Coordination with area agencies on aging.

(b) Accept grant applications from grantees to provide dental and oral health services as described in subsection (1) of this section;

(c) Contract with qualified grantees that are awarded a service grant to provide dental and oral health services to eligible seniors or to administer funds for the provision of such services through sub-grants, awards, or reimbursement processes that comply with the federal “Health Insurance Portability and Accountability Act of 1996”, 42 U.S.C. sec. 1320d to 1320d-9;

(d) Develop a monitoring procedure to assure that service grants are used to provide dental and oral health services to eligible seniors and that grantees are verifying the eligibility of the seniors served in the program for the old age pension program;

(e) In awarding grants, give priority to grantees who can demonstrate the ability to leverage additional resources.

(3) The department may seek alternatives for program administration and funding, including applying for federal waivers.

Source: **L. 77:** Entire article added, p. 1302, § 1, effective July 13. **L. 78:** (1) and (2) amended, p. 431, § 1, effective July 1. **L. 95:** Entire section amended, p. 927, § 29, effective May 25. **L. 2003:** Entire section amended, p. 2041, § 2, effective July 1. **L. 2010:** (2)(c) amended, (HB 10-1422), ch. 419, p. 2107, § 130, effective August 11.

25-21-105. Copayments - fees - rules. (1) Nothing in this article shall preclude a grantee from charging an eligible senior a co-payment, but any co-payment assessed shall not exceed twenty percent of the cost of the services provided.

(2) to (4) (Deleted by amendment, L. 2003, p. 2042, § 3, effective July 1, 2003.)

(5) (Deleted by amendment, L. 2008, p. 353, § 1, effective August 5, 2008.)

(6) The state board of health created in section 25-1-103 shall promulgate rules regarding allowable procedures and fees pursuant to this article based upon recommendations of the dental advisory committee created in section 25-21-107.5. The allowable procedures for which fees may be set shall include, but not be limited to, oral examination (diagnosis and treatment planning); emergency treatment (palliative); X rays - full mouth (periapical or panorex); X rays - bite wing; prophylaxis; full dentures, upper and lower, including adjustments; single, full, or acrylic partial dentures, including adjustments; repair of fractured dentures; replacement or repair of broken teeth; addition of teeth to a partial denture to replace a natural tooth; replacement of clasp, clasp intact; replacement of clasp, new clasp; removal of permanent teeth; surgical removal; reline (chairside); reline (laboratory processed); jump rebase (laboratory processed); partial dentures (chrome base cast); amalgam fillings (per surface); composite (per surface); periodontal treatment; and soft tissue treatment (surgical).

Source: **L. 77:** Entire article added, p. 1302, § 1, effective July 13. **L. 78:** Entire section R&RE, p. 432, § 2, effective July 1. **L. 79:** (6) added, p. 1074, § 1, effective June 19. **L. 94:** (4) amended, p. 2625, § 46, effective July 1. **L. 95:** (3) amended, p. 927, § 30, effective May 25. **L. 2003:** (1), (2), (3), (4), and IP(5) amended, p. 2042, § 3, effective July 1. **L. 2008:** (5) and (6) amended, p. 353, § 1, effective August 5.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-21-106. Operation period of program - review - reports.

(1) Repealed.

(1.5) Each qualified grantee receiving a service grant shall report semi-annually to the department concerning the number of eligible seniors served, the types of dental and oral health services provided, co-payments charged, and any other information deemed relevant by the department.

(2) The department shall submit annual reports to the joint budget committee on the operation and effectiveness of the dental assistance program, including any recommendations for legislative changes to the program.

Source: **L. 77:** Entire article added, p. 1303, § 1, effective July 13. **L. 78:** (1) amended and (2) R&RE, p. 433, §§ 3, 4, effective May 2. **L. 79:** (1) amended, p. 1074, § 2, effective June 19. **L. 95:** (1) amended, p. 927, § 31, effective May 25. **L. 2003:** Entire section amended, p. 2042, § 4, effective July 1. **L. 2008:** (1) repealed, p. 355, § 2, effective August 5.

25-21-107. Records - complaints.

(1) (Deleted by amendment, L. 2003, p. 2043, § 5, effective July 1, 2003.)

(2) The department shall designate a major association of dentists in this state, willing to do so, for the receiving and processing of complaints of persons applying for or receiving dental appliances or services under the provisions of this article.

(3) (Deleted by amendment, L. 2003, p. 2043, § 5, effective July 1, 2003.)

Source: **L. 77:** Entire article added, p. 1303, § 1, effective July 13. **L. 78:** (1) and (3) R&RE, p. 433, § 5, effective July 1. **L. 2003:** Entire section amended, p. 2043, § 5, effective July 1.

25-21-107.5. Dental advisory committee - creation - repeal. (1) There is hereby created in the department a dental advisory committee, which shall be appointed by the governor. The dental advisory committee shall be comprised of ten members, including one member representing the department who shall be a nonvoting member, one member representing the department of human services, two dentists providing dental care to the senior population, one dental hygienist, one representative of an agency that coordinates services for low-income seniors, one dentist in private practice who represents the professional dental association, one representative from a dental school, and two eligible seniors. The members of the advisory committee shall be appointed by July 1, 2003. Of the members initially appointed to the advisory committee, five shall be appointed for two-year terms and five shall be appointed for three-year terms. In the event of a vacancy on the advisory committee, the governor shall appoint a successor to fill the unexpired portion of the term of such member.

(2) The advisory committee shall:

- (a) Advise the department on the operation of the dental assistance program;
- (b) Review and make recommendations to the department on the awarding of any service grants to qualified grantees;
- (c) Make recommendations to the state board of health created in section 25-1-103 regarding allowable dental procedures and fees to maximize the number of participating providers and the number of eligible seniors receiving services.

(3) This section is repealed, effective July 1, 2013. Prior to said repeal, the dental advisory committee shall be reviewed, as provided in section 2-3-1203 (3), C.R.S.

Source: **L. 2003:** Entire section added, p. 2043, § 6, effective July 1. **L. 2008:** (2)(c) added, p. 355, § 3, effective August 5.

25-21-107.7. Program funding. The general assembly shall make annual appropriations to the department for service grants and for the payment of administrative costs of the dental assistance program. A grantee's administrative costs shall not exceed ten percent of the grant amount awarded.

Source: **L. 2003:** Entire section added, p. 2043, § 6, effective July 1.

25-21-108. Dental care for infirm people unable to travel to dental offices - limitation on appropriation. (1) The department shall administer a program of dental assistance, through its oral health program, involving the contracting for the provision of dental services to persons so infirm as to be unable to travel to dental offices. Such program may involve the use of vans containing portable dental equipment or other types of equipment. The department, through its oral health program, is authorized to coordinate the use of such equipment within the various communities in the state and to accept the services of local dentists who may wish to use the equipment which is available for the care of infirm persons.

(2) The general assembly each year in the general appropriation bill may require that an amount equal to the state appropriation for services provided in this section be obtained from private sources, including donated services, prior to the disbursement by the state treasurer of the state appropriation.

Source: **L. 83:** Entire section added, pp. 1107, 1108, §§ 1, 3, effective July 1. **L. 2003:** (1) amended, p. 2044, § 7, effective July 1.

ARTICLE 21.5**Children's Dental Assistance and
Fluoridation Program**

25-21.5-101.	Short title.	25-21.5-106.	Dental advisory committee - creation - repeal. (Repealed)
25-21.5-102.	Legislative declaration.	25-21.5-107.	Donated dental services - contract.
25-21.5-103.	Definitions.	25-21.5-108.	Fluoridation of community water supplies - grants - rules.
25-21.5-104.	Dental assistance program for children - rules.	25-21.5-109.	No general fund moneys.
25-21.5-105.	Copayment - eligibility - children's dental plan cash fund - payment schedule.		

25-21.5-101. Short title. This article shall be known and may be cited as the "Colorado Dental Program Act of 1997".

Source: L. 97: Entire article added, p. 1127, § 1, effective May 28.

25-21.5-102. Legislative declaration. (1) It is the purpose of this article to promote the public health and welfare of the people of Colorado by providing:

(a) A dental assistance program of preventive, emergency, diagnostic, and limited restorative dental care for children under twenty-one years of age who are not insured under a dental plan and are not eligible for medicaid;

(b) Coordination of donated dental services for disabled children and adults; and

(c) A grant program to assist communities in attaining appropriate levels of fluoride in drinking water provided by community water systems as a means of primary prevention of dental decay.

(2) The objectives of this article shall be implemented through various executive departments, agencies, and political subdivisions of the state in cooperation with private individuals and organizations.

(3) It is the intent of the general assembly that nothing in this article shall be construed to create an exemption from the applicable provisions of title 10, C.R.S.

Source: L. 97: Entire article added, p. 1127, § 1, effective May 28.

25-21.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) Repealed.

(2) "Department" means the department of public health and environment.

(3) "Eligible child" means a child:

(a) Who is under the age of twenty-one years;

(b) Who is not covered under a policy of dental insurance;

(c) Who is not eligible for medicaid; and

(d) Whose family income is equal to or less than one hundred eighty-five percent of the federal poverty line.

Source: L. 97: Entire article added, p. 1128, § 1, effective May 28. **L. 2006:** (1) repealed, p. 49, § 1, effective July 1. **L. 2010:** (3)(d) amended, (HB 10-1422), ch. 419, p. 2107, § 131, effective August 11.

25-21.5-104. Dental assistance program for children - rules. (1) Subject to available appropriations, the department shall administer a program of dental assistance to any child who is an eligible child, referred to in this article as "the program". Dental assistance under the program shall consist of preventive, emergency, diagnostic, and limited restorative services provided by appropriate licensed dental providers, including dentists and dental hygienists working in private and public settings.

(2) The department shall promulgate rules necessary for the implementation of the program.

(3) The department shall administer the program through recruitment of qualified providers, including dental hygienists. The department shall contract with appropriate providers, provider networks, or dental plans to provide services and shall determine appropriate payment mechanisms. The department shall collaborate with other state or private entities that determine income eligibility to determine the income eligibility of children applying for the dental assistance program.

Source: L. 97: Entire article added, p. 1128, § 1, effective May 28. L. 2006: (2) amended, p. 49, § 2, effective July 1. L. 2009: (3) amended, (SB 09-292), ch. 369, p. 1972, § 91, effective August 5.

25-21.5-105. Copayment - eligibility - children's dental plan cash fund - payment schedule. (1) A child who meets the eligibility criteria set forth in section 25-21.5-103 (3) shall be eligible for services pursuant to this section; except that the number of children served shall depend on the amounts appropriated for the program. The department shall determine costs for each eligible child and for individual services or combinations of services and shall establish copayments or fees for each participating eligible child, not to exceed a cap per eligible family. Any such payments under this program shall be credited to the children's dental plan cash fund, which fund is hereby created in the state treasury. The fund shall also consist of moneys from gifts, donations, or grants of any kind from any public or private entity. Moneys in the fund shall be subject to annual appropriation by the general assembly to help defray the expenses of the dental assistance program. The department is authorized to spend moneys in the fund for purposes of the dental assistance program. At the end of each fiscal year, any unexpended or unallocated funds shall remain in the cash fund and shall not be transferred to the general fund.

(2) The department is authorized to receive gifts, donations, or grants of any kind from any public or private entity to carry out the purposes of this article subject to the terms and conditions under which given; except that no gift, donation, or grant shall be accepted if the conditions attached thereto require the use or expenditure thereof in a manner contrary to law. All such gifts, donations, and grants shall be transmitted to the state treasurer, who shall credit the same to the children's dental plan cash fund, created pursuant to subsection (1) of this section.

(3) The department shall define the types of dental services to be provided under this article.

(4) The department shall annually set the payment rate for services, which shall be adequate to attract sufficient providers in the program but shall be less than the usual and customary charges for the types of dental services provided in accordance with subsection (3) of this section.

Source: L. 97: Entire article added, p. 1129, § 1, effective May 28. L. 2006: (3) amended, p. 49, § 3, effective July 1.

25-21.5-106. Dental advisory committee - creation - repeal. (Repealed)

Source: L. 97: Entire article added, p. 1129, § 1, effective May 28. L. 2006: Entire section repealed, p. 49, § 4, effective July 1.

25-21.5-107. Donated dental services - contract. The department shall contract with a nonprofit organization to administer a donated dental services program to provide dental treatment to people who are disabled or elderly, have serious dental problems but cannot afford such care, and are not eligible for medicaid. Pursuant to the terms of the contract, the nonprofit organization shall determine applicant eligibility and, through the use of referral

coordinators, shall match eligible persons with dentists and laboratories that volunteer to provide donated dental services. Subject to available appropriations, the contract shall cover the costs incurred by the nonprofit organization in implementing the donated dental services program.

Source: L. 97: Entire article added, p. 1130, § 1, effective May 28.

25-21.5-108. Fluoridation of community water supplies - grants - rules. (1) The department shall administer a grant program to assist community water systems in adjusting the level of fluoride in drinking water as a means of preventing dental decay for both children and adults, subject to available appropriations.

(2) Subject to criteria established by the department pursuant to subsection (3) of this section, the department shall award grants to communities that provide for some or all of the following:

(a) Assistance in the design, purchase, installation, and maintenance of equipment to add proper amounts of fluoride to drinking water;

(b) Training of water plant personnel in the proper operation of fluoridation equipment;

(c) Monitoring of the fluoride content by obtaining periodic samples of finished drinking water to assure the proper level of fluoride to prevent dental decay and to prevent risk to the public health.

(3) The department shall establish criteria for awarding grants for assistance under the fluoridation program outlined in this section. The criteria shall include but not be limited to giving priority to those counties or community water systems with the greatest need for dental services and the fewest dental resources and to those communities that agree to share part of the cost of the design, purchase, installation, and maintenance of fluoridation equipment.

(4) The department shall promulgate necessary rules for the implementation of the fluoridation program.

Source: L. 97: Entire article added, p. 1130, § 1, effective May 28.

25-21.5-109. No general fund moneys. It is the intent of the general assembly that no general fund moneys be appropriated for the purposes of implementing this article.

Source: L. 97: Entire article added, p. 1131, § 1, effective May 28.

ARTICLE 22

State Loan Repayment Program

25-22-101 to 25-22-104. (Repealed)

Source: L. 2007: Entire article repealed, p. 2109, § 3, effective June 4.

Editor’s note: This article was added in 1991 and was not amended prior to its repeal in 2007. For the text of this article prior to 2007, consult the 2006 Colorado Revised Statutes.

ARTICLE 23

Dental Loan Repayment Program

25-23-101.	Legislative declaration.		ditions.
25-23-102.	Definitions.	25-23-104.	Dental loan repayment fund -
25-23-103.	State loan repayment program		acceptance of grants and
	for dentists and dental hy-		donations.
	gienists serving underserved	25-23-105.	Board - rule-making author-
	populations - creation - con-		ity.

25-23-101. Legislative declaration. (1) The general assembly hereby finds that:

(a) Many dental professionals, particularly dentists, graduate with large debt levels that were used to finance their professional education;

(b) Dentistry is provided predominantly through individual practices, which minimizes the opportunity for dental professionals to provide unreimbursed services while maintaining the costs of a practice and repaying their educational loans;

(c) Many Colorado communities encounter difficulty recruiting dental providers dedicated to serving underserved populations;

(d) Incentives to reduce the indebtedness of dental professionals will increase access to dental care for underserved populations.

(2) The general assembly also finds that, during the 2000 regular session, the general assembly expanded the children's basic health plan to include dental services and paid for such expansion out of the tobacco settlement moneys, but, due to a lack of dental providers, the inclusion of dental care services was made contingent upon an adequate number of dental providers being willing to provide services. The general assembly hereby finds that the loan repayment program created in this article would provide a method to develop the infrastructure and resources needed to provide dental services as part of the children's basic health plan.

(3) The general assembly, therefore, states that the purpose of this article is to encourage and enable dental professionals to provide care through the children's basic health plan and the medicaid program and to other underserved populations in Colorado by the use of a financial incentive program.

Source: L. 2001: Entire article added, p. 923, § 1, effective June 4.

25-23-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the state board of health.

(2) "Eligible dental professional" means a person who is:

(a) A dentist licensed in Colorado pursuant to article 35 of title 12, C.R.S.; or

(b) A dental hygienist licensed in Colorado pursuant to article 35 of title 12, C.R.S.

(3) "Loan repayment assistance" means financial assistance in paying all or part of the principal, interest, and other related expenses of a loan for professional education in either dentistry or dental hygiene, whichever is appropriate.

(4) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.

(5) "Underserved population" includes but is not limited to:

(a) Individuals eligible for medical assistance under articles 4, 5, and 6 of title 25.5, C.R.S.;

(b) Individuals enrolled in the children's basic health plan pursuant to article 8 of title 25.5, C.R.S.;

(c) Individuals eligible for medical services pursuant to the Colorado indigent care program set forth in part 1 of article 3 of title 25.5, C.R.S.;

(d) Individuals who are provided services by a dental professional and who are charged fees on a sliding scale based upon income or who are served without charge.

Source: L. 2001: Entire article added, p. 924, § 1, effective June 4. **L. 2006:** (5)(a) to (5)(c) amended, p. 2015, § 92, effective July 1.

25-23-103. State loan repayment program for dentists and dental hygienists serving underserved populations - creation - conditions. (1) Subject to available appropriations, the department of public health and environment shall develop and maintain a state dental loan repayment program in which the state agrees to pay all or part of the principal, interest, and related expenses of the educational loans of each eligible dental professional. The department of public health and environment shall operate the program in cooperation with other health professional loan repayment programs.

(2) A dental professional is eligible for loan repayment assistance if the dental professional meets at least one of the following criteria:

- (a) The dental professional is employed by a federally qualified health center;
- (b) The dental professional owns or is employed by a practice that remains open to new clients enrolled in the medicaid program or the children's basic health plan program;
- (c) The dental professional owns or is employed by a practice that provides a significant level of service to underserved populations as defined in rule by the board; or
- (d) The dental professional provides, on a pro bono basis, a significant level of service to underserved populations.

(3) Loan repayments shall be available to eligible dental professionals on an annual basis, however, an eligible dental professional shall enter into a contract, as a condition of qualifying for the loan repayment assistance, in which the dental professional agrees to provide care to underserved populations for a minimum of two years. The department of public health and environment shall enter into contracts with eligible dental professionals on or after April 1, 2002.

(4) The board may establish the total amount of annual financial assistance available under the loan repayment program to any dental professional in order to promote recruitment and retention of a dental professional. Any contracts for loan repayment shall include reasonable penalties for breach of contract. In the event of a breach of contract for a loan repayment entered into pursuant to this article, the department of public health and environment shall be responsible for enforcing the contract and collecting any damages or other penalties owed.

(5) Nothing in this article shall be interpreted to create a legal entitlement to loan repayment assistance. The amount of assistance available is limited by available appropriations.

(6) The department of public health and environment may apply for any available matching federal funds on behalf of an eligible dental professional and shall use such federal funds to provide all or part of the financing for loan repayment for an eligible dental professional.

(7) Repealed.

Source: **L. 2001:** Entire article added, p. 925, § 1, effective June 4. **L. 2003:** (7) amended, p. 2008, § 86, effective May 22. **L. 2005:** (7) repealed, p. 288, § 37, effective August 8.

25-23-104. Dental loan repayment fund - acceptance of grants and donations. (1) The state dental loan repayment program shall be funded by moneys appropriated by the general assembly specifically for said program, moneys transferred thereto pursuant to subsection (2) of this section, and any matching funds or contributions received from any public or private sources. Such funds shall be transmitted to the treasurer, who shall credit the same to the state dental loan repayment fund, which fund is hereby created. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. Moneys in the fund shall be used to provide loan repayment assistance to eligible dental professionals. Moneys in the fund may also be used to pay for the administrative costs of the department of public health and environment to implement the loan repayment program except that administrative costs shall not exceed ten percent. For fiscal year 2001-02 only, administrative costs shall not exceed thirty-six thousand dollars (\$36,000) and may be paid from the state dental loan repayment fund.

(2) Pursuant to section 24-75-1104.5 (1) (d), C.R.S., beginning in fiscal year 2006-07 and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall transfer to the state dental loan repayment fund two hundred thousand dollars from the moneys received by the state pursuant to the master settlement agreement for the preceding fiscal year. The state treasurer shall transfer the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S. Moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes of this article. The amount appropriated pursuant to this subsection (2) shall be in addition to and not in replacement of any general fund moneys appropriated to the state dental loan repayment fund.

(3) The department of public health and environment is authorized to receive contributions, grants, and services from public and private sources to carry out the purposes of this article.

Source: **L. 2001:** Entire article added, p. 926, § 1, effective June 4. **L. 2003:** (2) amended, p. 464, § 8, effective March 5; (2) amended, p. 2564, § 6, effective June 5. **L. 2004:** (2) amended, p. 1711, § 10, effective June 4. **L. 2006:** (1) and (2) amended, p. 1037, § 7, effective May 25.

25-23-105. Board - rule-making authority. The board is authorized to promulgate rules necessary to implement the loan repayment program authorized in this article, including determining the amount of financial assistance available; establishing the criteria in section 25-23-103 (2) for loan repayment assistance and the criteria for determining what constitutes a significant level of service to underserved populations for purposes of qualifying for loan repayment assistance; and establishing criteria for prioritizing the repayment of loans if there are insufficient moneys in the state dental loan repayment fund.

Source: **L. 2001:** Entire article added, p. 927, § 1, effective June 4.

ARTICLE 25

Colorado Health Facilities Authority

25-25-101.	Short title.	25-25-116.	Trust agreement to secure bonds.
25-25-102.	Legislative declaration.	25-25-117.	Payment of bonds - nonliability of state.
25-25-103.	Definitions.	25-25-118.	Exemption from taxation - securities law.
25-25-104.	Colorado health facilities authority - creation - membership - appointment - terms - vacancies - removal.	25-25-119.	Rents and charges.
25-25-105.	Organization meeting - chair - executive director - surety bond - conflict of interest.	25-25-120.	Fees.
25-25-106.	Meetings of board - quorum - expenses.	25-25-121.	Conveyance of title - release of lien.
25-25-107.	General powers of authority.	25-25-122.	Investment of funds.
25-25-108.	Acquisition of property.	25-25-123.	Proceeds as trust funds.
25-25-109.	Notes.	25-25-124.	Agreement of state not to limit or alter rights of obligees.
25-25-110.	Bonds.	25-25-125.	Enforcement of rights of bondholders.
25-25-111.	Negotiability of bonds.	25-25-126.	Bonds eligible for investment.
25-25-112.	Security for bonds and notes.	25-25-127.	Account of activities - receipts for expenditures - report - audit.
25-25-113.	Personal liability.	25-25-128.	Federal social security act.
25-25-114.	Purchase.		
25-25-115.	Procedure concerning issuance of bonds.		

25-25-129.	Powers of authority not restricted - law complete in itself.	25-25-130.	Powers in addition to those granted by other laws.
		25-25-131.	Annual report.

25-25-101. Short title. This article shall be known and may be cited as the “Colorado Health Facilities Authority Act”.

Source: L. 77: Entire article added, p. 1304, § 1, effective July 1.

25-25-102. Legislative declaration. (1) The general assembly hereby finds and declares that, for the benefit of the people of the state of Colorado and the improvement of their health, welfare, and living conditions:

(a) It is essential that the people of this state have adequate medical care and health facilities;

(b) It is important that medical care and health facilities are made readily available by networks and organizations of health institutions, whether such networks and organizations are located within the state of Colorado or have facilities located both within and outside the state of Colorado;

(c) It is a benefit to the people of the state of Colorado to serve such multistate institutions, as such service will create health care-related employment opportunities;

(d) It is essential that health institutions that have headquarters in Colorado or that operate or manage health facilities in Colorado, and affiliates of such health institutions, be provided with appropriate additional means to assist in the development and maintenance of public health, health care, hospitals, and related facilities wherever such health institutions are located in order that they can provide more adequate medical care and health facilities to the people of Colorado;

(e) It is the purpose of this article to provide a measure of assistance to enable health institutions in the state to refund or refinance outstanding indebtedness incurred for health facilities and to provide additional facilities and structures that are greatly needed to accomplish the purposes of this article; and

(f) The exemption of bonds and notes issued pursuant to this article from all taxation and assessments in the state of Colorado benefit only the residents of the state of Colorado.

(2) It is the intent of the general assembly to create the Colorado health facilities authority to lend money to health institutions and to authorize the authority to acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, and dispose of properties so that the authority may be able to promote the health and welfare of the people of this state and develop health care-related employment opportunities for the people of this state. In enacting this article, it is the intent of the general assembly to vest the authority with the powers necessary to accomplish these purposes. However, it is not the intent of the general assembly to authorize the authority to operate a health facility.

(3) This article shall be liberally construed to accomplish the intentions expressed in this section.

Source: L. 77: Entire article added, p. 1304, § 1, effective July 1. **L. 97:** Entire section amended, p. 418, § 1, effective August 6. **L. 2007:** Entire section amended, p. 410, § 1, effective August 3.

25-25-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Authority” means the Colorado health facilities authority created by this article.

(2) “Board” means the board of directors of the authority.

(3) “Bond”, “note”, “bond anticipation note”, or “other obligation” means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the authority pursuant to this article, including refunding bonds.

(4) “Bond resolution” means the resolution authorizing the issuance of, or providing terms and conditions related to, bonds issued under the provisions of this article and

includes any trust agreement, trust indenture, indenture of mortgage, or deed of trust providing terms and conditions for such bonds.

(5) “Costs”, as applied to facilities financed in whole or in part under the provisions of this article, means and includes the sum total of all reasonable or necessary costs incidental to:

(a) The acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, improvement, and extension of such facilities; and

(b) The acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interest acquired, necessary, or used for, or useful for or in connection with, a facility; and

(c) All other undertakings that the authority deems reasonable or necessary for the development of a facility, including, without limitation, the cost of or for:

(I) Studies and surveys;

(II) Land title and mortgage guaranty policies;

(III) Plans, specifications, and architectural and engineering services;

(IV) Legal, accounting, organization, marketing, or other special services;

(V) Financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(VI) Rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(VII) All other necessary and incidental expenses, including working capital and an initial bond and interest reserve funds, together with interest on bonds issued to finance such facilities to the extent permitted under applicable federal tax law.

(6) (a) “Health facility” or “facility”, in the case of a participating health institution, means any structure or building, whether such structure or building is located within the state or whether such structure or building is located outside the state if an out-of-state health institution that operates or manages such structure or building, or an affiliate of such institution, also operates or manages a health facility within this state, suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, or other health care facility; laboratory; pharmacy; laundry; nurses’, doctors’, or interns’ residences; administration building; research facility; maintenance, storage, or utility facility; auditorium; dining hall; food service and preparation facility; mental or physical health care facility; dental care facility; nursing school; medical or dental teaching facility; mental or physical health facilities related to any such structure or facility; or any other structure or facility required or useful for the operation of a health institution, including but not limited to offices, parking lots and garages, and other supporting service structures; and any equipment, furnishings, appurtenances, or other assets, tangible or intangible, including but not limited to assets related to the medical practice of a health care professional, that are necessary or useful in the development, establishment, or operation of a participating health institution; and the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility.

(b) “Health facility” or “facility” does not include the following:

(I) Food, fuel, supplies, or other items that are customarily considered as a current operating expense or charges;

(II) Property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship; or

(III) Property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

(7) (a) “Health institution” means a limited liability company controlled directly or indirectly by one or more nonprofit entities, a private nonprofit hospital, corporation, association, or institution, or a public hospital or institution authorized or permitted by law, whether directly or indirectly through one or more affiliates, to provide, operate, or manage one or more health facilities in this state or outside this state if such entity, or an affiliate of such entity, also operates or manages a health facility within this state.

(b) “Health institution” also includes a cooperative hospital service organization, as described in section 501 (e) of the “Internal Revenue Code of 1986”, as amended, or a similar corporation, whether or not such corporation is exempt from federal income taxation pursuant to said section 501 (e).

(c) (I) "Health institution" also includes a network of health care providers, however organized; an integrated health care delivery system; a joint venture or partnership between or among health care providers; a health care purchasing alliance; health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services; an organization whose primary purpose is to provide supporting services to one or more health institutions; or a health care provider or such other health care-related organization, or an affiliate of such organization, whose regional or national headquarters are located in this state.

(II) In order to be a health institution, a network, system, joint venture, partnership, alliance, provider, or organization described in subparagraph (I) of this paragraph (c) shall be a nonprofit entity or controlled by one or more nonprofit entities.

(7.5) "Participating health institution" means a health institution that undertakes the financing and construction or acquisition of health facilities or undertakes the refunding or refinancing of outstanding obligations in accordance with this article.

(8) "Refinancing of outstanding obligations" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a participating health institution incurred prior to, on, or after July 1, 1977, to finance or aid in financing a lawful purpose of such health institution not financed pursuant to this article which would constitute a facility had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was initially incurred.

(9) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Source: L. 77: Entire article added, p. 1305, § 1, effective July 1. L. 79: (5), (6)(a), and (7)(a) amended, p. 1075, § 1, effective May 25. L. 95: (6)(a) and (7)(a) amended, p. 573, § 1, effective July 1. L. 97: (6)(a) and (7)(a) amended, p. 419, § 2, effective August 6. L. 2007: (5) to (7) amended and (7.5) added, p. 411, § 2, effective August 3.

25-25-104. Colorado health facilities authority - creation - membership - appointment - terms - vacancies - removal. (1) There is hereby created an independent public body politic and corporate to be known as the Colorado health facilities authority. Said authority is constituted a public instrumentality, and its exercise of the powers conferred by this article shall be deemed and held to be the performance of an essential public function. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(2) The governing body of the authority shall be a board of directors which shall consist of seven members to be appointed by the governor, with the consent of the senate. Such members shall be residents of the state. No more than four of the members shall be of the same political party. The members of the board first appointed shall serve for terms to be designated by the governor, expiring on June 30 of each year beginning in 1978 and ending in 1984. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, upon the expiration of the term of any member, his successor shall be appointed for a term of four years. Each member shall serve until his resignation or, in the case of a member whose term has expired, until his successor has been appointed and qualified. Any member shall be eligible for reappointment. The governor shall fill any vacancy by appointment for the remainder of an unexpired term. Any member appointed by the governor when the general assembly is not in regular session, whether appointed for an unexpired term or for a full term, shall be deemed to be duly appointed and qualified until the appointment of such member is approved or rejected by the senate. Such appointment shall be submitted to the senate for its approval or rejection during the next regular session of the general assembly following the appointment.

(3) (a) Any member of the board may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), a member shall be removed by the governor if such member fails, for reasons other than temporary mental or physical disability or illness, to attend three regular meetings of the board during any twelve-month period without the board having entered upon its minutes an approval for any of such absences.

Source: **L. 77:** Entire article added, p. 1306, § 1, effective July 1. **L. 79:** (3) amended, p. 1076, § 2, effective May 25. **L. 83:** (2) amended, p. 1109, § 1, effective May 25. **L. 87:** (2) amended, p. 911, § 23, effective June 15.

Cross references: For limitation on issuance of private activity bonds, see part 17 of article 32 of title 24; for the provisions which designate the Colorado health facilities authority as a “special purpose authority” for the purposes of § 20 of article X of the state constitution, see § 24-77-102 (15).

25-25-105. Organization meeting - chair - executive director - surety bond - conflict of interest. (1) A member of the board, designated by the governor, shall call and convene the initial organizational meeting of the board and shall serve as its chair pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The board’s bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties, and such other matters as the authority deems proper. At such meeting and annually thereafter, the board shall elect one of its members as chair and one as vice-chair. It shall appoint an executive director and, if desired, an associate executive director and any other officer designated by the board, who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as shall be fixed by the board.

(2) The executive director, the associate executive director, or any other person designated by the board shall keep a record of the board’s proceedings and shall be custodian of all books, documents, and papers filed with the board, the minute books or journal, and the official seal of the authority. This person may make copies of the minutes and other records and documents of the board and may certify under the official seal of the authority that such copies are true copies. All persons dealing with the authority may rely on such certifications.

(3) The board may delegate, by resolution, to one or more of its members or to its executive director, associate executive director, or any other officer designated by the board, such powers and duties as it may deem proper.

(4) (a) Before the issuance of any bonds under this article, the executive director, associate executive director, and any other officer designated by the board shall each execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars.

(b) In lieu of the surety bonds required by paragraph (a) of this subsection (4), the chair of the board may execute a blanket bond covering each member, the executive director, the associate executive director, and the employees or other officers of the authority.

(c) Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(5) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any health institution, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or other firm, person, or corporation to serve as a member of the board; except that such trustee, director, officer, or employee shall disclose such interest to the board and shall abstain from deliberation, action, and voting by the board in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

Source: **L. 77:** Entire article added, p. 1307, § 1, effective July 1. **L. 78:** (5) R&RE, p. 435, § 1, effective April 28. **L. 79:** (1) amended and (5) R&RE, p. 1076, 1079, §§ 3, 1, effective May 25. **L. 2007:** (1) to (4) amended, p. 413, § 3, effective August 3.

25-25-106. Meetings of board - quorum - expenses. (1) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of at least four of its members. A vacancy in the membership of the board shall not impair the right of a quorum of the board to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. One or more members of the board may participate in a meeting of the board or a committee of the board and may vote on resolutions presented at the meeting through the use of telecommunications devices, including, but not limited to, a conference telephone or similar communications equipment. Participation through telecommunications devices shall constitute presence in person at the meeting. The use of telecommunications devices shall not supersede any requirements for public hearing otherwise provided by law. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for expenses shall be paid from funds of the authority.

Source: L. 77: Entire article added, p. 1308, § 1, effective July 1. L. 91: (2) amended, p. 901, § 1, effective April 19. L. 2007: Entire section amended, p. 414, § 4, effective August 3.

25-25-107. General powers of authority. (1) In addition to any other powers granted to the authority by this article, the authority shall have the following powers:

- (a) To have perpetual existence and succession as a body politic and corporate;
- (b) To adopt and from time to time amend or repeal bylaws for the regulation of its affairs and the conduct of its business, consistent with the provisions of this article;
- (c) To sue and be sued;
- (d) To have and to use a seal and to alter the same at pleasure;
- (e) To maintain an office at such place or places as it may designate;
- (f) To determine, in accordance with the provisions of this article, the location and character of any facility to be financed under the provisions of this article; to acquire, construct, reconstruct, renovate, improve, alter, replace, maintain, repair, operate, and lease as lessee or lessor; to enter into contracts for any and all of such purposes and for the management and operation of a facility; and to designate a participating health institution as its agent to determine the location and character of a facility undertaken by such participating health institution under the provisions of this article and, as agent of the authority, to acquire, construct, reconstruct, renovate, replace, alter, improve, maintain, repair, operate, lease as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all of such purposes including contracts for the management and operation of such facility;
- (g) To lease to a participating health institution any or all of the facilities upon such terms and conditions as the authority shall deem proper; to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods, at such rent, and upon such terms or conditions as shall be determined by the authority or to purchase any or all of the facilities, or provisions that, upon payment of all of the indebtedness incurred by the authority for the financing of such facilities, the authority will convey any or all of the facilities to the lessee or lessees thereof with or without consideration;

(h) To borrow money and to issue bonds, notes, bond anticipation notes, or other obligations for any of its corporate purposes and to fund or refund the same, all as provided for in this article;

(i) To establish rules and regulations and to designate a participating health institution as its agent to establish such rules and regulations, for the use of the facilities undertaken or operated by such participating health institution; to employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(j) To receive and accept from the federal government, the state of Colorado, or any other public agency loans, grants, or contributions for or in aid of the construction of facilities or any portion thereof, or for equipping the same, and to receive and accept grants, gifts, or other contributions from any source; and to use such funds only for the purposes for which they were loaned, contributed, or granted;

(k) To mortgage or pledge all or any portion of the facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit of the holders of bonds issued to finance such facilities or any portion thereof;

(l) To make mortgage or other secured or unsecured loans to any participating health institution for the cost of the facilities in accordance with an agreement between the authority and such participating health institution; but no such loan shall exceed the total cost of such facilities as determined by such participating health institution and approved by the authority;

(m) To make mortgage loans or other secured or unsecured loans to a participating health institution; to refund outstanding obligations, mortgages, or advances issued, made, or given by such institution for the cost of its facilities, including the issuance of bonds and the making of loans to a participating health institution; and to refinance outstanding obligations and indebtedness incurred for facilities undertaken and completed prior to, on, or after July 1, 1977, when the authority makes a finding consistent with section 25-25-115 (1);

(n) To obtain, or aid in obtaining, from any department or agency of the United States or of this state or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this article; and, notwithstanding any other provisions of this article, to enter into any agreement, contract, or any other instrument whatsoever with respect to any such insurance or guarantee, to accept payment in such manner and form as provided therein in the event of default by a participating health institution, and to assign any such insurance or guarantee as security for the authority's bonds;

(o) To do all things necessary and convenient to carry out the purposes of this article;

(p) To charge to and equitably apportion among participating health institutions its administrative costs and expenses incurred in the exercise of the powers granted and duties conferred by this article;

(q) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article;

(r) To assist, coordinate, and participate with other issuers of tax-exempt bonds and public officials in other states in connection with financing on behalf of a multistate health institution;

(s) In connection with financing on behalf of a multistate health institution:

(I) To determine or agree upon who will be assisting, coordinating, or participating issuers of tax-exempt bonds in other states;

(II) To determine or agree upon what the terms or conditions of the financing will be with assisting, coordinating, or participating issuers of tax-exempt bonds in other states; and

(III) To charge fees to, apportion fees among, or agree upon fees with assisting, coordinating, or participating issuers of tax-exempt bonds in other states.

(2) The authority shall not have the power to operate the facilities as a business other than as a lessee or lessor. Notwithstanding anything contained in this subsection (2) to the contrary, the authority shall have the power to enter into leases which are annually renewable with a public hospital or institution. Any lease of the facilities entered into

pursuant to the provisions of this article shall provide for rentals adequate to pay principal and interest on any bonds issued to finance such facilities as the same fall due and to create and maintain such reserves and accounts for depreciation as the authority shall determine to be necessary.

Source: L. 77: Entire article added, p. 1308, § 1, effective July 1. **L. 81:** (2) amended, p. 1363, § 1, effective July 1. **L. 83:** (2) amended, p. 1110, § 2, effective May 25. **L. 97:** (1)(r) and (1)(s) added, p. 420, § 3, effective August 6. **L. 2007:** (1)(m) amended, p. 415, § 5, effective August 3.

25-25-108. Acquisition of property. The authority may, directly or by or through a participating health institution as its agent, acquire by purchase, lease, gift, devise, or otherwise such lands, structures, real or personal property, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights which are located within or without the state, as it may deem necessary or convenient for the construction, acquisition, or operation of facilities, upon such terms as may be considered by the authority to be reasonable, and may take title thereto in the name of the authority or in the name of such participating health institution as its agent.

Source: L. 77: Entire article added, p. 1310, § 1, effective July 1.

25-25-109. Notes. The authority may issue from time to time its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any facility, and may renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. All such notes shall be payable from the proceeds of bonds or renewal notes or from the revenues of the authority or other moneys available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

Source: L. 77: Entire article added, p. 1310, § 1, effective July 1.

25-25-110. Bonds. (1) The authority may issue from time to time its bonds in such principal amount as the authority shall determine for the purpose of financing all or a part of the cost of any health institutions or any facilities authorized by this article or for the refinancing of outstanding obligations. In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of the sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as bonds. Such notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations which a bond resolution of the authority may contain.

(2) The bonds may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing, mortgaging, or sale by the authority of the facilities concerned or of any part thereof as designated in the resolutions of the authority under which the bonds are authorized to be issued or as designated in a trust indenture authorized by the authority, which trust indenture shall name a bank or trust company in Colorado, or outside of Colorado if it is determined by the authority to be in the best interests of the

financing, such determination to be conclusive, as trustee, or out of other moneys available therefor and not otherwise pledged. Such bonds may be issued and delivered by the authority at such times and in such manner, may be in such form and denominations and include such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such time or times not exceeding forty years after the date thereof, may be payable at such place or places whether within or without the state of Colorado, may bear interest at such rate or rates per annum as shall be determined by the authority or as shall be determined by any formula prescribed by the authority or as may be determined from time to time by a designated agent of the authority in accordance with specified standards and procedures and without regard to any interest rate limitation appearing in any other law, may be evidenced in such manner, may be in the form of coupon bonds that have attached thereto interest coupons bearing the facsimile signature of an authorized officer of the authority, and may contain such provisions not inconsistent with this article, all as shall be provided in the resolutions of the authority under which the bonds are authorized to be issued or as is provided in a trust indenture authorized by the authority. Notwithstanding anything in this subsection (2) to the contrary, in the case of short-term notes or other obligations maturing not later than one year after the date of issuance thereof, the board may authorize the executive director, associate executive director, or any officer of the board to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the board shall prescribe by resolution, and such authorization shall remain effective for the period of time designated in the initial resolution regardless of whether the composition of the board changes in the interim unless sooner rescinded by the board.

(3) If deemed advisable by the authority, there may be retained in the resolutions or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such resolutions or in such trust indenture, at such price or prices, after such notice or notices, and on such terms and conditions as may be set forth in such resolutions or in such trust indenture and as may be briefly recited on the face of the bonds; but nothing in this article shall be construed to confer on the authority the right or option to redeem any bonds except as may be provided in the resolutions or in such trust indenture under which they are issued.

(4) The bonds or notes of the authority may be sold at public or private sale for such price or prices, in such manner, and at such times as may be determined by the authority, and the authority may pay all expenses, premiums, and commissions that it may deem necessary or advantageous in connection with the issuance thereof. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and issue bonds and notes may be delegated to the executive director, associate executive director, or any officer of the board of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates, which shall be exchanged for the definitive bonds.

(5) (a) Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facilities, any other facilities, or any other purpose under this article, but the resolutions or trust indenture under which any subsequent bonds may be issued shall recognize the terms and provisions of any prior pledge or mortgage made for any prior issue of bonds and the terms upon which such additional bonds may be issued and secured. Any outstanding bonds of the authority may at any time and from time to time be refunded or advance refunded by the authority by the issuance of its bonds for such purpose and in a principal amount as may be determined by the authority, which may include interest accrued or to accrue thereon with or without giving effect to investment income thereon and other expenses necessary to be paid in connection therewith. If deemed advisable by the authority, such bonds may be refunded or advance refunded for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a facility or any portion thereof.

(b) Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds to be so refunded, regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities or for any other purpose under this article and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested or deposited in securities or depositories meeting the requirements established in part 6 of article 75 of title 24, C.R.S. The interest, income, and profit, if any, earned or realized on any such investment may also, in the discretion of the authority, be applied to the payment of the outstanding bonds or notes to be so refunded or to the payment of principal and interest on the refunding bonds or for any other purpose under this article. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a facility may be invested or deposited in securities or depositories meeting the requirements established in part 6 of article 75 of title 24, C.R.S. The interest, income, and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner. All such bonds shall be subject to the provisions of this article in the same manner and to the same extent as other bonds issued pursuant to this article.

Source: L. 77: Entire article added, p. 1310, § 1, effective July 1. L. 79: (2) amended, p. 1076, § 4, effective May 25. L. 83: (2) and (4) amended, p. 1110, § 3, effective May 25. L. 84: (2) amended, p. 787, § 1, effective April 5. L. 85: (1) and (5)(b) amended, p. 922, § 1, effective July 1. L. 89: (5)(b) amended, p. 1112, § 19, effective July 1. L. 2007: (2) and (4) amended, p. 415, § 6, effective August 3.

25-25-111. Negotiability of bonds. All bonds and the interest coupons applicable thereto are hereby declared and shall be construed to be negotiable instruments.

Source: L. 77: Entire article added, p. 1313, § 1, effective July 1.

25-25-112. Security for bonds and notes. (1) The principal of and interest on any bonds or notes issued by the authority may be secured by a pledge of, or security interest in, the revenues, rentals, and receipts out of which the same may be made payable or from other moneys available therefor and not otherwise pledged or used as security and may be secured by a trust indenture, mortgage, or deed of trust (including assignment of leases or other contract rights of the authority thereunder) covering all or any part of the facilities from which the revenues, rentals, or receipts so pledged or used as security may be derived, including any enlargements of and additions to any such facility thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture, mortgage, or deed of trust may contain any agreements and provisions which shall be a part of the contract with the holders of the bonds or notes to be authorized as to:

(a) Pledging or providing a security interest in all or any part of the revenues of a facility or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation, or association or other body, public or private, to secure

the payment of the bonds or notes or of any particular issue of bonds, subject to such agreements with noteholders or bondholders as may then exist;

(b) Maintenance of the properties covered thereby;

(c) Fixing and collection of mortgage payments, rents, fees, and other charges to be charged and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(d) Setting aside, creation, and maintenance of special and reserve funds and sinking funds and the use and disposition of the revenues;

(e) Limitations on the right of the authority or its agent to restrict and regulate the use of the facilities;

(f) Limitations on the purpose to which the proceeds of sale of any issue of bonds or notes then or thereafter to be issued may be applied, and pledging or providing a security interest in such proceeds to secure the payment of the bonds or notes or any issue of the bonds or notes;

(g) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(h) The procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(i) Limitations on the amount of moneys derived from a facility to be expended for operating, administrative, or other expenses of the authority;

(j) Defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(k) Mortgaging of a facility and the site thereof for the purpose of securing the bondholders or noteholders;

(l) Such other additional covenants, agreements, and provisions as are judged advisable or necessary by the authority for the security of the holders of such bonds or notes.

(2) Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded. Each pledge, agreement, lease, indenture, mortgage, and deed of trust made for the benefit or security of any of the bonds of the authority shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the resolutions authorizing the bonds or in any trust indenture, mortgage, or deed of trust executed as security therefor, said payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity, foreclosure of any mortgage and deed of trust, or any one or more of said remedies.

(3) In addition to the provisions of subsections (1) and (2) of this section, bonds of the authority may be secured by a pooling of leases, loans, or mortgages whereby the authority may assign its rights, as lessor, lender, or mortgagee, and pledge rents, loan payments, or mortgage payments under two or more leases, loans, or mortgages, with two or more participating health institutions as lessees, borrowers, or mortgagors, respectively, upon such terms as may be provided for in the resolutions of the authority or as may be provided for in a trust indenture or mortgage or deed of trust authorized by the authority.

Source: L. 77: Entire article added, p. 1313, § 1, effective July 1. L. 81: (3) amended, p. 1363, § 2, effective February 27.

25-25-113. Personal liability. Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

Source: L. 77: Entire article added, p. 1314, § 1, effective July 1.

25-25-114. Purchase. The authority may purchase its bonds or notes out of any funds available therefor. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

Source: L. 77: Entire article added, p. 1314, § 1, effective July 1.

25-25-115. Procedure concerning issuance of bonds. (1) Notwithstanding any other provisions of this article, the authority may not undertake any facility authorized by this article unless, prior to the issuance of any bonds or notes, the board finds that the facility will enable or assist a health institution to fulfill its obligation to provide health facilities.

(2) (Deleted by amendment, L. 2007, p. 416, § 7, effective August 3, 2007.)

Source: L. 77: Entire article added, p. 1314, § 1, effective July 1. **L. 79:** (1)(b) amended, p. 1077, § 5, effective May 25. **L. 81:** Entire section R&RE, p. 1363, § 3, effective February 27. **L. 2007:** Entire section amended, p. 416, § 7, effective August 3.

25-25-116. Trust agreement to secure bonds. (1) In the discretion of the authority, any bonds issued under this article may be secured by a trust agreement between the authority and a corporate trustee or trustees. A corporate trustee may be any trust company or bank in Colorado. If the authority determines it to be in the best interests of the financing, a trust company or bank outside of Colorado may be a corporate trustee. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenues to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the facilities or any portion of the facilities. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including provisions that have been specifically authorized to be included in any resolution or resolutions of the authority authorizing the bonds.

(2) Any bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, the trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a facility.

Source: L. 77: Entire article added, p. 1315, § 1, effective July 1. **L. 2007:** Entire section amended, p. 417, § 8, effective August 3.

25-25-117. Payment of bonds - nonliability of state. Bonds and notes issued by the authority shall not constitute or become an indebtedness, a debt, or a liability of the state, the general assembly, or any county, city, city and county, town, school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic within the state, and neither the state, the general assembly, nor any county, city, city and county, town, school district, or other subdivision of the state shall be liable thereon; nor shall such bonds or notes constitute the giving, pledging, or loaning of the faith and credit of the state, the general assembly, or any county, city, city and county, town, school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic within the state but shall be payable solely from the funds provided for in this article. The issuance of bonds or notes under the provisions of this article shall not, directly, indirectly, or contingently, obligate the state or any subdivision thereof nor empower the authority to levy or collect any form of taxes or assessments therefor, or to create any

indebtedness payable out of taxes or assessments therefor or make any appropriation for their payment, and such appropriation or levy is prohibited. Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating health institution to the payment of bonds or notes authorized pursuant to this article. Nothing in this article shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Colorado or to authorize the authority to levy or collect taxes or assessments; and all bonds issued by the authority pursuant to the provisions of this article are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or with any trust indenture, mortgage, or deed of trust executed as security therefor and are not a debt or liability of the state of Colorado. The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation, or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

Source: L. 77: Entire article added, p. 1315, § 1, effective July 1.

25-25-118. Exemption from taxation - securities law. The authority is hereby declared to be a public instrumentality of the state, performing a public function for the benefit of the people of the state for the improvement of their health and living conditions. Accordingly, the income or other revenues of the authority, all properties at any time owned by the authority, any bonds, notes, or other obligations issued under this article, the transfer thereof and the income therefrom, including any profit made on the sale thereof, and all mortgages, leases, trust indentures, and other documents issued in connection therewith shall be exempt at all times from all taxation and assessments in the state of Colorado. Bonds issued by the authority shall also be exempt from the “Colorado Securities Act”, article 51 of title 11, C.R.S.

Source: L. 77: Entire article added, p. 1316, § 1, effective July 1. L. 90: Entire section amended, p. 741, § 7, effective July 1.

25-25-119. Rents and charges. A sufficient amount of the revenues derived in respect of a facility, except such part of such revenues as may be necessary to pay the cost of maintenance, repair, and operation and to provide reserves and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any bonds or notes of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund, which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds or notes as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; and the rates, rents, fees, charges, and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution, any trust agreement, any other agreement, nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the resolution authorizing the issuance of such bonds or notes or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance facilities at a particular health institution without distinction or priority of one over another; except that the authority in any such resolution or trust agreement may

provide that such sinking or other similar fund shall be the fund for a particular facility at a health institution and for the bonds issued to finance a particular facility and may, additionally, permit and provide for the issuance of bonds having a lien in respect of the security authorized which is subordinate to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

Source: L. 77: Entire article added, p. 1316, § 1, effective July 1.

25-25-120. Fees. (1) All expenses of the authority incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article, and no liability shall be incurred by the authority beyond the moneys which are provided pursuant to this article; except that, for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided pursuant to this article, the authority may borrow such moneys as may be required for the necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided pursuant to this article.

(2) An initial planning service fee in an amount determined by the authority shall be paid to the authority by each health institution that applies for financial assistance to provide for its facilities. Such initial planning service fees shall be included in the cost of the facilities to be financed and shall not be refundable by the authority, whether or not any such application is approved, or, if approved, whether or not such financial assistance is accomplished. In addition to such initial fee, an annual planning service fee shall be paid to the authority by each participating health institution in an amount determined by the authority. Such fees shall be paid on dates or in installments as may be satisfactory to the authority. Such fees may be used for:

- (a) (Deleted by amendment, L. 2007, p. 417, § 9, effective August 3, 2007.)
- (b) Necessary administrative and operating expenses; and
- (c) Reserves for anticipated future expenses.

(3) In addition, the authority may retain the services of any other public or private person, firm, partnership, association, or corporation to furnish services and data to be used by the authority in determining the financial feasibility of any facilities for which application is being made or for such other services or surveys as the authority deems necessary to carry out the purposes of this article. The authority may negotiate the fee to be paid to a person or entity that provides these services to the authority.

Source: L. 77: Entire article added, p. 1317, § 1, effective July 1. **L. 79:** IP(2) amended, p. 1077, § 6, effective May 25. **L. 2007:** IP(2), (2)(a), (2)(b), and (3) amended, p. 417, § 9, effective August 3.

25-25-121. Conveyance of title - release of lien. When the principal of and interest on bonds issued by the authority to finance the cost of facilities or to refinance outstanding indebtedness of one or more participating health institutions, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution, the lease, the trust indenture, and the mortgage, deed of trust, or other form of security arrangement, if any, authorizing and securing the same have been satisfied, the authority shall promptly do all things and execute such deeds, conveyances, and other documents as are necessary and required to release the lien of such mortgage, deed of trust, or other form of security arrangement in accordance with the provisions thereof and to convey its right, title, and interest in such facilities so financed, and any other facilities leased or mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds, to such participating health institution or institutions.

Source: L. 77: Entire article added, p. 1317, § 1, effective July 1.

25-25-122. Investment of funds. (1) The authority may invest the proceeds from the sale of a series of bonds or any funds related to the series in securities and other investments as may be provided in the proceedings under which the series of bonds are authorized to be issued, whether or not the investment or reinvestment is authorized under any other provision of law. Such investment or reinvestment may include, but is not limited to, the following:

- (a) Bonds or other obligations of the United States;
 - (b) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
 - (c) Obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;
 - (d) Obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;
 - (e) Prime commercial paper;
 - (f) Prime finance company paper;
 - (g) Bankers acceptances drawn on and accepted by commercial banks;
 - (h) Repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;
 - (i) Certificates of deposit or time deposits issued by commercial banks or savings and loan associations that are insured by the federal deposit insurance corporation or its successor; or
 - (j) Such other securities and investments as may be authorized by resolution of the board if such securities and investments are rated within one of the three highest rating categories by a nationally recognized rating agency.
- (2) The authority may invest any other funds in the securities as provided in this section and with such maturities as the authority shall determine if such maturities are on a date or dates prior to the time that, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time that any funds will be required for expenditure or be redeemable is final and conclusive.

Source: L. 77: Entire article added, p. 1318, § 1, effective July 1. L. 79: Entire section amended, p. 1078, § 7, effective May 25. L. 83: Entire section R&RE, p. 1111, § 4, effective May 25. L. 2004: Entire section amended, p. 155, § 71, effective July 1. L. 2007: Entire section amended, p. 418, § 10, effective August 3.

25-25-123. Proceeds as trust funds. All moneys received pursuant to this article, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, shall be deemed to be trust funds to be held and applied solely as provided in this article. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this article, subject to such regulations as this article and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations shall provide.

Source: L. 77: Entire article added, p. 1318, § 1, effective July 1.

25-25-124. Agreement of state not to limit or alter rights of obligees. The state hereby pledges to and agrees with the holders of any bonds, notes, or other obligations issued under this article, and with those parties who may enter into contracts with the authority pursuant to the provisions of this article, that the state will not limit, alter, restrict, or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain, and operate any facility or to establish, revise, charge, and collect rates, rents, fees, and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any

agreements made with the holders of bonds, notes, or other obligations authorized and issued pursuant to this article and with the parties who may enter into contracts with the authority pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of such bonds, notes, or other obligations of such parties until such bonds, notes, and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this article precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds, notes, or other obligations of the authority or those entering into such contracts with the authority. The authority may include this pledge and undertaking for the state in such bonds, notes, or other obligations and in such contracts.

Source: L. 77: Entire article added, p. 1318, § 1, effective July 1.

25-25-125. Enforcement of rights of bondholders. Any holder of bonds issued pursuant to this article or any trustee under a trust agreement, trust indenture, indenture of mortgage, or deed of trust entered into pursuant to this article, except to the extent that their rights are restricted by any bond resolution, may, by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by this article or the bond resolution; to enjoin unlawful activities; and, in the event of default with respect to the payment of any principal of, premium on, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the bond resolution, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate the project or projects, the revenues of which are pledged to the payment of principal of, premium on, if any, and interest on such bonds, with full power to pay, and to provide for payment of, principal of, premium on, if any, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, but excluding any power to pledge additional revenues of the authority to the payment of such principal, premium, and interest.

Source: L. 77: Entire article added, p. 1319, § 1, effective July 1.

25-25-126. Bonds eligible for investment. All banks, bankers, trust companies, savings and loan associations, investment companies, and insurance companies and associations and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

Source: L. 77: Entire article added, p. 1319, § 1, effective July 1. **L. 89:** Entire section amended, p. 1130, § 67, effective July 1.

25-25-127. Account of activities - receipts for expenditures - report - audit. (1) The authority shall keep an accurate account of its activities, receipts, and expenditures and shall annually make a report of its activities, receipts, and expenditures to the board, the governor, and the state auditor. The report shall be submitted within six months after the close of the authority's fiscal year and shall be in a form prescribed by the recipients of the report.

(2) The state auditor may investigate the affairs of the authority, severally examine the properties and records of the authority, and prescribe methods of accounting and the rendering of periodical reports in relation to facilities undertaken by the authority. This article and the expenditures of the authority shall be reviewed by the legislative audit committee every odd-numbered year.

Source: **L. 77:** Entire article added, p. 1319, § 1, effective July 1. **L. 79:** Entire section amended, p. 1078, § 8, effective May 25. **L. 2007:** Entire section amended, p. 419, § 11, effective August 3.

25-25-128. Federal social security act. The authority may take such action as it deems appropriate to enable its employees to come within the provisions and obtain the benefits of the federal “Social Security Act”, as from time to time amended.

Source: **L. 77:** Entire article added, p. 1319, § 1, effective July 1.

25-25-129. Powers of authority not restricted - law complete in itself. This article shall not be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state but shall be construed as cumulative of any such powers. No proceedings, referendum, notice, or approval shall be required for the creation of the authority or the issuance of any bonds or any instrument as security therefor, except as provided in this article; but nothing in this article shall be construed to deprive the state and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Source: **L. 77:** Entire article added, p. 1320, § 1, effective July 1.

25-25-130. Powers in addition to those granted by other laws. The powers conferred by this article are in addition and supplementary to, and the limitations imposed by this article do not affect the powers conferred by, any other law, except as provided in this article. Facilities may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this article for said purposes notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extensions of like facilities or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

Source: **L. 77:** Entire article added, p. 1320, § 1, effective July 1.

25-25-131. Annual report. The authority shall submit to the governor and the general assembly within six months after the end of the fiscal year a report which shall set forth a complete and detailed operating and financial statement of the authority during such year. Also included in the report shall be any recommendations with reference to additional legislation or other action that may be necessary to carry out the purposes of the authority.

Source: **L. 77:** Entire article added, p. 1320, § 1, effective July 1.

ARTICLE 26

Multiphasic Health Screening

25-26-101.	Short title.	25-26-103.	Definitions.
25-26-102.	Legislative declaration.	25-26-104.	Immunity.

25-26-101. Short title. This article shall be known and may be cited as “The Multiphasic Health Screening Act”.

Source: **L. 81:** Entire article added, p. 1365, § 1, effective May 27.

25-26-102. Legislative declaration. The general assembly declares it to be in the interests of public health, safety, and welfare to protect the people of this state from the

danger of uncertainty and confusion as to the responsibility for, and the rendering of, professional health care. The general assembly further declares that multiphasic health screening units provide to people certain health testing services which do not include diagnosis or treatment. Unless persons are aware of the nature and extent of such services, a false and injurious sense of security relating to personal health may result. Therefore, the general assembly finds that the protection of the public requires that multiphasic health screening units comply with certain minimum standards and practices.

Source: L. 81: Entire article added, p. 1365, § 1, effective May 27.

25-26-103. Definitions. As used in this article, unless the context otherwise requires: (1) “Multiphasic health screening unit” means any fixed or mobile facility where diagnostic testing is performed, where specimens are taken from the human body for laboratory analyses, or where certain measurements such as height and weight determination, blood pressure determination, audio and visual tests, and electrocardiograms are made. The term does not include a facility licensed or certified in this state as a hospital, a home health agency, a clinical laboratory, or the office of a physician licensed to practice medicine in this state.

Source: L. 81: Entire article added, p. 1365, § 1, effective May 27.

25-26-104. Immunity. No cause of action in tort or contract shall accrue against any person on account of receipt by such person of an unsolicited referral arising from a test performed by a multiphasic health screening unit.

Source: L. 81: Entire article added, p. 1366, § 1, effective May 27.

ARTICLE 27

Assisted Living Residences

Law reviews: For article, “Rights of Residents in Assisted Living Facilities and Nursing Homes”, see 22 Colo. Law. 2537 (1993).

25-27-101.	Legislative declaration.	25-27-106.	License denial, suspension, or revocation.
25-27-102.	Definitions.	25-27-107.	License fees - rules.
25-27-103.	License required - criminal and civil penalties.	25-27-107.5.	Assisted living residence cash fund created.
25-27-104.	Minimum standards for assisted living residences - rules.	25-27-108.	Enforcement - ability to contract.
25-27-104.5.	Requirements governing forfeiture of security deposits and rent.	25-27-109.	List of licensed residences maintained by department.
25-27-105.	License - application - inspection - issuance.	25-27-110.	Advisory committee.
25-27-105.5.	Compliance with local government zoning regulations - notice to local governments - provisional licensure.	25-27-111.	Rules.
		25-27-112.	Treatment - religious belief.
		25-27-113.	Fees for providers with high medicaid utilization and disproportionate low-income residences.

25-27-101. Legislative declaration. (1) In order to promote the public health and welfare of the people of Colorado, it is declared to be in the public interest to establish minimum standards and rules for assisted living residences in the state of Colorado and to provide the authority for the administration and enforcement of such minimum standards and rules. These standards and rules shall be sufficient to assure the health, safety, and welfare of assisted living residents. (2) The general assembly further finds that the department of public health and

environment, as the executive branch agency assigned to administer and enforce minimum standards for assisted living residences, is in a position to provide technical assistance, educational materials, and training information to residences. The general assembly determines that a proactive approach by the department, acting as a mentor and educator for residences, will enhance the quality of care of residents of assisted living residences. Additionally, the general assembly finds that the department should explore whether risk-based inspections may be implemented to allocate resources more effectively and at the same time adequately protect the health and safety of the residents.

(3) Further, the general assembly determines and declares that, in administering and enforcing standards for assisted living residences, the department of public health and environment should focus on the outcome related to measures and treatment of residents.

Source: **L. 84:** Entire article added, p. 789, § 1, effective July 1. **L. 85:** Entire section amended, p. 924, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1316, § 1, effective July 1.

25-27-102. Definitions. As used in this article, unless the context otherwise requires:

(1) Repealed.

(1.3) “Assisted living residence” or “residence” means a residential facility that makes available to three or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: Personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term “assisted living residence” does not include any facility licensed in this state as a residential care facility for individuals with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the department of public health and environment.

(2) “Department” means the department of public health and environment of the state of Colorado.

(3) to (5) Repealed.

(6) “Local board of health” means any county, district, or municipal board of health.

(7) Repealed.

(8) (Deleted by amendment, L. 2002, p. 1317, § 2, effective July 1, 2002.)

(9) “Personal services” means those services that the operator and employees of an assisted living residence provide for each resident, including, but not limited to:

(a) An environment that is sanitary and safe from physical harm;

(b) Individualized social supervision;

(c) Assistance with transportation; and

(d) Assistance with activities of daily living, including but not limited to bathing, dressing, and eating.

(10) “Protective oversight” means guidance of a resident as required by the needs of the resident or as reasonably requested by the resident, including the following:

(a) Being aware of a resident’s general whereabouts, although the resident may travel independently in the community; and

(b) Monitoring the activities of the resident while on the premises to ensure the resident’s health, safety, and well-being, including monitoring the resident’s needs and ensuring that the resident receives the services and care necessary to protect the resident’s health, safety, and well-being.

(11) “State board” means the state board of health.

Source: **L. 84:** Entire article added, p. 789, § 1, effective July 1. **L. 85:** (1) and (5) repealed and (9) amended, p. 1362, §§ 23, 24, effective June 28; (3), (4), and (7) repealed and (8) and (9) amended, pp. 928, 924, §§ 7, 2, effective July 1. **L. 90:** (8) R&RE, p. 1354, § 1, effective July 1. **L. 92:** (8) amended, p. 1398, § 59, effective July 1. **L. 94:** (2) and (8) amended, p. 2794, § 542, effective July 1. **L. 2001:** (8) amended, p. 106, § 3, effective

March 21. **L. 2002:** (1.3) added and (8), (9), and (10) amended, p. 1317, § 2, effective July 1. **L. 2010:** (6) amended, (HB 10-1422), ch. 419, p. 2107, § 132, effective August 11.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (2) and (8), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-27-103. License required - criminal and civil penalties. (1) On or after July 1, 2002, it is unlawful for any person, partnership, association, or corporation to conduct or maintain an assisted living residence without having obtained a license therefor from the department of public health and environment. Any person who violates this provision:

(a) Is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars;

(b) May be subject to a civil penalty assessed by the department of not less than fifty dollars nor more than one hundred dollars for each day the residence violates this section. The assessed penalty shall accrue from the date the residence is found by the department to be in violation of this section. The assessment, enforcement, and collection of the penalty shall be by the department in accordance with article 4 of title 24, C.R.S., for credit to the assisted living residence cash fund created pursuant to section 25-27-107.5. Enforcement and collection of the penalty shall occur following the decision reached in accordance with procedures set forth in section 24-4-105, C.R.S.

Source: **L. 84:** Entire article added, p. 790, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 925, § 3, effective July 1. **L. 90:** Entire section amended, p. 1354, § 2, effective July 1. **L. 94:** IP(1) amended, p. 2795, § 543, effective July 1. **L. 2002:** IP(1) and (1)(b) amended, p. 1318, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-27-104. Minimum standards for assisted living residences - rules. (1) On or before November 1, 2002, the state board shall promulgate rules pursuant to section 24-4-103, C.R.S., providing minimum standards for the location, sanitation, fire safety, adequacy of facilities, adequacy of diet and nutrition, equipment, structure, operation, provision of personal services and protective oversight, and personnel practices of assisted living residences within the state of Colorado. Such rules shall differentiate between homes of different sizes. In formulating such rules, the state board shall seek recommendations from the advisory committee established pursuant to section 25-27-110.

(2) Rules promulgated by the state board pursuant to subsection (1) of this section shall include, as a minimum, provisions requiring the following:

(a) Compliance with all applicable zoning, housing, fire, sanitary, and other codes and ordinances of the city, city and county, or county where the residence is situated, to the extent that such codes and ordinances are consistent with the federal "Fair Housing Amendment Act of 1988", as amended, 42 U.S.C. sec. 3601 et seq.;

(b) Annual inspection of assisted living residences by the department or its designated representative;

(c) That the premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care to the residents;

(d) That the Colorado long-term care ombudsman, designated by the department of human services, have access to the premises and residents during reasonable hours for the purposes set out in the federal "Older Americans Act of 1965";

(e) Protection of the individual rights of residents either through a written board and care plan or by means of contracts executed with the residents, which board and care plan or contract shall meet the requirements stated in section 25-27-104.5;

(f) Responsibility of the assisted living residences for social supervision, personal services, and coordination with community resources as needed by the residents;

(g) That the administrator and staff of a residence meet minimum educational, training, and experience standards established by the state board, including a requirement that such

persons be of good, moral, and responsible character. In making such a determination, the owner or licensee of a residence may have access to and shall obtain any criminal history record information from a criminal justice agency, subject to any restrictions imposed by such agency, for any person responsible for the care and welfare of residents of such residence.

(h) Intermediate enforcement remedies as authorized by section 25-27-106 (2);

(i) Written plans, to be submitted by residences to the department for approval, detailing the measures that will be taken to correct violations found as a result of inspections;

(j) The definition for high medicaid utilization facility as a basis for a modified fee schedule. A high medicaid utilization residence shall be a residence in which no less than thirty-five percent of the available beds are occupied by medicaid enrollees as indicated by the most complete claims data available.

(k) A modified fee schedule for residences that serve a disproportionate share of low-income residents. The board may adopt a standard for determining residences that serve a disproportionate share of low-income residents. Such standard may require a residence to submit documentation determined appropriate by the department for verification.

Source: **L. 84:** Entire article added, p. 791, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 925, § 4, effective July 1. **L. 90:** (2)(a) amended and (2)(g) added, p. 1355, § 3, effective July 1. **L. 94:** (2)(d) amended, p. 2703, § 259, effective July 1. **L. 2002:** (1), IP(2), (2)(a), (2)(b), (2)(f), and (2)(g) amended and (2)(h) to (2)(k) added, p. 1318, § 4, effective July 1. **L. 2003:** (2)(k) amended, p. 1998, § 47, effective May 22. **L. 2006:** (2)(e) amended, p. 254, § 2, effective January 1, 2007.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(d), see section 1 of chapter 345, Session Laws of Colorado 1994.

25-27-104.5. Requirements governing forfeiture of security deposits and rent. If a lease provision in a resident care plan or in a contract signed by a resident of an assisted living residence results in or requires forfeiture of more than thirty days of rent if a resident moves due to a medical condition or dies during the term of the plan, then the plan shall be deemed to be against public policy and shall be void; except that inclusion of such a provision shall not render the remainder of the plan or contract void. A lease provision in a written board and care plan or in a contract that requires forfeiture of rent for thirty days after the resident moves due to a medical condition or dies does not violate this section. The provisions regarding forfeiture of rent shall appear on the front page of the plan or contract and shall be printed in no less than twelve-point bold-faced type. The provisions shall read as follows:

This lease agreement is for a month-to-month tenancy. The lessor shall not require the forfeiture of rent beyond a thirty-day period if the lessee moves due to a medical condition or dies during the term of the lease.

In circumstances in which the resident moves due to a medical condition or dies during the term of a plan or contract, the assisted living residence shall return that part of rent paid in excess of thirty days' rent after a patient moves or dies to the resident or the resident's estate. The assisted living residence may assess daily rental charges for any days in which the former or deceased resident's personal possessions remain in the resident's room after the time period for which the resident has paid rent and for the usual time to clean the room after the resident's personal possessions have been removed. For purposes of this section, "daily rental charges" means an amount not to exceed one-thirtieth of thirty days' rental amount plus reasonable expenses.

Source: **L. 2006:** Entire section added, p. 254, § 3, effective January 1, 2007.

25-27-105. License - application - inspection - issuance. (1) An application for a license to operate an assisted living residence shall be submitted to the department annually upon such form and in such manner as prescribed by the department.

(2) The department shall investigate and pass on each original application and each renewal application for a license. The department shall inspect or cause to be inspected the residences to be operated by an applicant for an original license before the license is granted and shall annually thereafter inspect or cause to be inspected the residences of all licensees. The department shall make such other inspections as it deems necessary to insure that the health, safety, and welfare of the residents are being protected. The residence shall submit in writing, in a form prescribed by the department, a plan detailing the measures that will be taken to correct any violations found by the department as a result of inspections undertaken pursuant to this subsection (2).

(2.5) (a) On July 1, 2002, as part of an original application and on and after July 1, 2002, on the first renewal of an application for assisted living residences licensed before July 1, 2002, for a license, an owner, applicant, or licensee shall request from a criminal justice agency designated by the department criminal history record information regarding such owner, applicant, or licensee. The information, upon such request and subject to any restrictions imposed by such agency, shall be forwarded by the criminal justice agency directly to the department.

(a.5) On and after July 1, 2002, the department may require that an administrator request from a criminal justice agency designated by the department a criminal history record on such administrator. The information, upon such request and subject to any restrictions imposed by such agency, shall be forwarded by the criminal justice agency directly to the department.

(b) The information shall be used by the department in ascertaining whether the person applying for licensure has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct that the department determines could pose a risk to the health, safety, and welfare of residents of the assisted living residence. Information obtained in accordance with this section shall be maintained by the department.

(c) All costs of obtaining any information from a criminal justice agency pursuant to this section shall be borne by the individual who is the subject of such check.

(2.8) No license shall be issued or renewed by the department if the owner, applicant, or licensee of the assisted living residence has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct that the department determines could pose a risk to the health, safety, and welfare of the residents of the assisted living residence.

(3) Except as otherwise provided in subsection (4) of this section, the department shall issue or renew a license when it is satisfied that the applicant or licensee is in compliance with the requirements set out in this article and the rules promulgated thereunder. Except for provisional licenses issued in accordance with subsection (4) of this section, a license issued or renewed pursuant to this section shall expire one year from the date of issuance or renewal.

(4) The department may issue a provisional license to an applicant for the purpose of operating an assisted living residence for a period of ninety days if the applicant is temporarily unable to conform to all the minimum standards required under this article; except that no license shall be issued to an applicant if the operation of the applicant's residence will adversely affect the health, safety, and welfare of the residents of such residence. As a condition of obtaining a provisional license, the applicant shall show proof to the department that attempts are being made to conform and comply with applicable standards. No provisional license shall be granted prior to the submission of a criminal background check in accordance with subsection (2.5) of this section. A provisional license shall not be renewed.

Source: L. 85: Entire section added, p. 926, § 5, effective July 1. L. 90: (2.5), (2.8), and (4) added and (3) amended, p. 1355, § 4, effective July 1. L. 2002: (1), (2), (2.5)(a), (2.5)(b), (2.8), (3), and (4) amended and (2.5)(a.5) added, p. 1319, § 5, effective July 1.

25-27-105.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure. (1) The department shall require any assisted living residence seeking licensure pursuant to this article to comply with any applicable zoning regulations of the municipality, city and county, or county where the residence is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a residence; except that nothing in this section shall be construed to supersede the provisions of sections 30-28-115 (2), 31-23-301 (4), and 31-23-303 (2), C.R.S.

(2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where an assisted living residence is situated, including the address of the residence and the population and number of persons to be served by the residence, when any of the following occurs:

(a) An application for a license to operate an assisted living residence pursuant to section 25-27-105 is made;

(b) A license is granted to an assisted living residence pursuant to section 25-27-105;

(c) A change in the license of an assisted living residence occurs; or

(d) The license of an assisted living residence is revoked or otherwise terminated for any reason.

(3) Notwithstanding the provisions of section 25-27-105 (4), in the event of a zoning or other delay or dispute between an assisted living residence and the municipality, city and county, or county where the residence is situated, the department may grant a provisional license to the residence for up to one hundred twenty days pending resolution of the delay or dispute.

Source: L. 2000: Entire section added, p. 1516, § 3, effective June 1. **L. 2002:** Entire section amended, p. 1321, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 2000 act enacting this section, see section 1 of chapter 319, Session Laws of Colorado 2000.

25-27-106. License denial, suspension, or revocation. (1) When an application for an original license has been denied by the department, the department shall notify the applicant in writing of such denial by mailing a notice to the applicant at the address shown on his or her application. Any applicant believing himself or herself aggrieved by such denial may pursue the remedy for review provided in article 4 of title 24, C.R.S., if the applicant, within thirty days after receiving such notice, petitions the department to set a date and place for hearing, affording the applicant an opportunity to be heard in person or by counsel. All hearings on the denial of original licenses shall be conducted in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S.

(2) (a) The department may suspend, revoke, or refuse to renew the license of any residence that is out of compliance with the requirements of this article or the rules promulgated thereunder. Such suspension, revocation, or refusal shall be done after a hearing thereon and in conformance with the provisions and procedures specified in article 4 of title 24, C.R.S.

(b) (I) The department may impose intermediate restrictions or conditions on a licensee that may include at least one of the following:

(A) Retaining a consultant to address corrective measures;

(B) Monitoring by the department for a specific period;

(C) Providing additional training to employees, owners, or operators of the residence;

(D) Complying with a directed written plan, to correct the violation; or

(E) Paying a civil fine not to exceed two thousand dollars in a calendar year.

(II) (A) If the department imposes an intermediate restriction or condition that is not a result of a life-threatening situation, the licensee shall receive written notice of the restriction or condition. No later than ten days after the date the notice is received from the department, the licensee shall submit a written plan that includes the time frame for completing the plan and addresses the restriction or condition specified.

(B) If the department imposes an intermediate restriction or condition that is the result of a life-threatening situation, the department shall notify the licensee in writing, by telephone, or in person during an on-site visit. The licensee shall implement the restriction or condition immediately upon receiving notice of the restriction or condition. If the department provides notice of a restriction or condition by telephone or in person, the department shall send written confirmation of the restriction or condition to the licensee within two business days.

(III) (A) After submission of an approved written plan, a licensee may first appeal any intermediate restriction or condition on its license to the department through an informal review process as established by the department.

(B) If the restriction or condition requires payment of a civil fine pursuant to this paragraph (b), the licensee may request that the informal review be conducted in person. In addition, the licensee may request and the department shall grant a stay in payment of the fine until final disposition of the restriction or condition.

(C) In the event a licensee is not satisfied with the result of the informal review or chooses not to seek informal review, no intermediate restriction or condition on the licensee shall be imposed until after an opportunity for a hearing has been afforded the licensee pursuant to section 24-4-105, C.R.S.

(IV) (A) In the event that the department assesses a civil fine pursuant to this paragraph (b), moneys received by the department shall be transmitted to the state treasurer, who shall credit the same to the assisted living residence improvement cash fund, which fund is hereby created.

(B) The general assembly shall make annual appropriations from the assisted living residence improvement cash fund for expenditures of the department pursuant to subparagraph (V) of this paragraph (b).

(C) Notwithstanding any provision of section 24-36-114, C.R.S., to the contrary, all interest derived from the deposit and investment of moneys from the assisted living residence improvement cash fund created in sub-subparagraph (A) of this subparagraph (IV) shall remain in the assisted living residence improvement cash fund.

(V) Civil fines collected pursuant to this paragraph (b) shall be used for expenses related to:

(A) Continuing monitoring required pursuant to this paragraph (b);

(B) Education for licensees to avoid restrictions or conditions or facilitate the application process or the change of ownership process;

(C) Education for residents and their families about resolving problems with a residence, rights of residents, and responsibilities of residences;

(D) Providing technical assistance to any residence for the purpose of complying with changes in rules or state or federal law;

(E) Relocating residents to other facilities or residences;

(F) Maintaining the operation of a residence pending correction of violations, as determined necessary by the department;

(G) Closing a residence; or

(H) Reimbursing residents for personal funds lost, as determined necessary by the department.

(3) The department shall revoke or refuse to renew the license of a facility where the owner or licensee has been convicted of a felony or misdemeanor involving moral turpitude or involving conduct which the department determines could pose a risk to the health, safety, and welfare of the residents of such facility. Such revocation or refusal shall be made only after a hearing is provided in accordance with article 4 of title 24, C.R.S.

Source: L. 85: Entire section added, p. 926, § 5, effective July 1. L. 90: (3) added, p. 1356, § 5, effective July 1. L. 2002: (1) and (2) amended, p. 1321, § 7, effective July 1.

25-27-107. License fees - rules.

(1) Repealed.

(1.5) (a) No later than January 1, 2009, the state board shall promulgate rules establishing a schedule of fees sufficient to meet the direct and indirect costs of administration

and enforcement of this article. The rules shall set a lower fee for facilities with a high medicaid utilization rate as defined by the state board. The rules shall be adopted in accordance with article 4 of title 24, C.R.S.

(b) Prior to setting a fee by rule pursuant to this subsection (1.5), the department shall hold public stakeholder meetings on behalf of the state board to discuss issues pertaining to setting fees, including, without limitation, a phased-in fee schedule based upon expected licensing program costs, maximum yearly fee increases, risk-based assessments, and technical assistance that may be met by or in collaboration with the private sector.

(c) The department shall assess and collect, from assisted living residences subject to licensure, fees in accordance with the fee schedule established by the state board.

(d) (Deleted by amendment, L. 2010, (HB 10-1422), ch. 419, p. 2108, § 133, effective August 11, 2010.)

(2) The fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the assisted living residence cash fund created in section 25-27-107.5.

(3) Notwithstanding the amount specified for any fee in this section, the state board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(4) Fees collected pursuant to subsection (1.5) of this section shall be used by the department, in addition to regulatory and administrative functions, to provide technical assistance and education to assisted living residences related to compliance with Colorado law. The department may contract with private entities to assist the department in providing such technical assistance and education.

Source: **L. 85:** Entire section added, p. 926, § 5, effective July 1. **L. 90:** Entire section amended, p. 1356, § 6, effective July 1. **L. 98:** (3) added, p. 1337, § 55, effective June 1. **L. 2002:** Entire section amended, p. 1324, § 8, effective July 1. **L. 2008:** (1)(f) and (1.5) added, p. 662, §§ 2, 3, effective August 5. **L. 2009:** (1.5)(b) and (4) amended, (SB 09-292), ch. 369, p. 1972, § 92, effective August 5. **L. 2010:** (1.5)(d) and (4) amended, (HB 10-1422), ch. 419, p. 2108, § 133, effective August 11.

Editor's note: Subsections (1)(f) provided for the repeal of subsection (1), effective January 1, 2009. (See L. 2008, p. 662.)

25-27-107.5. Assisted living residence cash fund created. The fees collected pursuant to section 25-27-107, plus any civil penalty collected pursuant to section 25-27-103 (1) (b), shall be transmitted to the state treasurer, who shall credit the same to the assisted living residence cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the department in performing its duties under this article. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

Editor's note: This version of this section is effective until July 1, 2013, only if the revisor of statutes receives notification. (See the editor's note following this section.)

25-27-107.5. Assisted living residence cash fund created. (1) The fees collected pursuant to section 25-27-107, plus any civil penalty collected pursuant to section 25-27-103 (1) (b), shall be transmitted to the state treasurer, who shall credit the same to the assisted living residence cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the department in performing its duties under this article. Notwithstanding subsection (2) of this section, at the end of any fiscal year, all unexpended and unencum-

bered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) Notwithstanding subsection (1) of this section, on July 1, 2013, any moneys remaining in the fund from fees collected by the department for assisted living residence building and structure code plan reviews and inspections are transferred to the health facility construction and inspection cash fund created in section 24-33.5-1207.8, C.R.S.

Editor's note: This version of this section is effective July 1, 2013, only if the revisor of statutes receives notification. (See the editor's note following this section.)

Source: **L. 90:** Entire section added, p. 1357, § 7, effective July 1. **L. 2002:** Entire section amended, p. 1325, § 9, effective July 1. **L. 2012:** Entire section amended, (HB 12-1268), ch. 234, p. 1026, §4, effective July 1, 2013.

Editor's note: Section 15 of chapter 234, Session Laws of Colorado 2012, provides that the amendments to this section are effective July 1, 2013, only if the division of fire prevention and control in the department of public safety notifies the revisor of statutes in writing, by June 30, 2013, that the secretary of the United States department of health and human services has granted a modification to the agreement entered into between said secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, which modification allows said division to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities.

25-27-108. Enforcement - ability to contract. (1) The department is responsible for the enforcement of the provisions of this article and the regulations adopted thereunder.

(2) The department may contract with a local board of health to investigate and inspect the facilities to be licensed under this article and may accept reports on such investigations or inspections as a basis for licensing. The department may also contract with local boards of health to enforce the provisions of this article and the regulations adopted thereunder and is required to transfer license fees and additional fees collected in this article to the local boards of health if a contract is so negotiated.

Source: **L. 85:** Entire section added, p. 927, § 5, effective July 1.

25-27-109. List of licensed residences maintained by department. The department shall maintain a current list of assisted living residences that have been licensed and shall make such list available to individuals upon request.

Source: **L. 85:** Entire section added, p. 927, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1326, § 10, effective July 1.

25-27-110. Advisory committee. (1) There is hereby established an advisory committee to the department for the purposes of making recommendations to the department and reporting to the house and senate committees on health and human services, or any successor committees, concerning the rules promulgated by the state board pursuant to this article, implementation of the licensing program, the impact of the program, and the effectiveness of enforcement. The advisory committee shall consist of not fewer than nine members to be appointed by the executive director of the department. The committee shall elect its own chairperson. Such members shall be representatives from assisted living residences, the Colorado commission on the aging, county, district, or municipal public health agencies, or local boards of health, and consumer and other agencies and organizations providing services to or concerned with residents of assisted living residences. Members of the advisory committee shall serve on a voluntary basis and shall serve without compensation.

(2) and (3) Repealed.

Source: **L. 85:** Entire section added, p. 927, § 5, effective July 1. **L. 86:** (3) amended, p. 421, § 44, effective March 26. **L. 88:** (2) and (3)(a) amended, p. 317, § 12, effective

April 14. **L. 90:** (3) repealed, p. 334, § 24, effective April 3. **L. 96:** (1) and (2) amended, p. 1261, § 166, effective August 7. **L. 2002:** (1) and (2) amended, p. 1326, § 11, effective July 1. **L. 2003:** (1) and IP(2)(a) amended, p. 2008, § 87, effective May 22. **L. 2004:** (2) repealed, p. 203, § 22, effective August 4. **L. 2007:** (1) amended, p. 2042, § 69, effective June 1. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2108, § 134, effective August 11.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

25-27-111. Rules. The state board shall promulgate such rules as are necessary to implement this article pursuant to the provisions of article 4 of title 24, C.R.S.

Source: **L. 85:** Entire section added, p. 927, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1327, § 12, effective July 1.

25-27-112. Treatment - religious belief. Nothing in this article shall authorize the department to impose any mode of treatment inconsistent with the religious faith or belief of any person.

Source: **L. 85:** Entire section added, p. 927, § 5, effective July 1.

25-27-113. Fees for providers with high medicaid utilization and disproportionate low-income residences. (1) The general assembly hereby finds, determines, and declares that assisted living residences provide necessary services to many residents who receive medicaid benefits pursuant to articles 4, 5, and 6 of title 25.5, C.R.S. Because so many Coloradans benefit from assisted living centers that serve medicaid recipients, the general assembly hereby finds, determines, and declares that assisted living residences that have high medicaid utilization should receive a modified fee schedule for fees required by this article.

(2) Residences identified as high medicaid utilization residences by the department shall be subject to a modified fee schedule as determined by the board.

(3) Residences identified as servicing a disproportionate number of low-income residents may be subject to a modified fee schedule as determined by the board.

Source: **L. 2002:** Entire section added, p. 1327, § 13, effective July 1. **L. 2006:** (1) amended, p. 2016, § 93, effective July 1.

ARTICLE 27.5

Home Care Agencies

25-27.5-101.	Legislative declaration.	25-27.5-106.	License - application - inspection - issuance.
25-27.5-102.	Definitions.	25-27.5-107.	Employee criminal history record check.
25-27.5-103.	License required - civil and criminal penalties.	25-27.5-108.	License denial - suspension - revocation.
25-27.5-104.	Minimum standards for home care agencies - rules - advisory committee.	25-27.5-109.	Enforcement.
25-27.5-105.	Home care agency cash fund created.	25-27.5-110.	Repeal of article - sunset review.

25-27.5-101. Legislative declaration. (1) In order to promote the public health and welfare of the people of Colorado, it is declared to be in the public interest to establish minimum standards and rules for home care agencies in the state of Colorado and to provide the authority for the administration and enforcement of such minimum standards and rules. These standards and rules shall be sufficient to assure the health, safety, and welfare of home care consumers.

(2) The general assembly further finds that the department of public health and environment, as the executive branch agency assigned to administer and enforce minimum standards for home care agencies, should explore whether risk-based inspections may be implemented to allocate resources more effectively and at the same time adequately protect the health and safety of the home care consumers. Risk shall be evaluated based on the home care agency's compliance history, quality performance measures, and other relevant factors set forth in rules promulgated by the state board of health.

(3) Further, the general assembly determines and declares that, in administering and enforcing standards for home care agencies, the inspections by the department should focus on home care consumer safety and outcomes.

Source: L. 2008: Entire article added, p. 2233, § 3, effective August 5.

25-27.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Certified home care agency" means an agency that is certified by either the federal centers for medicare and medicaid services or the Colorado department of health care policy and financing to provide skilled home health or personal care services.

(1.5) "Community centered board" has the meaning set forth in section 27-10.5-102, C.R.S.

(2) "Department" means the Colorado department of public health and environment.

(3) (a) "Home care agency" means any sole proprietorship, partnership, association, corporation, government or governmental subdivision or agency subject to the restrictions in section 25-1.5-103 (1) (a) (II), not-for-profit agency, or any other legal or commercial entity that manages and offers, directly or by contract, skilled home health services or personal care services to a home care consumer in the home care consumer's temporary or permanent home or place of residence. A residential facility that delivers skilled home health or personal care services which the facility is not licensed to provide shall either be licensed as a home care agency or require the skilled home health or personal care services to be delivered by a licensed home care agency.

(b) "Home care agency" does not include:

(I) Organizations that provide only housekeeping services;

(II) Community and rural health networks that furnish home visits for the purpose of public health monitoring and disease tracking;

(III) An individual who is not employed by or affiliated with a home care agency and who acts alone, without employees or contractors;

(IV) Outpatient rehabilitation agencies and comprehensive outpatient rehabilitation facilities certified pursuant to Title XVIII or XIX of the "Social Security Act", as amended;

(V) Consumer-directed attendant programs administered by the Colorado department of health care policy and financing;

(VI) Licensed dialysis centers that provide in-home dialysis services, supplies, and equipment;

(VII) Subject to the requirements of section 25-27.5-103 (3), a facility otherwise licensed by the department;

(VIII) A home care placement agency as defined in subsection (5) of this section; or

(IX) Services provided by a qualified early intervention service provider and overseen jointly by the department of education and the department of human services.

(4) "Home care consumer" means a person who receives skilled home health services or personal care services in his or her temporary or permanent home or place of residence from a home care agency or home care placement agency.

(5) "Home care placement agency" means an organization that, for a fee, provides only referrals of providers to home care consumers seeking services. A home care placement agency does not provide skilled home health services or personal care services to a home care consumer in the home care consumer's temporary or permanent home or place of residence directly or by contract. Such organizations shall follow the requirements of sections 25-27.5-103 (2), 25-27.5-104 (1) (c), and 25-27.5-107.

(6) "Personal care services" means assistance with activities of daily living, including but not limited to bathing, dressing, eating, transferring, walking or mobility, toileting, and

continence care. It also includes housekeeping, personal laundry, medication reminders, and companionship services furnished to a home care consumer in the home care consumer's temporary or permanent home or place of residence, and those normal daily routines that the home care consumer could perform for himself or herself were he or she physically capable, which are intended to enable that individual to remain safely and comfortably in the home care consumer's temporary or permanent home or place of residence.

(6.3) "Qualified early intervention service provider" has the meaning set forth in section 27-10.5-702, C.R.S.

(6.7) "Service agency" has the meaning set forth in section 27-10.5-102, C.R.S.

(7) "Skilled home health services" means health and medical services furnished to a home care consumer in the home care consumer's temporary or permanent home or place of residence that include wound care services; use of medical supplies including drugs and biologicals prescribed by a physician; in-home infusion services; nursing services; home health aide or certified nurse aide services that require the supervision of a licensed or certified health care professional acting within the scope of his or her license or certificate; occupational therapy; physical therapy; respiratory care services; dietetics and nutrition counseling services; medication administration; medical social services; and speech-language pathology services. "Skilled home health services" does not include the delivery of either durable medical equipment or medical supplies.

(8) "State board" means the state board of health.

Source: **L. 2008:** Entire article added, p. 2234, § 3, effective August 5. **L. 2010:** (1.5), (3)(b)(IX), (6.3), and (6.7) added and (3)(b)(VII) and (3)(b)(VIII) amended, (SB 10-194), ch. 251, p. 1121, §§ 1, 2, effective May 21.

Cross references: For Title XVIII or XIX of the "Social Security Act", see Pub.L. 89-97.

25-27.5-103. License required - civil and criminal penalties. (1) On or after June 1, 2009, it is unlawful for any person, partnership, association, or corporation to conduct or maintain a home care agency that provides skilled home health services without having submitted a completed application for licensure as a home care agency to the department. On or after January 1, 2010, it is unlawful for any person, partnership, association, or corporation to conduct or maintain a home care agency that provides skilled home health services without having obtained a license therefor from the department. On or after January 1, 2010, it is unlawful for any person, partnership, association, or corporation to conduct or maintain a home care agency that provides in-home personal care services without having submitted a completed application for licensure as a home care agency to the department. On or after January 1, 2011, it is unlawful for any person, partnership, association, or corporation to conduct or maintain a home care agency that provides in-home personal care services without having obtained a license therefor from the department. Any person who violates this provision:

(a) Is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars; and

(b) May be subject to a civil penalty assessed by the department of up to ten thousand dollars for each violation of this section. The department shall assess, enforce, and collect the penalty in accordance with article 4 of title 24, C.R.S., for credit to the home care agency cash fund created in section 25-27.5-105. Enforcement and collection of the penalty shall occur following the decision reached in accordance with procedures set forth in section 24-4-105, C.R.S.

(1.5) (a) Notwithstanding any provision of law to the contrary, by March 1, 2011, the following providers of skilled home health services or in-home personal care services shall apply for licensure as a home care agency to the department:

(I) Community centered boards designated pursuant to section 27-10.5-105, C.R.S.; and

(II) Service agencies that have received program approval from the department of human services as a developmental disabilities service agency under rules promulgated by the department of human services that are providing services pursuant to the supported

living services waiver or the children's extensive support waiver of the home- and community-based services waivers administered by the department of health care policy and financing and the department of human services under part 4 of article 6 of title 25.5, C.R.S.

(b) On or after September 1, 2011, it is unlawful for any community centered board that is directly providing home care services, or any service agency as described in paragraph (a) of this subsection (1.5), to conduct or maintain a home care agency that provides skilled home health services or in-home personal care services without having obtained a license therefor from the department. Any person who violates this provision is guilty of a misdemeanor and is subject to the civil and criminal penalties described in paragraphs (a) and (b) of subsection (1) of this section. Nothing in this section relieves an entity that contracts or arranges with a community centered board or service agency, and that meets the definition of a "home care agency" under section 25-27.5-102, from the entity's obligation to apply for and operate under a license in accordance with this article.

(2) (a) On or after June 1, 2009, any home care placement agency shall notify the department in writing that it provides referrals for skilled home health services or personal care services and shall annually update such notice. The department shall maintain a list of all home care placement agencies and shall make the list accessible to the public. A home care placement agency is not licensed or certified by the department and shall not claim or assert that the department licenses or certifies the home care placement agency.

(b) A person who violates this section may be subject to a civil penalty assessed by the department that is not less than five hundred dollars per year or more than one thousand dollars per year for failure to register with the department or for claiming to be licensed or certified by the department. The department shall assess, enforce, and collect the penalty in accordance with article 4 of title 24, C.R.S. Any moneys collected shall be deposited in the home care agency cash fund created in section 25-27.5-105.

(3) If a facility that is licensed pursuant to this title provides skilled home health or personal care services also provides the services outside the premises of the licensed facility, the facility license shall be amended to include the services, and the facility shall meet the requirements promulgated by the state board.

Source: L. 2008: Entire article added, p. 2235, § 3, effective August 5. L. 2010: (1.5) added, (SB 10-194), ch. 251, p. 1122, § 3, effective May 21. L. 2012: (2) amended, (HB 12-1294), ch. 252, p. 1259, § 10, effective June 4.

Cross references: For the legislative declaration in the 2012 act amending subsection (2), see section 1 of chapter 252, Session Laws of Colorado 2012.

25-27.5-104. Minimum standards for home care agencies - rules - advisory committee. (1) The state board shall promulgate rules pursuant to section 24-4-103, C.R.S., providing minimum standards for the operation of home care agencies within the state of Colorado. In promulgating these rules, the state board shall establish different requirements appropriate to the various types of skilled home health and personal care services, including differentiating requirements for providers that are substantially funded through medicare and medicaid reimbursement, providers for the program of all-inclusive care for the elderly established in section 25.5-5-412, C.R.S., providers that are already licensed under this title, and providers that are solely or substantially privately funded. This differentiation shall consider the requirements already imposed by other federal and state regulatory agencies, shall require the department of health care policy and financing and the department of public health and environment to work jointly to resolve differing requirements, and shall only regulate a provider for the program of all-inclusive care for the elderly consistent with the federal requirements established for the provider pursuant to a three-way agreement between the provider, the centers of medicare and medicaid services, and the department of health care policy and financing; except that the department may require additional information from the provider with regard to reporting instances of abuse. Such rules must include the following:

(a) Inspection of home care agencies by the department or its designated representative;

(b) Minimum educational, training, and experience standards for the administrator and staff of an agency, including a requirement that such persons be of good, moral, and responsible character;

(c) Requirements for disclosure notices to be provided by home care agencies and home care placement agencies to home care consumers concerning the duties and employment status of the individual providing services;

(d) Intermediate enforcement remedies as authorized by section 25-27.5-108;

(e) A requirement and form for written plans, to be submitted by agencies to the department for approval, detailing the measures that will be taken to correct violations found as a result of inspections;

(f) Establishing occurrence reporting requirements pursuant to section 25-1-124;

(g) Fees for home care agency licensure, which shall not exceed one thousand five hundred dollars per year for two years from the effective date of fees established by rule for home care agencies that are certified providers through the federal centers for medicare and medicaid services or the Colorado department of health care policy and financing. Home care agency fees shall be payable to the home care agency cash fund. The annual fee shall include a component that reflects whether a survey is planned for the year based on the agency's compliance history. The fee schedule shall also be tiered to reflect the differences in type and volume of services of various home care agencies, including but not limited to their volume of medicaid and medicare services. The fee schedule shall also provide for reduced fees for home care agencies that are certified prior to initial license application. The department of public health and environment shall not charge a duplicate fee for survey work conducted pursuant to its role as state survey agency for the federal centers for medicare and medicaid services or the Colorado department of health care policy and financing. No later than January 1, 2011, the department of public health and environment shall issue an independent report detailing the direct and indirect costs associated with the administration of home care agency licensure.

(h) Requirements for home care agencies to provide evidence of and maintain either liability insurance coverage or a surety bond in lieu of liability insurance coverage, in amounts set through rules of the state board.

(2) Rules promulgated by the state board are subject to judicial review in accordance with the requirements of section 24-4-106, C.R.S.

(3) There is hereby established a home care advisory committee, which shall make recommendations to the department and the state board of health concerning the rules promulgated pursuant to this article and implementation of the licensing of home care agencies. The home care advisory committee shall be appointed by the executive director of the department. The advisory committee shall, at a minimum, consist of representatives from skilled home health services agencies, personal care services agencies, members of the disabled community who are home care consumers, seniors or representatives of seniors who are home care consumers, providers of medicaid services, providers of in-home support services, and representatives of the departments of health care policy and financing and human services. Members of the advisory committee shall serve at the pleasure of the appointing authority on a voluntary basis and shall serve without compensation.

Source: L. 2008: Entire article added, p. 2236, § 3, effective August 5. L. 2012: IP(1) amended, (HB 12-1294), ch. 252, p. 1259, § 11, effective June 4.

Cross references: For the legislative declaration in the 2012 act amending the introductory portion to subsection (1), see section 1 of chapter 252, Session Laws of Colorado 2012.

25-27.5-105. Home care agency cash fund created. The fees collected pursuant to section 25-27.5-104 (1), plus any civil penalty collected pursuant to section 25-27.5-103 (1) (b), shall be transmitted to the state treasurer, who shall credit the same to the home care agency cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the

department in performing its duties under this article. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

Source: L. 2008: Entire article added, p. 2238, § 3, effective August 5.

25-27.5-106. License - application - inspection - issuance. (1) An application for a license to operate a home care agency shall be submitted to the department annually upon such form and in such manner as prescribed by the department.

(2) (a) The department shall investigate and review each original application and each renewal application for a license. The department shall determine an applicant's compliance with the rules adopted pursuant to section 25-27.5-104 before a license is issued or renewed. A certified home care agency that applies for a license by June 1, 2009, shall be exempt from licensure inspection prior to issuance of the initial license. The department shall make such inspections as it deems necessary to ensure that the health, safety, and welfare of the home care agency's home care consumers are being protected. Inspections of a home care consumer's home shall be subject to the consent of the home care consumer to access the property. The home care agency shall submit in writing, in a form prescribed by the department, a plan detailing the measures that will be taken to correct any violations found by the department as a result of inspections undertaken pursuant to this subsection (2).

(b) The department shall keep all medical records obtained during an inspection or investigation of a home care agency confidential, and the medical records shall be exempt from disclosure pursuant to sections 24-72-204, C.R.S., and 25-1-124.

(3) (a) With the submission of an application for a license granted pursuant to this article, each owner, applicant, or licensee shall submit a complete set of his or her fingerprints to the department. The department shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation. The owner, applicant, or licensee shall pay the costs associated with the fingerprint-based criminal history record check to the Colorado bureau of investigation.

(b) The information shall be used by the department in ascertaining whether the person applying for licensure has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct that the department determines could pose a risk to the health, safety, or welfare of home care consumers of the home care agency. The department shall maintain information obtained in accordance with this section.

(4) No license shall be issued or renewed by the department if the owner, applicant, or licensee of the home care agency has been convicted of a felony or of a misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct that the department determines could pose a risk to the health, safety, or welfare of the home care consumers of the home care agency.

(5) Except as otherwise provided in subsections (6) and (7) of this section, the department shall issue or renew a license when it is satisfied that the applicant or licensee is in compliance with the requirements set out in this article and the rules promulgated pursuant to this article. Except for provisional licenses issued in accordance with subsections (6) and (7) of this section, a license issued or renewed pursuant to this section shall expire one year after the date of issuance or renewal.

(6) The department may issue a provisional license to an applicant for the purpose of operating a home care agency for a period of ninety days if the applicant is temporarily unable to conform to all of the minimum standards required under this article; except that no license shall be issued to an applicant if the operation of the applicant's home care agency will adversely affect the health, safety, or welfare of the home care consumers of such home care agency. As a condition of obtaining a provisional license, the applicant shall show proof to the department that attempts are being made to conform and comply with applicable standards. No provisional license shall be granted prior to the completion of a criminal background check in accordance with subsection (3) of this section and a finding

in accordance with subsection (4) of this section. A second provisional license may be issued, for a like term and fee, to effect compliance. No further provisional licenses may be issued for the current year after the second issuance.

(7) If requested by the Colorado department of health care policy and financing, the department may issue a provisional license for a period of ninety days to an agency that has applied to be a certified home care agency as defined in section 25-27.5-102. A provisional license shall not be granted prior to the completion of a fingerprint-based criminal history record check in accordance with subsection (3) of this section and a finding in accordance with subsection (4) of this section. A second provisional license may be issued, for a like term and fee, to effect compliance. No further provisional licenses may be issued for the current year after the second issuance.

Source: L. 2008: Entire article added, p. 2238, § 3, effective August 5.

25-27.5-107. Employee criminal history record check. On and after June 1, 2009, prior to employing or placing any person, the home care agency or home care placement agency shall require the person seeking employment or placement to submit to a criminal history record check. The home care agency or home care placement agency or the person seeking employment with the home care agency shall pay the costs of such inquiry. The criminal history record check shall be conducted not more than ninety days prior to the employment of the applicant.

Source: L. 2008: Entire article added, p. 2240, § 3, effective August 5.

25-27.5-108. License denial - suspension - revocation. (1) Upon denial of an application for an original license, the department shall notify the applicant in writing of such denial by mailing a notice to the applicant at the address shown on his or her application. Any applicant believing himself or herself aggrieved by such denial may pursue the remedy for review provided in article 4 of title 24, C.R.S., if the applicant, within thirty days after receiving such notice, petitions the department to set a date and place for hearing, affording the applicant an opportunity to be heard in person or by counsel. All hearings on the denial of original licenses shall be conducted in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S.

(2) (a) The department may suspend, revoke, or refuse to renew the license of any home care agency that is out of compliance with the requirements of this article or the rules promulgated pursuant to this article. Such suspension, revocation, or refusal shall be done after a hearing thereon and in conformance with the provisions and procedures specified in article 4 of title 24, C.R.S.; except that the department may implement a summary suspension prior to a hearing in accordance with article 4 of title 24, C.R.S.

(b) (I) The department may impose intermediate restrictions or conditions on a licensee that may include at least one of the following:

- (A) Retaining a consultant to address corrective measures;
- (B) Monitoring by the department for a specific period;
- (C) Providing additional training to employees, owners, or operators of the home care agency;
- (D) Complying with a directed written plan to correct the violation; or
- (E) Paying a civil fine not to exceed ten thousand dollars per calendar year for all violations.

(II) (A) If the department imposes an intermediate restriction or condition that is not a result of a serious and immediate threat to health or welfare, the licensee shall receive written notice of the restriction or condition. No later than ten days after the date the notice is received from the department, the licensee shall submit a written plan that includes the time frame for completing the plan and addresses the restriction or condition specified.

(B) If the department imposes an intermediate restriction or condition that is the result of a serious and immediate threat to health, safety, or welfare, the department shall notify the licensee in writing, by telephone, or in person during an on-site visit. The licensee shall remedy the circumstances creating harm or potential harm immediately upon receiving notice of the restriction or condition. If the department provides notice of a restriction or condition by telephone or in person, the department shall send written confirmation of the restriction or condition to the licensee within two business days.

(III) (A) After submission of an approved written plan, a licensee may first appeal any intermediate restriction or condition on its license to the department through an informal review process as established by the department.

(B) If the restriction or condition requires payment of a civil fine, the licensee may request, and the department shall grant, a stay in payment of the fine until final disposition of the restriction or condition.

(C) If a licensee is not satisfied with the result of the informal review or chooses not to seek informal review, no intermediate restriction or condition on the licensee shall be imposed until after an opportunity for a hearing has been afforded the licensee pursuant to section 24-4-105, C.R.S.

(IV) If the department assesses a civil fine pursuant to this paragraph (b), moneys received by the department shall be transmitted to the state treasurer, who shall credit the same to the home care agency cash fund created in section 25-27.5-105.

(V) Civil fines collected pursuant to this paragraph (b) shall be used for expenses related to:

(A) Continuing monitoring required pursuant to this paragraph (b);

(B) Education for licensees to avoid restrictions or conditions or facilitate the application process or the change of ownership process;

(C) Education for home care consumers and their families about resolving problems with a home care agency, rights of home care consumers, and responsibilities of home care agencies;

(D) Providing technical assistance to any home care agency for the purpose of complying with changes in rules or state or federal law;

(E) Monitoring and assisting in the transition of home care consumers to other home care agencies, when the transition is a result of the revocation of a license, or other appropriate medical services; or

(F) Maintaining the operation of a home care agency pending correction of violations, as determined necessary by the department.

(3) The department shall revoke or refuse to renew the license of a home care agency where the owner or licensee has been convicted of a felony or misdemeanor involving moral turpitude or involving conduct that the department determines could pose a risk to the health, safety, or welfare of the home care consumers of such home care agency. Such revocation or refusal shall be made only after a hearing is provided in accordance with article 4 of title 24, C.R.S.

Source: L. 2008: Entire article added, p. 2240, § 3, effective August 5.

25-27.5-109. Enforcement. The department is responsible for the enforcement of this article and the rules adopted pursuant to this article.

Source: L. 2008: Entire article added, p. 2242, § 3, effective August 5.

25-27.5-110. Repeal of article - sunset review. (1) This article is repealed, effective July 1, 2014.

(2) Prior to such repeal, the licensing of home care agencies shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2008: Entire article added, p. 2242, § 3, effective August 5.

ARTICLE 28

Colorado Health Data Commission

25-28-101 to 25-28-111. (Repealed)

Editor’s note: (1) This article was added in 1985. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 25-28-111 provided for the repeal of this article, effective July 1, 1995. (See L. 91, p. 1009.)

ARTICLE 29

Denver Health and Hospital Authority

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25-29-112.	General powers of authority.	25-29-124.	Exemption from property taxation.
		25-29-125.	General assembly retains authority to enact laws governing Denver health and hospital authority.
		25-29-126.	Severability.

25-29-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The city and county of Denver department of health and hospitals:

(I) Provides access to quality preventive, acute, and chronic health care for all the citizens of Denver regardless of ability to pay;

(II) Provides high quality emergency medical services to the citizens of Denver and the Rocky Mountain region;

(III) Fulfills public health functions as dictated by the Denver charter and the needs of the citizens of Denver;

(IV) Provides health education for patients and participates in the education of the next generation of health care professionals; and

(V) Engages in research which enhances its ability to meet the health care needs of patients of the Denver health system.

(b) In order to carry out its patient care and community service mission in an era of health care reform, it is necessary that the Denver health system be able to take whatever actions are necessary to enable its continuation as a system which provides the finest possible quality of health care.

(c) It is essential that the Denver health system be able to maximize its economic viability and productivity in order to avoid becoming increasingly dependent on city, state, and other governmental subsidies.

(d) Both the quality and economic viability of the Denver health system will be difficult to maintain in the future under the present constraints imposed by government policy and regulation.

(e) The needs of the citizens of the state of Colorado and of the city and county of Denver will therefore be best served if the Denver health system is operated by a political subdivision charged with carrying out the mission and programs of the Denver health system.

(2) The general assembly further finds and declares that, after the transfer date, all new employees of the Denver health system shall be employees of the authority.

Source: L. 94: Entire article added, p. 655, § 1, effective April 19.

25-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Authority” means the political subdivision and body corporate known as the Denver health and hospital authority created by this article.

(2) “Board” or “Board of directors” means the board of directors of the authority.

(3) “City” means the city and county of Denver as constituted under article XX of the state constitution.

(4) “City employee” means a person employed by the city and county of Denver, whether or not a classified employee.

(5) “Denver health system” means the programs, services, and facilities operated by the Denver department of health and hospitals prior to the transfer date.

(6) “Department” means the Denver department of health and hospitals.

(7) “Health system” means the Denver health system or the programs, services, and facilities operated by the authority after the transfer date.

(8) “Health system assets” means all property or rights in property, real and personal, tangible and intangible existing on the transfer date, used by or accruing to the department in the normal course of operations.

(9) “Health system liabilities” means all debts or other obligations, contingent or certain, owing on the transfer date, to any person or other entity, arising out of the operation of the Denver health system and including, without limitation, all debts for the purchase of goods and services, whether or not delivered, and obligations for the delivery of services, whether or not performed.

(10) “Mayor” means the mayor of the city and county of Denver.

(11) “Transfer date” means a date agreed to by the city and the authority for the transfer of Denver health system assets to and the assumption of health system liabilities by such authority.

Source: L. 94: Entire article added, p. 656, § 1, effective April 19.

25-29-103. Denver health and hospital authority. (1) There is hereby created the Denver health and hospital authority, which shall be a body corporate and a political subdivision of the state, which shall not be an agency of the state or local government, and which shall not be subject to administrative direction or control by any department, commission, board, bureau, or agency of state or local government.

(2) The authority shall be governed by a nine-member board of directors which shall be responsible for the operation of the health system. The mayor shall appoint the members of the board whose appointments shall be conditioned upon confirmation by the Denver city council. Of the nine members first appointed, four shall serve a term of two years and five shall serve a term of five years. Thereafter, all members shall serve five-year terms. The seven members of the Denver board of health and hospitals, regardless of constraints upon the terms of office or any appointments or reappointments to the Denver board of health and hospitals, shall serve ex officio as a nonvoting advisory panel to the authority’s board. In the event the Denver charter no longer provides for the Denver board of health and hospitals, the seven members of such board shall no longer serve the authority in any capacity. Actions of the board shall require the affirmative vote of the majority of the total

membership of the board. The board shall annually elect a chairperson from among its members. Any member may be elected to serve successive terms as chairperson.

(3) Each member of the board of directors shall hold office until a successor is appointed and qualified. Any member shall be eligible for reappointment, but voting members shall not be eligible to serve more than two consecutive full terms. Members of the board shall receive no compensation for such services but may be reimbursed for necessary expenses while serving on the board. Any vacancy in office shall be filled in the same manner provided for original appointments.

(4) Any member may be removed pursuant to city ordinance for any cause which renders the member unfit for the position after written notice has been provided to the member by the mayor or council of the city stating the specific grounds which constitute cause for removal and upon providing the member an opportunity to be heard.

(5) No part of the revenues or assets of the authority shall inure to the benefit of, or be distributed to, members of the board of directors, officers of the authority, or any other private person or entity; except that the authority may make reasonable payments for expenses incurred on its behalf relating to any of its lawful purposes and the authority is also authorized and empowered to pay reasonable compensation for services rendered to or for its benefit relating to any of its lawful purposes.

(6) The authority and its corporate existence shall continue until terminated by law; except that no such law shall take effect so long as the authority has outstanding bonds, notes, or other obligations unless adequate provisions have been made for the payment of such outstanding debt.

Source: L. 94: Entire article added, p. 657, § 1, effective April 19.

25-29-104. Mission of authority - action of board of directors. (1) The mission of the authority is to:

(a) Provide access to quality preventive, acute, and chronic health care for all the citizens of Denver regardless of ability to pay;

(b) Provide high quality emergency medical services to Denver and the Rocky Mountain region;

(c) Fulfill public health functions in accordance with the agreement entered into with the city pursuant to the authority granted in section 25-29-105 and the needs of the citizens of Denver;

(d) Provide for the health education of patients and to participate in the education of the next generation of health care professionals; and

(e) Engage in research to the extent that it enhances the ability of the authority to meet the health care needs of its patients.

(2) The board of directors shall not transfer assets of the authority or of the health system to any person or entity except for such grants or transfers as may be incidental to health system programs and which are consistent with the purposes of this article.

(3) Upon the dissolution of the authority, all assets of the authority, after the satisfaction of creditors, shall revert to the city.

(4) The business activities of the authority, including any joint ventures, shall be primarily in furtherance or in support of the duties and responsibilities of the health system as specified in subsection (1) of this section.

Source: L. 94: Entire article added, p. 658, § 1, effective April 19.

ANNOTATION

Providing access to health care services is different from the actual provision of such services; this section does not create a statutory exception to the common law corporate practice of medicine doctrine. Since the Denver health and hospital authority is neither explicitly au-

thorized or required to practice medicine, nor can it control the independent medical judgment of its employees, it is not exposed to vicarious liability. *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

25-29-105. Transfer of health system assets and liabilities to authority. (1) The authority is authorized to enter into agreements with the city for the purpose of leasing, conveying, or otherwise acquiring Denver's health system assets. Any such lease, conveyance, transfer, or other agreement to acquire such assets shall be on such terms as may be agreed upon by the parties and shall include consideration of the authority's agreement to assume Denver's health system liabilities.

(2) Any transfer of health system assets to the authority shall be conditioned upon the existence of a binding agreement between the city and the authority transferring management and operation of some or all of the Denver health system to the authority and by which the authority shall accept and agree to fulfill the mission specified in section 25-29-104 and the provisions of section 25-29-107 concerning personnel.

(3) Any transfer of health system assets to the authority pursuant to this section shall be further conditioned upon the existence of a binding agreement between the authority and the city which provides that, effective on the transfer date and thereafter, the authority shall assume responsibility for and shall defend, indemnify, and hold the city harmless with respect to:

(a) All liabilities and duties of the city pursuant to contracts, agreements, and leases for commodities, services, and supplies utilized by the Denver health system, including real property leases;

(b) All claims related to the employment relationship between employees of the authority and the authority on and after the transfer date;

(c) All claims for breach of contract resulting from the authority's action or failure to act on and after the transfer date; and

(d) All claims related to the authority's errors and omissions including but not limited to medical malpractice; director and officer liability; workers' compensation; automobile liability; and premises, completed operations, and products liability.

Source: L. 94: Entire article added, p. 659, § 1, effective April 19.

Editor's note: The introductory portion to subsection (3) and subsections (3)(a) to (3)(d) were enacted as the introductory portion to subsection (3)(a) and subsections (3)(a)(I) to (3)(a)(IV) by Senate Bill 94-99, Session Laws of Colorado 1994, chapter 126, section 1, but have been renumbered on revision for ease of location.

25-29-106. Relationship between authority and city and county of Denver. (1) On and after the transfer date, except for the power of the city and the mayor to appoint and remove members of the authority's board of directors, the city shall have no further control over the operation of the health system.

(2) The authority may enter into any agreement with the city including but not limited to contracts for:

(a) The provision of goods, services, and facilities in support of Denver's health system; and

(b) Insurance coverage for the authority and its employees for medical malpractice liability from any self-insurance trust fund controlled or maintained by the city.

(3) The authority shall comply with all of city regulatory laws, ordinances, and rules and regulations generally applicable to entities and property holders in the city.

Source: L. 94: Entire article added, p. 660, § 1, effective April 19.

25-29-107. Personnel. (1) Any employee of the Denver health system who is an employee of the city on the transfer date may elect to remain a city employee or may elect to become an employee of the authority. An employee may elect to become an employee of the authority at any time on or after the transfer date but may not thereafter return to the city's personnel system while employed by the authority. No city employee shall be discriminated against in training, promotion, retention, assignment of duties, granting of rights and benefits, or any other personnel action. Promotion or a change in position shall not be contingent upon the employee becoming an employee of the authority.

(2) Any employee of the authority who elects to remain a city employee shall retain all rights and privileges which are applicable to such employee's position.

(3) In the case of any dispute involving a city employee who is a member of the city personnel system, the authority shall agree to accept resolution of all disciplinary appeals or other employment disputes governed by the city's system according to the rules and procedures applicable to members of the city's personnel system.

(4) Any city employee who elects to become an employee of the authority shall receive credit from the authority for sick leave and annual leave accrued while employed by the city, the cash equivalent of all or part of such leave, or a combination of credit or cash equivalent, all in accordance with a written agreement between the city and the authority.

(5) The authority shall establish and administer its own personnel program, including a wage and benefit structure, for authority employees.

Source: L. 94: Entire article added, p. 660, § 1, effective April 19.

25-29-108. Retirement benefits - rights of former city employees. (1) Any former city employee who elects to become an employee of the authority shall be eligible for membership in the authority's retirement plan.

(2) The authority shall qualify its retirement plan under section 401 (a) of the "Internal Revenue Code of 1986", as amended, as a governmental plan under section 414 (d) of such code.

Source: L. 94: Entire article added, p. 661, § 1, effective April 19.

25-29-109. Records of board of directors. Records of the authority are subject to the open records law under article 72 of title 24, C.R.S.

Source: L. 94: Entire article added, p. 661, § 1, effective April 19.

25-29-110. Meetings of board of directors. (1) All meetings of the board of directors of the authority shall be subject to the provisions of section 24-6-402, C.R.S. No business of the board of directors shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present. Any action of the board shall require the affirmative vote of a majority of the total membership of the board.

(2) The board may elect to hold an executive session for the consideration of any documents or data protected from disclosure pursuant to section 25-29-109.

Source: L. 94: Entire article added, p. 661, § 1, effective April 19.

25-29-111. Disclosure of interests required. Any member of the board of directors and any employee or other agent or advisor of the authority, who has a direct or indirect interest in any contract or transaction with the authority, shall disclose this interest to the authority. This interest shall be set forth in the minutes of the authority, and no director, employee, or other agent or advisor having such interest shall participate on behalf of the authority in the authorization of any such contract or transaction; except that the provisions of this section shall not be construed to prohibit any city employee who is a member of the board of directors who has no personal interest in the matter at hand from voting on the authorization of any such contract or transaction between the authority and the city. The status of a board member as a member of the department board, in and of itself, shall not be a conflicting interest.

Source: L. 94: Entire article added, p. 661, § 1, effective April 19.

25-29-112. General powers of authority. (1) In addition to any other powers granted to the authority in this article, the authority shall have the following powers:

- (a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;
- (b) To have perpetual existence and succession;
- (c) To adopt, have, and use a seal and to alter the seal at its pleasure;
- (d) To sue and be sued;
- (e) To enter into any contract or agreement not inconsistent with this article or the laws of this state and to authorize the chief executive officer to enter into contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this article and to secure the payment of bonds;
- (f) To borrow money and to issue bonds evidencing the same;
- (g) To purchase, lease, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, lease, sell, and dispose of personal property, whether tangible or intangible, and any interest therein; and to purchase, lease, trade, exchange, or otherwise acquire real property or any interest therein, and to maintain, hold, improve, mortgage, lease, and otherwise transfer such real property, so long as such transactions do not interfere with the mission of the authority as specified in section 25-29-104;
- (h) To acquire space, equipment, services, supplies, and insurance necessary to carry out the purposes of this article;
- (i) To deposit any moneys of the authority in any banking institution within or without the state or in any depository authorized in section 24-75-603, C.R.S., and to appoint, for the purpose of making such deposits, one or more persons to act as custodians of the moneys of the authority, who shall give surety bonds in such amounts and form and for such purposes as the board of directors requires;
- (j) To contract for and to accept any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply, subject to the provisions of this article, with the terms and conditions thereof;
- (k) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article;
- (l) To fix the time and place or places at which its regular and special meetings are to be held. Meetings shall be held on the call of the presiding officer, but no less than eight meetings shall be held annually.
- (m) To adopt and from time to time amend or repeal bylaws and rules and regulations consistent with the provisions of this article; except that article 4 of title 24, C.R.S., shall not apply to the promulgation of any policies, procedures, rules, or regulations of the authority;
- (n) To appoint one or more persons as secretary and treasurer of the board and such other officers as the board of directors may determine and provide for their duties and terms of office;
- (o) To appoint the authority's chief executive officer and such agents, employees, and professional and business advisers as may from time to time be necessary in its judgment to accomplish the purposes of this article, and to fix the compensation of such chief executive officer, employees, agents, and advisers, and to establish the powers and duties of all such agents, employees, and other persons contracting with the authority;
- (p) To waive, by such means as the authority deems appropriate, the exemption from federal income taxation of interest on the authority's bonds, notes, or other obligations provided by the "Internal Revenue Code of 1986", as amended, or any other federal statute providing a similar exemption;
- (q) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this article, including but not limited to contracts with any person, firm, corporation, municipality, state agency, county, or other entity. All municipalities, counties, and state agencies are hereby authorized to enter into and do all things necessary to perform any such arrangement or contract with the authority.

- (r) To arrange for guaranties or insurance of its bonds, notes, or other obligations by the federal government or by any private insurer, and to pay any premiums therefor;
- (s) To engage in joint ventures, or to participate in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity;
- (t) To authorize officers or employees of the authority to incorporate a nonprofit corporation to be capitalized and controlled by the authority, or to serve in their official capacities on the governing body of a governmental or nongovernmental entity.

Source: L. 94: Entire article added, p. 661, § 1, effective April 19.

25-29-113. Bonds and notes. (1) (a) The authority has the power and is authorized to issue from time to time its notes and bonds in such principal amounts as the authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the authority, the establishment of reserves to secure such notes and bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(b) (I) The authority has the power, from time to time, to issue:

(A) Notes to renew notes;

(B) Bonds to pay notes, including the interest thereon, and, whenever it deems refunding expedient, to refund any bonds whether the bonds to be refunded have or have not matured; and

(C) Bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

(II) Refunding bonds issued pursuant to this paragraph (b) may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption, or payment of such bonds.

(c) The authority has the power to provide for the replacement of lost, destroyed, or mutilated bonds or notes.

(d) Except as may otherwise be expressly provided by the authority, every issue of its notes and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(2) The notes and bonds shall be authorized by a resolution adopted by an affirmative vote of a majority of the members of the board of directors.

(3) Any resolution authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) Pledging all or any part of the revenues of the authority to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(b) Pledging all or any part of the assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist, such assets to include any grant or contribution from the federal government or any corporation, association, institution, or person;

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(e) Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds;

(f) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(g) Limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;

(h) Vesting in a trustee such property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to this article, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, powers, and duties of such trustee;

(i) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; except that such rights and remedies shall not be inconsistent with the general laws of this state and the other provisions of this article;

(j) Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(4) The bonds or notes of each issue may, in the discretion of the board of directors, be made redeemable before maturity at such prices and under such terms and conditions as may be determined by the board of directors. Notes shall mature at such time as may be determined by the board of directors, and bonds shall mature at such time, not exceeding thirty-five years from their date of issue, as may be determined by the board. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place, and be subject to such terms of redemption as such resolution may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price as the board of directors shall determine.

(5) In case any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached thereto ceases to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery. The board of directors may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

(6) Prior to the preparation of definitive bonds or notes, the authority may, under like restrictions, issue interim receipts or temporary bonds or notes until such definitive bonds or notes have been executed and are available for delivery.

(7) The authority, subject to such agreements with noteholders or bondholders as may then exist, has the power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be cancelled at a price not exceeding:

(a) If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon; or

(b) If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(8) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without this state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all moneys. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(9) The authority shall not have outstanding, at any one time, bonds, not including bond anticipation notes, or bonds which have been refunded, in an aggregate principal amount exceeding one hundred twenty million dollars without the approval of the city acting by formal resolution of the Denver city council; however, this limitation shall not apply to bonds which are unsecured or secured solely by a pledge of the revenues of the authority and are not in any way secured by a pledge of any of the authority's other assets, including, without limitation, any buildings or real property, and which contain a statement that the bondholders shall not have any recourse against the authority's other assets for repayment of the bonds. Under no circumstances shall the city be liable for any indebtedness incurred by the authority. The general assembly specifically finds there is a substantial public purpose in limiting the indebtedness of the authority in the event the authority assets or the hospital assets are transferred back to or revert to the city.

(10) The authority has the power and is authorized to issue from time to time notes, bonds, and other securities which may be collateralized or otherwise secured in whole or in part by loans or participations or other interests in such loans or which may evidence loans or participations or other interests in such loans to provide net funds that are to be dedicated in whole or in part by resolution of the authority to the carrying out of one or more of the purposes of the authority. The interest on or from such notes, bonds, and other securities may be subject to or exempt from federal income taxation.

(11) Any notes, bonds, or other securities issued pursuant to this section, and the income therefrom, including any profit from the sale thereof, shall at all times be free from taxation by the state or any agency, political subdivision, or instrumentality of the state.

Source: L. 94: Entire article added, p. 663, § 1, effective April 19.

25-29-114. Remedies. Any holder of bonds issued under the provisions of this article, or any coupons appertaining thereto and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except to the extent the rights under this article may be restricted by such trust agreement or resolution, may, either at law or in equity by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted under this article or under such agreement or resolution, or under any other contract executed by the authority pursuant to this article, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the authority or by an officer thereof.

Source: L. 94: Entire article added, p. 667, § 1, effective April 19.

25-29-115. Negotiable instruments. Notwithstanding any of the foregoing provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds and interest coupons appertaining thereto shall be negotiable instruments under the laws of this state, subject only to any applicable provisions for registration.

Source: L. 94: Entire article added, p. 667, § 1, effective April 19.

25-29-116. Bonds eligible for investment. Bonds issued under the provisions of this article are hereby made securities in which all insurance companies, trust companies, banking associations, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds, notes, or obligations of the state is authorized by law.

Source: L. 94: Entire article added, p. 667, § 1, effective April 19.

25-29-117. Refunding bonds. (1) The board of directors may provide for the issuance of refunding obligations of the authority for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations, and for any corporate purpose of the authority.

(2) Refunding obligations issued as provided in subsection (1) of this section may be sold or exchanged for outstanding obligations issued under this article, and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, the accrued interest, and any redemption premium on the obligations being refunded and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

Source: L. 94: Entire article added, p. 668, § 1, effective April 19.

25-29-118. Nonliability of state for bonds. Neither the state of Colorado nor the city shall be liable for bonds of the authority, and such bonds shall not constitute a debt of the state or the city. The bonds shall contain on the face thereof a statement to such effect.

Source: L. 94: Entire article added, p. 668, § 1, effective April 19.

25-29-119. Members of authority not personally liable on bonds. Neither the members of the board of directors nor any authorized person executing bonds issued pursuant to this article shall be personally liable for such bonds by reason of the execution or issuance thereof.

Source: L. 94: Entire article added, p. 668, § 1, effective April 19.

25-29-120. Annual report. The authority shall submit to the mayor of the city within six months after the end of the fiscal year a report which shall set forth a complete and detailed operating and financial statement of the authority during such year. Also included in the report shall be any recommendations with reference to additional legislation or other action that may be necessary to carry out the purposes of the authority.

Source: L. 94: Entire article added, p. 669, § 1, effective April 19.

25-29-121. Powers of authority - investments. (1) The authority has the power:

(a) To invest any funds not required for immediate disbursement in property or in securities which meet the standard for investments established in section 15-1-304, C.R.S., provided such investment assists the authority in carrying out its public purposes; and to sell from time to time such securities thus purchased and held; and to deposit any securities in any trust bank within or without the state. Any funds deposited in a banking institution or in any depository authorized in section 24-75-603, C.R.S., shall be secured in such manner and subject to such terms and conditions as the board may determine, with or without payment of any interest on such deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any commercial bank incorporated under the laws of

this state which may act as depository of any funds of the authority may issue indemnifying bonds or may pledge such securities as may be required by the board of directors.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the authority and of any moneys held in trust or otherwise for the payment of notes or bonds and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

Source: L. 94: Entire article added, p. 669, § 1, effective April 19.

25-29-122. Agreement of this state. This state does hereby pledge to and agree with the holders of any notes or bonds issued under this article that this state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged. The authority is authorized to include this pledge and agreement of this state in any agreement with the holders of such notes or bonds.

Source: L. 94: Entire article added, p. 669, § 1, effective April 19.

25-29-123. This article not a limitation of powers. Nothing in this article shall be construed as a restriction or limitation upon any other powers which the authority might otherwise have under any other law of this state, and this article is cumulative to any such powers. This article does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes, and other obligations and refunding bonds under the provisions of this article need not comply with the requirements of any other state law applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds, notes, or other obligations or any instrument as security therefor, except as is provided in this article.

Source: L. 94: Entire article added, p. 670, § 1, effective April 19.

25-29-124. Exemption from property taxation. The authority shall be exempt from any general ad valorem taxes upon any property of the authority acquired and used for its public purposes. The authority may enter into agreements to pay annual sums in lieu of taxes to any county, municipality, or other taxing entity with respect to any real property which is owned by the authority and is located in such county, municipality, or other taxing entity.

Source: L. 94: Entire article added, p. 670, § 1, effective April 19.

25-29-125. General assembly retains authority to enact laws governing Denver health and hospital authority. The general assembly expressly reserves its plenary legislative authority relating to the Denver health and hospital authority, including but not limited to the authority to enact laws relating thereto. Nothing in this part 5 or part 6 of this article or in section 11 of article II of the state constitution or in section 10 of article I of the federal constitution, relating to impairment of the obligation of contract, shall be construed to limit said legislative authority. Any contract or other obligation of the authority is expressly subject to the provisions of this section, and the parties to such contract or

obligation shall not assert such contract or obligation as a bar to the general assembly’s exercise of legislative authority relating to the Denver health and hospital authority.

Source: L. 94: Entire article added, p. 670, § 1, effective April 19.

25-29-126. Severability. Any provision of this article declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this article.

Source: L. 94: Entire article added, p. 670, § 1, effective April 19.

ARTICLE 30

Female Genital Mutilation Outreach

25-30-101 to 25-30-104. (Repealed)

Editor’s note: (1) This article was added in 1999 and was not amended prior to its repeal in 2004. For the text of this article prior to 2004, consult the 2003 Colorado Revised Statutes.
(2) Section 25-30-104 provided for the repeal of this article, effective July 1, 2004. (See L. 1999, p. 803.)

ARTICLE 31

Colorado Nurse Home
Visitor Program

25-31-101.	Short title.		
25-31-102.	Legislative declaration.	25-31-107.	quirements.
25-31-103.	Definitions.		Selection of entities to admin-
25-31-104.	Nurse home visitor program -		ister the program - grants -
	created - rules.		nurse home visitor program
25-31-105.	Health sciences facility - du-	25-31-108.	fund - created.
	ties.		Annual program review - au-
25-31-106.	Program applications - re-		dit.

25-31-101. Short title. This article shall be known and may be cited as the “Colorado Nurse Home Visitor Program Act”.

Source: L. 2000: Entire article added, p. 596, § 5, effective May 18.

25-31-102. Legislative declaration. (1) The general assembly hereby finds that, in order to adequately care for their newborns and young children, new mothers may often benefit from receiving professional assistance and information. Without such assistance and information, a young mother may develop habits or practices that are detrimental to her health and well-being and the health and well-being of her child. The general assembly further finds that inadequate prenatal care and inadequate care in infancy and early childhood often inhibit a child’s ability to learn and develop throughout his or her childhood and may have lasting, adverse effects on the child’s ability to function as an adult. The general assembly recognizes that implementation of a nurse home visitor program that provides educational, health, and other resources for new young mothers during pregnancy and the first years of their infants’ lives has been proven to significantly reduce the amount of drug, including nicotine, and alcohol use and abuse by mothers, the occurrence of criminal activity committed by mothers and their children under fifteen years of age, and the number of reported incidents of child abuse and neglect. Such a program has also been proven to reduce the number of subsequent births, increase the length of time between subsequent births, and reduce the mother’s need for other forms of public assistance. It is the intent of the general assembly that such a program be established for the state of

Colorado, beginning with a limited number of participants and expanding by the year 2010 to be available to all low-income, first-time mothers in the state who consent to receiving services.

(2) The general assembly further finds that, to implement such a program efficiently and effectively and to promote the successful implementation of partnerships between state public entities and the private sector, responsibility for the program should be divided between the department, which shall be responsible for financial administration of the program, and a health sciences facility at the university of Colorado, which shall be responsible for programmatic and clinical support, evaluation, and monitoring for the program, and such other responsibilities as described in this article. It is the intent of the general assembly that the department and the health sciences facility work collaboratively to share information in order to promote efficient and effective program implementation; however, neither entity is responsible for the other entity's statutorily prescribed duties.

Source: **L. 2000:** Entire article added, p. 596, § 5, effective May 18. **L. 2010:** Entire section amended, (SB 10-073), ch. 386, p. 1808, § 3, effective June 30.

25-31-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of public health and environment created in section 25-1-102.

(2) "Entity" means any nonprofit, not-for-profit, or for-profit corporation, religious or charitable organization, institution of higher education, visiting nurse association, existing visiting nurse program, county, district, or municipal public health agency, county department of social services, political subdivision of the state, or other governmental agency or any combination thereof.

(3) "Health sciences facility" means the Anschutz medical campus or a successor facility located at the university of Colorado health sciences center that is selected by the president of the university of Colorado pursuant to section 25-31-105 to assist the state board in administering the program.

(4) "Low-income" means an annual income that does not exceed two hundred percent of the federal poverty line.

(5) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.

(6) "Nurse" means a person licensed as a professional nurse pursuant to article 38 of title 12, C.R.S., or accredited by another state or voluntary agency that the state board of nursing has identified by rule pursuant to section 12-38-108 (1) (a), C.R.S., as one whose accreditation may be accepted in lieu of board approval.

(7) "Program" means the nurse home visitor program established in this article.

(8) "State board" means the state board of health created in section 25-1-103.

Source: **L. 2000:** Entire article added, p. 597, § 5, effective May 18. **L. 2010:** (3) amended, (SB 10-073), ch. 386, p. 1808, § 4, effective June 30; (2) and (4) amended, (HB 10-1422), ch. 419, p. 2108, § 135, effective August 11.

25-31-104. Nurse home visitor program - created - rules. (1) There is hereby established the nurse home visitor program to provide regular, in-home, visiting nurse services to low-income, first-time mothers, with their consent, during their pregnancies and through their children's second birthday. The program shall provide trained visiting nurses to help educate mothers on the importance of nutrition and avoiding alcohol and drugs, including nicotine, and to assist and educate mothers in providing general care for their

children and in improving health outcomes for their children. In addition, visiting nurses may help mothers in locating assistance with educational achievement and employment. Any assistance provided through the program shall be provided only with the consent of the low-income, first-time mother, and she may refuse further services at any time.

(2) The program shall be administered in communities throughout the state by entities selected on a competitive basis by the state board. Any entity that seeks to administer the program shall submit an application to the department as provided in section 25-31-106. The entities selected pursuant to section 25-31-107 shall be expected to provide services to a minimum of one hundred low-income, first-time mothers in the community in which the entity administers the program; except that the state board may grant a waiver of this requirement if the population base of the community does not have the capacity to enroll one hundred eligible families. The state board shall consult with the health sciences facility prior to granting the waiver to ensure that the entity can implement the program within the smaller community and maintain compliance with the program requirements. A mother shall be eligible to receive services through the program if she is pregnant with her first child, or her first child is less than one month old, and her gross annual income does not exceed two hundred percent of the federal poverty line.

(3) The state board shall promulgate, pursuant to the provisions of article 4 of title 24, C.R.S., rules for the implementation of the program. The state board shall base the rules establishing program training requirements, program protocols, program management information systems, and program evaluation requirements on research-based model programs that have been implemented in one or more other states for a period of at least five years and have shown significant reductions in:

(a) The occurrence among families receiving services through the model program of infant behavioral impairments due to use of alcohol and other drugs, including nicotine;

(b) The number of reported incidents of child abuse and neglect among families receiving services through the model program;

(c) The number of subsequent pregnancies by mothers receiving services through the model program;

(d) The receipt of public assistance by mothers receiving services through the model program;

(e) Criminal activity engaged in by mothers receiving services through the model program and their children.

(4) Notwithstanding the provisions of subsection (3) of this section, the board shall adopt rules pursuant to which a nurse home visitation program that is in operation in the state as of July 1, 1999, may qualify for participation in the program if it can demonstrate that it has been in operation in the state for a minimum of five years and that it has achieved a reduction in the occurrences specified in subsection (3) of this section. Any program so approved shall be exempt from the rules adopted regarding program training requirements, program protocols, program management information systems, and program evaluation requirements so long as said program continues to demonstrate a reduction in the occurrences specified in subsection (3) of this section.

(5) The department may propose to the state board rules concerning program applications under section 25-31-106 (1). Any such proposal shall be made in consultation with the health sciences facility.

Source: L. 2000: Entire article added, p. 597, § 5, effective May 18. **L. 2010:** (5) added, (SB 10-073), ch. 386, p. 1809, § 5, effective June 30; (2) amended, (HB 10-1422), ch. 419, p. 2108, § 136, effective August 11.

25-31-105. Health sciences facility - duties. (1) The president of the university of Colorado shall identify a facility at the university of Colorado health sciences center with the knowledge and expertise necessary to:

(a) Assist the state board in selecting entities from among the applications submitted pursuant to section 25-31-106;

(b) Provide programmatic and clinical support, evaluation, and monitoring for the program, including nurse practice support and training, clinical and programmatic technical

assistance, compliance monitoring and support, program development and implementation support, and performance improvement monitoring and support, in communities throughout the state;

(c) Cooperate with the department in connection with the department's financial administration of the program; and

(d) Work with the state auditor's office as required in section 2-3-113 (4), C.R.S.

(1.5) The health sciences facility is not responsible for the duties assigned to the department with respect to the program under section 25-31-107 (2) (a.5).

(2) The health sciences facility shall perform the duties set forth in subsection (1) of this section to ensure that the program is implemented and operated according to the program training requirements, protocols, management information systems, and evaluation requirements established by rule of the state board. The health sciences facility shall evaluate overall program implementation, operation, and effectiveness, and include that evaluation, along with any recommendations concerning the program's selected entities or changes in the program's implementation, operation, and effectiveness, including program training requirements, protocols, management information systems, or evaluation requirements, in the annual report submitted to the department pursuant to section 25-31-108.

(3) The department shall compensate the health sciences facility for the health sciences facility's actual costs incurred in performing its duties under this article, as determined by the health sciences facility. Such duties and actual costs shall be included in the scope of work in the agreement between the department and the health sciences facility for implementation of those duties and shall include the costs incurred by any contractor or subcontractor of the health sciences facility for those duties. Such compensation shall be paid out of the amount allocated for the health sciences facility's costs, in accordance with the maximum allocation of three percent of the amount annually allocated for the program under section 25-31-107 (2).

Source: L. 2000: Entire article added, p. 599, § 5, effective May 18. **L. 2010:** Entire section amended, (SB 10-073), ch. 386, p. 1809, § 6, effective June 30.

25-31-106. Program applications - requirements. (1) An entity that seeks to administer the program in a community shall submit an application to the department in accordance with rules adopted by the state board, in consultation with the department and the health sciences facility. At a minimum, the application shall specify the basic elements and procedures that the entity shall use in administering the program. Basic program elements shall include the following:

(a) The specific training to be received by each nurse employed by the entity to provide home nursing services through the program, which training shall meet or exceed the visiting nurse training requirements established by rule of the state board;

(b) The protocols to be followed by the entity in administering the program, which protocols at a minimum shall comply with the program protocols established by rule of the state board;

(c) The management information system to be used by the entity in administering the program, which at a minimum shall comply with the management information system requirements established by rule of the state board;

(d) The reporting and evaluation system to be used by the entity in measuring the effectiveness of the program in assisting low-income, first-time mothers, which at a minimum shall meet the reporting and evaluation requirements specified by rule of the state board;

(e) An annual report to both the health sciences facility and the community in which the entity administers the program that reports on the effectiveness of the program within the community and is written in a manner that is understandable for both the health sciences facility and members of the community.

(2) Any program application submitted pursuant to this section shall demonstrate strong, bipartisan public support for and a long-time commitment to operation of the program in the community.

(3) The department shall initially review the applications received pursuant to this section and submit to the health sciences facility for review those applications that include the basic program elements as required by the rules adopted by the state board. Following its review, the health sciences facility shall submit to the state board a list of the applying entities that the health sciences facility recommends to administer the program in communities throughout the state.

Source: L. 2000: Entire article added, p. 599, § 5, effective May 18. L. 2010: IP(1) amended, (SB 10-073), ch. 386, p. 1810, § 7, effective June 30.

25-31-107. Selection of entities to administer the program - grants - nurse home visitor program fund - created. (1) On receipt of the list of entities recommended by the health sciences facility, the state board shall select the entities that will administer the program in communities throughout the state. In selecting entities, the state board shall give special consideration to entities that are proposing to administer the program as a collaborative effort among multiple entities.

(2) (a) The entities selected to operate the program shall receive grants in amounts specified by the state board. The grants may include operating costs and additional amounts for training and development of any infrastructure, including but not limited to development of the information management system, necessary to administer the program. For the 2000-01 fiscal year, the state board shall award grants to no more than twelve entities in at least eight communities. The number of entities selected and the number of communities in which the program shall be implemented in subsequent fiscal years shall be determined by moneys available in the nurse home visitor program fund created in paragraph (b) of this subsection (2).

(a.5) Except as otherwise provided in section 25-31-108, the department shall be responsible for financial administration of this article, which shall include compensating the health sciences facility pursuant to section 25-31-105 (3), paying grants to entities selected to administer the program, monitoring financial, contractual, and regulatory compliance; providing medicaid financing oversight; managing accounting and budgeting; and, in cooperation with the health sciences facility, managing grant applications as set forth in section 25-31-106. The department shall also cooperate with the health sciences facility's administration of programmatic and clinical support, evaluation, and monitoring of the program. The department shall not be responsible for any duties assigned to the health sciences facility with respect to the program, as described in section 25-31-105.

(b) Grants awarded pursuant to paragraph (a) of this subsection (2) shall be payable from the nurse home visitor program fund, which fund is hereby created in the state treasury. The nurse home visitor program fund, referred to in this section as the "fund", shall be administered by the department and shall consist of moneys transferred thereto by the state treasurer from moneys received pursuant to the master settlement agreement in the amount described in paragraph (d) of this subsection (2). In addition, the state treasurer shall credit to the fund any public or private gifts, grants, or donations received by the department for implementation of the program, including any moneys received from the United States federal government for the program. The fund shall be subject to annual appropriation by the general assembly to the department for grants to entities for operation of the program. The department may retain a total of up to five percent of the amount annually appropriated from the fund for the program, in order to compensate the health sciences facility pursuant to section 25-31-105 (3), as set forth in the scope of work in the agreement between the department and the health sciences facility, and to compensate the department for the actual costs incurred by the department in implementing the provisions of paragraph (a.5) of this subsection (2), as determined by the department; except that the portion of the costs to compensate the department for implementing the provisions of paragraph (a.5) of this subsection (2) shall not exceed two percent of the amount annually appropriated from the fund for the program, and the portion of such costs to compensate the health sciences facility under section 25-31-105 (3), as set forth in the scope of work in the contract between the department and the health sciences facility, shall not exceed three percent of the amount annually appropriated from the fund for the program. In addition, if the total amount

annually appropriated from the fund for the program exceeds nineteen million dollars, the department and the health sciences facility shall assess whether a smaller percentage of the appropriated funds exceeding nineteen million dollars is adequate to cover their actual costs and shall jointly submit to the general assembly a report articulating their conclusions on this subject. The actual costs of the department include department personnel and operating costs and any necessary transfers to the department of health care policy and financing for administrative costs incurred for the medicaid program associated with the program. The actual costs of the health sciences facility include the facility's own actual program costs and those of its contractors and subcontractors. Any costs for time studies required to obtain medicaid reimbursement for the program may be paid from program funds, and shall not be subject to the five percent limit in this section. Notwithstanding section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unencumbered moneys appropriated from moneys received pursuant to the master settlement agreement remaining in the fund at the end of any fiscal year shall be transferred to the tobacco litigation settlement trust fund created in section 24-22-115.5, C.R.S.

(c) It is the intent of the general assembly that general fund moneys not be appropriated for implementation of the program.

(d) (I) Pursuant to section 24-75-1104.5 (1) (a), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning with the 2006-07 fiscal year and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall transfer to the fund the amounts specified in subparagraph (III) of this paragraph (d) from the master settlement agreement moneys received by the state, other than attorney fees and costs, during the preceding fiscal year, not to exceed nineteen million dollars in any fiscal year. The transfer shall be from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(II) Repealed.

(III) (A) For the 2004-05 fiscal year, the general assembly shall appropriate to the fund nine percent of the total amount of moneys received by the state.

(A.5) For the 2005-06 fiscal year, the general assembly shall appropriate to the fund ten percent of the total amount of moneys received by the state.

(A.7) For the 2006-07 fiscal year, the state treasurer shall transfer from the moneys received by the state pursuant to the master settlement agreement to the fund eleven percent of the total amount of moneys received by the state.

(B) Beginning with the 2007-08 fiscal year and for each fiscal year thereafter through the 2010-11 fiscal year, the state treasurer shall increase the percentage transferred to the fund pursuant to sub-subparagraph (A.7) of this subparagraph (III) by one percent; except that the percentage transferred to the fund for the 2009-10 fiscal year shall be the same as the percentage transferred to the fund for the 2008-09 fiscal year.

(C) For the 2011-12 and 2012-13 fiscal years, the state treasurer shall transfer to the fund the greater of twelve million seven hundred thirty-seven thousand three hundred fifty dollars or the same percentage of the total amount of moneys received by the state as was transferred to the fund for the 2010-11 fiscal year.

(D) For the 2013-14 fiscal year, the state treasurer shall transfer to the fund fifteen percent of the total amount of moneys received by the state.

(E) For the 2014-15 fiscal year and for each fiscal year thereafter through the 2016-17 fiscal year, the state treasurer shall increase the percentage transferred to the fund by one percent over the percentage transferred to the fund in the preceding fiscal year.

(F) For the 2017-18 fiscal year and for each fiscal year thereafter, the state treasurer shall transfer to the fund nineteen percent of the total amount of moneys received by the state.

(IV) In addition to all other moneys transferred to the fund pursuant to this paragraph (d), the state treasurer shall transfer moneys from the general fund to the fund as specified in section 24-75-1104.5 (5) (a) (I) (B), C.R.S.

Source: L. 2000: Entire article added, p. 600, § 5, effective May 18. **L. 2003:** (2)(d)(I) amended, p. 464, § 7, effective March 5; (2)(d)(I) amended, p. 2552, § 13, effective June

5; (2)(d)(I) amended, p. 2563, § 5, effective June 5. **L. 2004:** (2)(d)(I) amended, (2)(d)(II) repealed, and (2)(d)(III) added, pp. 1711, 1713, §§ 11, 16, effective June 4. **L. 2006:** (2)(b) and (2)(d) amended, p. 1038, § 8, effective May 25. **L. 2009:** (2)(d)(I), (2)(d)(III)(B), and (2)(d)(III)(C) amended and (2)(d)(IV) added, (SB 09-269), ch. 333, p. 1765, § 2, effective June 1. **L. 2010:** (2)(a.5) added and (2)(b) amended, (SB 10-073), ch. 386, p. 1810, § 8, effective June 30. **L. 2011:** (2)(d)(III)(B) and (2)(d)(III)(C) amended and (2)(d)(III)(D), (2)(d)(III)(E), and (2)(d)(III)(F) added, (SB 11-224), ch. 155, p. 539, § 2, effective May 5.

Editor’s note: Amendments to subsection (2)(d)(I) by Senate Bill 03-268 and Senate Bill 03-282 were harmonized.

25-31-108. Annual program review - audit. (1) The health sciences facility shall annually prepare and submit to the department a report including an evaluation of the implementation of the program, the results achieved by the program based on the annual reports submitted by the administering entities pursuant to section 25-31-106 (1) (e), the extent to which the program serves medicaid-eligible persons and provides services that may be provided in part through medicaid funding, and any recommendations concerning changes to the program, including any changes that may be appropriate to enable the program to receive medicaid funding. The department shall include the report in the annual report on the program prepared pursuant to section 25-1-108.5 (3). Each program contractor and subcontractor and each entity that administers the program shall work with the health sciences facility and the department to prepare the reports required under this section and sections 2-3-113 (2) and 25-1-108.5 (3), C.R.S. Any entity that is administering the program is subject to a reduction in or cessation of funding if the state board, based on recommendations from the health sciences facility, determines that the entity is not operating the program in accordance with the program requirements established by rule of the state board or is operating the program in such a manner that the program does not demonstrate positive results.

(2) The state auditor’s office, pursuant to section 2-3-113, C.R.S., shall audit each entity administering the program to determine whether the entity is administering the program in compliance with the program requirements and in an effective manner. The audit shall be conducted and reported in accordance with the provisions of section 2-3-113, C.R.S.

Source: **L. 2000:** Entire article added, p. 601, § 5, effective May 18. **L. 2001:** (1) amended, p. 1275, § 39, effective June 5. **L. 2010:** (1) amended, (SB 10-073), ch. 386, p. 1811, § 9, effective June 30.

ARTICLE 32

Poison Control Act

25-32-101.	Short title.		oversight board - duties.
25-32-102.	Legislative declaration.	25-32-105.	Department - poison control
25-32-103.	Definitions.		services - duties - contract.
25-32-104.	Poison control services - statewide poison control	25-32-106.	Release of medical informa- tion.

25-32-101. Short title. This article shall be known and may be cited as the “Poison Control Act”.

Source: **L. 2002:** Entire article added, p. 423, § 1, effective July 1.

25-32-102. Legislative declaration. The general assembly hereby declares that it is in the interest of the public’s health and well-being to continue to provide quality poison control services to the people of this state and that the provision of such services is a matter of statewide concern. It is the intent of the general assembly in enacting this article that such services be made available throughout the state on a consistent and prompt basis, by means

of a toll-free telephone network, in order that illness or death that may result from the exposure of an individual to poisonous substances may be avoided. The general assembly finds that the provision of such poison control services may be accomplished on a more cost-efficient basis, at a savings to the taxpayer, if the duty of providing such services is placed with the department of public health and environment with authority to contract with a competitively priced service provider for the entire state.

Source: L. 2002: Entire article added, p. 423, § 1, effective July 1.

25-32-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the statewide poison control oversight board, created in section 25-32-104.

(2) "Department" means the department of public health and environment.

(3) "Poison control services" shall include the following services provided by an entity certified by the American association of poison control centers or its successor organization:

(a) Twenty-four-hour toll-free telephone service dedicated to disseminating information on prevention of poisoning and the care and treatment of individuals exposed to poisonous substances;

(b) Dissemination of poison information by persons who are trained in poison control education, and the prevention, triage, and treatment of poisoning and who meet the criteria established by and are certified by the American association of poison control centers, or its successor organization; and

(c) Supervision of poison control centers by a person who meets the criteria established by the American association of poison control centers, or its successor organization, and who shall be available twenty-four hours each day for consultation.

Source: L. 2002: Entire article added, p. 424, § 1, effective July 1; (3)(b) amended, p. 946, § 7, effective August 7. **L. 2005:** (3) amended, p. 323, § 1, effective April 20.

Editor's note: Subsection (3)(b) was originally numbered as § 25.5-2-103 (2)(b), and the amendments to it in House Bill 02-1403 were harmonized with subsection (3)(b) as relocated to this section by House Bill 02-1348.

25-32-104. Poison control services - statewide poison control oversight board - duties. (1) As of July 1, 2002, the department of public health and environment shall allocate moneys for the provision of poison control services on a statewide basis and for the dissemination of information concerning the care and treatment of individuals exposed to poisonous substances. The department shall have the powers and duties outlined in section 25-32-105 in carrying out the poison control services. Provision of such poison control services shall be overseen by a statewide oversight board, described in subsection (3) of this section, which board shall have the duties and responsibilities set forth in subsection (4) of this section.

(2) On July 1, 2002, the statewide poison control oversight board, referred to in this article as the "board", which was created in 1994, in section 25.5-2-103 (2), C.R.S., shall be transferred from the department of health care policy and financing to the department of public health and environment by a **type 2** transfer. The members of the board who are serving terms on July 1, 2002, shall continue to serve for the remainder of the terms for which they were appointed by the governor; except that the member of the board who serves as the representative of the department of health care policy and financing shall no longer serve on the board and the governor shall appoint the executive director of the department of public health and environment or the executive director's designee to fill that position on the board.

(3) (a) As specified in subsection (2) of this section, on and after July 1, 2002, the board shall consist of seven members, appointed by the governor, as follows:

- (I) One member who is involved in the provision of hospital emergency care services;
- (II) One member with expertise in public health;

(III) A designee of the chancellor of the university of Colorado health sciences center;
(IV) The executive director of the department of public health and environment or such executive director's designee; and

(V) Three members from the public at large, at least one of whom has personally utilized the services of the poison control center or has a family member who has utilized the services of the poison control center.

(b) Each congressional district within the state shall be represented by one member of the board designated in paragraph (a) of this subsection (3).

(c) At least one member of the board shall reside west of the continental divide.

(d) Each member appointed pursuant to paragraph (a) of this subsection (3) shall serve a term of four years, and the terms of the members of the board shall remain staggered as originally determined by the governor.

(e) A vacancy on the board occurs whenever any member moves out of the congressional district from which such member was appointed. A member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy by appointment for the unexpired term.

(f) No more than four members of the board shall be members of the same major political party.

(g) The board membership shall elect a chairperson from among its members.

(h) The members of the board shall serve without compensation; except that they shall be reimbursed for any actual and necessary expenses incurred in the performance of their official duties pursuant to this section as members of the board including, but not limited to, reasonable expenses incurred for in-state travel.

(4) (a) The board shall have the following powers and duties:

(I) To review contract bids for the provision of poison control services and the dissemination of poison control information by means of a toll-free telephone network;

(II) To provide oversight and input to the department concerning the provision of poison control services and the dissemination of poison control information by means of a toll-free telephone network.

(b) The board shall exercise its powers and duties as a **type 2** board.

Source: L. 2002: Entire article added, p. 424, § 1, effective July 1.

25-32-105. Department - poison control services - duties - contract. (1) The department shall have the following powers and duties with respect to the provision of poison control services on a statewide basis and for the dissemination of information as provided in this article:

(a) To solicit, receive, and review contract bids, with input from the board, for the provision of poison control services and the dissemination of poison control information by means of a toll-free telephone network;

(b) To contract with private, nonprofit, or public entities for the continuing provision of statewide poison control services and the continuing dissemination of poison control information to the citizens of the state by means of a toll-free telephone network, the provision of which services initially commenced on July 1, 1995. The department shall review the contract at least once each year and shall solicit and receive bids on the provision of poison control services no less than once every five years. This paragraph (b) shall apply to contract years commencing July 1, 1995, and thereafter.

(c) To provide, by contract and for adequate reimbursement, poison control services and the dissemination of poison control information to the citizens of other states by this state;

(d) To contract with an auditor for a performance or financial audit at the discretion of the department. A copy of such audit, when performed, shall be sent to the members of the board and the joint budget committee.

(2) Whenever the department of health care policy and financing is referred to or designated by any contract or other document in connection with the duties and functions transferred to the department of public health and environment, such reference or designation shall be deemed to refer to the department of public health and environment.

nation shall be deemed to apply to the department of public health and environment. All contracts entered into by the department of health care policy and financing prior to July 1, 2002, in connection with the duties and functions transferred to the department of public health and environment, are hereby validated, with the department of public health and environment succeeding to all the rights and obligations of such contracts. Any appropriation of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the department of public health and environment for the payment of such obligations.

Source: L. 2002: Entire article added, p. 426, § 1, effective July 1.

25-32-106. Release of medical information. Notwithstanding any other provisions to the contrary, when a poison control service provider selected pursuant to section 25-32-105 determines that a medical emergency exists and that information concerning the patient's medical history is necessary to assist in the diagnosis or treatment of such patient, the patient's physician shall release to the poison control service provider such medical information concerning the patient as may be necessary to aid in the diagnosis or treatment of the patient. The poison control service provider receiving such information shall maintain the confidentiality of the information received.

Source: L. 2002: Entire article added, p. 427, § 1, effective July 1.

ARTICLE 33

Farmers' Market Nutrition Program Women, Infants, and Children

25-33-101 to 25-33-104. (Repealed)

Editor's note: (1) This article was added in 2002 and was not amended prior to its repeal in 2006. For the text of this article prior to 2006, consult the 2005 Colorado Revised Statutes.

(2) Section 25-33-104 (1) provided for the repeal of this article, effective July 1, 2006, if the program was not implemented due to insufficient funds. On June 20, 2006, the revisor of statutes received notice from the joint budget committee staff director that the conditions in § 25-33-104 (1) had not been met.

ARTICLE 34

Colorado Stroke Advisory Board

25-34-101 to 25-34-107. (Repealed)

Editor's note: (1) This article was added in 2002. For amendments to this article prior to its repeal in 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 25-34-107 provided for the repeal of this article, effective July 1, 2004. (See L. 2002, p. 781.)

ARTICLE 34.1

Stroke Prevention and Treatment Cash Fund Transfer

25-34.1-101. Transfer of balance of stroke
prevention and treatment
cash fund - repeal.

25-34.1-101. Transfer of balance of stroke prevention and treatment cash fund - repeal. (Repealed)

Source: L. 2009: Entire article added, (SB 09-208), ch. 149, p. 626, § 29, effective April 20.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2009. (See L. 2009, p. 626.)

ARTICLE 35

Colorado Cancer Drug Repository Program

25-35-101.	Short title.	25-35-104.	medical devices.
25-35-102.	Definitions.	25-35-105.	Rules.
25-35-103.	Cancer drug repository - administration - donation - dispensing - cancer drugs -		Liability - prescription drug manufacturers.

25-35-101. Short title. This article shall be known and may be cited as the “Colorado Cancer Drug Repository Act”.

Source: L. 2005: Entire article added, p. 311, § 1, effective August 8.

25-35-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Cancer drug” means a prescription drug that is used to treat cancer or the side effects of cancer.

(2) “Department” means the department of public health and environment.

(3) “Dispense” shall have the same meaning as set forth in section 12-42.5-102 (11), C.R.S.

(4) “Eligible patient” means an uninsured or underinsured cancer patient who meets the eligibility criteria established in rule by the state board.

(5) “Health care facility” means a hospital, hospice, or hospital unit that is required to be licensed pursuant to section 25-3-101.

(6) “Medical clinic” means a community health clinic required to be licensed or certified by the department pursuant to section 25-1.5-103.

(7) “Medical device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component, part, or accessory that is:

(a) Recognized in the official national formulary, or the United States pharmacopoeia, or any supplement;

(b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or animals; or

(c) Intended to affect the structure or any function of the human body or animals, that does not achieve any of its primary intended purposes through chemical action within or on the human body or animals, and that is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

(8) “Pharmacist” means an individual licensed by this state pursuant to article 42.5 of title 12, C.R.S., to engage in the practice of pharmacy.

(9) “Program” means the Colorado cancer drug repository program created in section 25-35-103.

(10) “State board” means the state board of health.

Source: L. 2005: Entire article added, p. 311, § 1, effective August 8. L. 2007: (7) amended, p. 1293, § 1, effective August 3. L. 2012: (3) and (8) amended, (HB 12-1311), ch. 281, p. 1628, § 73, effective July 1.

25-35-103. Cancer drug repository - administration - donation - dispensing - cancer drugs - medical devices. (1) There is hereby established the Colorado cancer drug repository program for the purpose of allowing a cancer patient or the patient's family to donate unused cancer drugs and medical devices to uninsured and underinsured cancer patients in the state of Colorado. The program shall be administered by the department.

(2) The program shall allow a cancer patient or the patient's family to donate unused cancer drugs or medical devices to a health care facility, medical clinic, or pharmacy that elects to participate in the program. A health care facility, medical clinic, or pharmacy that receives a donated cancer drug or medical device under the program may distribute the cancer drug to another eligible health care facility, medical clinic, or pharmacy for use under the program.

(3) A pharmacist may accept and dispense cancer drugs and medical devices donated under the program to eligible patients if all of the following requirements are met:

(a) (I) The cancer drug or medical device is in its original, unopened, sealed, and tamper-evident packaging or, if packaged in single-unit doses, the single-unit-dose packaging is unopened; or

(II) The pharmacist has determined that the cancer drug or medical device is safe for redistribution;

(b) The cancer drug bears an expiration date that has not expired;

(c) The cancer drug or medical device is not adulterated or misbranded, as determined by a pharmacist; and

(d) The cancer drug or medical device is prescribed by a practitioner, as defined in section 12-42.5-102 (32), C.R.S., for use by an eligible patient and is dispensed by a pharmacist.

(4) A cancer drug or medical device donated under the program may not be resold. A health care facility, medical clinic, or pharmacy may charge an eligible patient a handling fee to receive a donated cancer drug or medical device, which fee may not exceed the amount specified in rule by the state board.

(5) Nothing in this section requires a health care facility, medical clinic, or pharmacy to participate in the program.

(6) A health care facility, medical clinic, or pharmacy that elects to participate in the program shall establish eligibility criteria for individuals to receive donated cancer drugs or medical devices. Dispensation shall be prioritized to cancer patients who are uninsured or underinsured. Dispensation to other cancer patients shall be permitted if an uninsured or underinsured cancer patient is not available.

Source: L. 2005: Entire article added, p. 312, § 1, effective August 8. L. 2007: (3)(a) and (3)(c) amended and (6) added, p. 1294, § 2, effective August 3. L. 2012: (3)(d) amended, (HB 12-1311), ch. 281, p. 1628, § 74, effective July 1.

25-35-104. Rules. (1) The state board, in consultation with the state board of pharmacy, shall promulgate any rules necessary for the implementation and administration of the program. The rules shall include, at a minimum:

(a) Requirements for health care facilities, medical clinics, and pharmacies to accept and dispense donated cancer drugs and medical devices under the program, including but not limited to:

(I) Eligibility criteria; and

(II) Standards and procedures for a health care facility, medical clinic, or pharmacy to accept, safely store, and dispense donated cancer drugs and medical devices.

(b) and (c) Repealed.

(d) The maximum handling fee that a health care facility, medical clinic, or pharmacy may charge for distributing or dispensing donated cancer drugs or medical devices.

(e) Repealed.

Source: L. 2005: Entire article added, p. 313, § 1, effective August 8. L. 2007: (1)(b), (1)(c), and (1)(e) repealed, p. 1294, § 3, effective August 3.

25-35-105. Liability - prescription drug manufacturers. Nothing in this article shall be construed to create or abrogate any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of a cancer drug or medical device, or to create any civil cause of action against a prescription drug manufacturer, in addition to that which is available under applicable law.

Source: L. 2005: Entire article added, p. 313, § 1, effective August 8.

ARTICLE 36

Short-term Grants for Innovative Health Programs

25-36-101. Short-term grants for innovative health programs - grant fund - creation - appropriation from fund - transfer of moneys for fiscal years 2007-08 through 2011-12 - repeal.

25-36-101. Short-term grants for innovative health programs - grant fund - creation - appropriation from fund - transfer of moneys for fiscal years 2007-08 through 2011-12 - repeal.

(1) Repealed.

(2) (a) (I) The short-term innovative health program grant fund is hereby created in the state treasury. The principal of the fund shall include settlement moneys, as defined in section 24-75-1102 (2), C.R.S., transferred to the fund pursuant to sections 24-22-115 (1) (b) and 24-75-1104.5 (1.5) (a) (IX) and (1.5) (b), C.R.S., and any other moneys that the general assembly may appropriate or transfer to the fund. Interest and income earned on the deposit and investment of fund moneys shall remain in the fund and shall not be credited to the general fund or to any other fund at the end of any fiscal year; except that, effective June 30, 2012, all moneys in the fund shall be transferred to the tobacco litigation settlement cash fund created in section 24-22-115 (1) (a), C.R.S.

(II) This paragraph (a) is repealed, effective December 31, 2012.

(b) Repealed.

(3) to (10) Repealed.

Source: L. 2007: Entire article added, p. 148, § 8, effective March 22; (8) added, p. 1356, § 6, effective May 29; (3) added, p. 1383, § 2, effective May 30; (9) added, p. 1398, § 3, effective May 30; (4) added, p. 1673, § 2, effective May 31; (7) added, p. 2081, § 2, effective June 4; (10) added, p. 2108, § 2, effective June 4; (5) and (6) added, p. 893, § 6, effective July 1. **L. 2008:** (3) amended, p. 1908, § 107, effective August 5. **L. 2009:** (5) amended, (SB 09-210), ch. 124, p. 533, § 6, effective April 16; (2) amended, (SB 09-208), ch. 149, p. 626, § 30, effective April 20; (10) amended, (HB 09-1111), ch. 396, p. 2142, § 5, effective June 2. **L. 2010:** (3) and (7) amended, (SB 10-175), ch. 188, p. 799, § 63, effective April 29; (10)(b) amended, (HB 10-1138), ch. 142, p. 485, § 11, effective July 1. **L. 2011:** (10)(b) amended, (HB 11-1281), ch. 180, p. 689, § 12, effective May 19. **L. 2012:** (1), (2)(b), (3) to (7), (9) and (10) repealed and (2)(a) amended, (HB 12-1247), ch. 53, p. 194, § 5, effective March 22.

Editor's note: Subsection (8)(b) provided for the repeal of subsection (8), effective July 1, 2008. (See L. 2007, p. 1356.)

ARTICLE 37

Contracts With Health Care Providers

Editor's note: This article was added in 2007. This article was amended with relocations in 2010, resulting in the addition, relocation, and elimination of sections as well as subject matter. For

amendments to this article prior to 2010, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

25-37-101.	Applicability of article.	25-37-108.	Assignment of rights - requirements.
25-37-102.	Definitions.	25-37-109.	Waiver of rights prohibited.
25-37-103.	Health care contracts - required provisions - permissible provision.	25-37-110.	Provider declining service to new patients - notice - definition.
25-37-104.	Material change in health care contract - written advance notice.	25-37-111.	Termination of contract - effect on payment terms - right to terminate - termination of pharmacy contracts.
25-37-105.	Contract modification by operation of law.	25-37-112.	Disclosure to third parties - confidentiality.
25-37-106.	Clean claims - development of standardized payment rules and code edits - task force to develop - legislative recommendations - short title - applicability - repeal.	25-37-113.	Article inapplicable - when.
25-37-107.	Claim adjudication information - balance owing.	25-37-114.	Enforcement.
		25-37-115.	Providers obligated to comply with law.
		25-37-116.	Copyrights protected.

25-37-101. Applicability of article. Except as provided in section 25-37-106, a person or entity that contracts with a health care provider shall comply with this article and shall include the provisions required by this article in the contract.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1413, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (1) as it existed prior to 2010.

25-37-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Category of coverage" means one of the following types of coverage offered by a person or entity:
 - (a) Health maintenance organization plans;
 - (b) Any other commercial plan or contract that is not a health maintenance organization plan;
 - (c) Medicare;
 - (d) Medicaid; or
 - (e) Workers' compensation.
- (2) "CMS" means the federal centers for medicare and medicaid services in the United States department of health and human services.
- (3) "CPT code set" means the current procedural terminology code, or its successor code, as developed and copyrighted by the American medical association, or its successor entity, and adopted by the CMS as a HIPAA code set.
- (4) "Edit" means a practice or procedure, consistent with the standardized set of payment rules and claim edits developed pursuant to section 25-37-106, pursuant to which one or more adjustments are made regarding procedure codes, including the CPT code sets and the HCPCS, that results in:
 - (a) Payment for some, but not all, of the codes;
 - (b) Payment for a different code;
 - (c) A reduced payment as a result of services provided to a patient that are claimed under more than one code on the same service date;
 - (d) A modified payment related to a permissible and legitimate modifier used with a procedure code, as specified in section 25-37-106 (2); or
 - (e) A reduced payment based on multiple units of the same code billed for a single date of service.

(5) “HCPCS” means the health care common procedure coding system developed by the CMS for identifying health care services in a consistent and standardized manner.

(6) “Health care contract” or “contract” means a contract entered into or renewed between a person or entity and a health care provider for the delivery of health care services to others.

(7) “Health care provider” means a person licensed or certified in this state to practice medicine, pharmacy, chiropractic, nursing, physical therapy, podiatry, dentistry, optometry, occupational therapy, or other healing arts. “Health care provider” also means an ambulatory surgical center, a licensed pharmacy or provider of pharmacy services, and a professional corporation or other corporate entity consisting of licensed health care providers as permitted by the laws of this state.

(8) “HIPAA code set” means any set of codes used to encode elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes, that have been adopted by the secretary of the United States department of health and human services pursuant to the federal “Health Insurance Portability and Accountability Act of 1996”, as amended. “HIPAA code set” includes the codes and the descriptors of the codes.

(9) (a) “Material change” means a change to a contract that decreases the health care provider’s payment or compensation, changes the administrative procedures in a way that may reasonably be expected to significantly increase the provider’s administrative expense, replaces the maximum allowable cost list used with a new and different maximum allowable cost list by a person or entity for reimbursement of generic prescription drug claims, or adds a new category of coverage.

(b) “Material change” does not include:

(I) A decrease in payment or compensation resulting solely from a change in a published fee schedule upon which the payment or compensation is based and the date of applicability is clearly identified in the contract;

(II) A decrease in payment or compensation resulting from a change in the fee schedule specified in a contract for pharmacy services such as a change in a fee schedule based on average wholesale price or maximum allowable cost;

(III) A decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract;

(IV) An administrative change that may significantly increase the provider’s administrative expense, the specific applicability of which is clearly identified in the contract;

(V) Changes to an existing prior authorization, precertification, notification, or referral program that do not substantially increase the provider’s administrative expense; or

(VI) Changes to an edit program or to specific edits; however, the person or entity shall provide notice of the changes to the health care provider in accordance with paragraph (c) of this subsection (9), and the notice shall include information sufficient for the health care provider to determine the effect of the change.

(c) If a change to the contract is administrative only and is not a material change, the change shall be effective upon at least fifteen days’ notice to the health care provider. All other notices shall be provided pursuant to the contract.

(10) “National correct coding initiative” or “NCCI” means the system developed by the CMS to promote consistency in national correct coding methodologies and to control improper coding leading to inappropriate payment in medicare part B claims for professional services.

(11) “National initiative” means a collaborative effort led by or occurring under the direction of the secretary of the United States department of health and human services, which includes a diverse group of stakeholders, to create a level of understanding of the impact of coding edits on the industry and a uniform, standardized set of claim edits that meets the needs of the stakeholders in the industry.

(12) “Person or entity” means a person or entity that has a primary business purpose of contracting with health care providers for the delivery of health care services.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1413, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (2) as it existed prior to 2010.

25-37-103. Health care contracts - required provisions - permissible provision.

(1) (a) A person or entity shall provide, with each health care contract, a summary disclosure form disclosing, in plain language, the following:

- (I) The terms governing compensation and payment;
- (II) Any category of coverage for which the health care provider is to provide service;
- (III) The duration of the contract and how the contract may be terminated;
- (IV) The identity of the person or entity responsible for the processing of the health care provider's claims for compensation or payment;
- (V) Any internal mechanism required by the person or entity to resolve disputes that arise under the terms or conditions of the contract; and
- (VI) The subject and order of addenda, if any, to the contract.

(b) The summary disclosure form required by paragraph (a) of this subsection (1) shall be for informational purposes only and shall not be a term or condition of the contract; however, such disclosure shall reasonably summarize the applicable contract provisions.

(c) If the contract provides for termination for cause by either party, the contract shall state the reasons that may be used for termination for cause, which terms shall not be unreasonable, and the contract shall state the time by which notice of termination for cause shall be provided and to whom the notice shall be given.

(d) The person or entity shall identify any utilization review or management, quality improvement, or similar program the person or entity uses to review, monitor, evaluate, or assess the services provided pursuant to a contract. The policies, procedures, or guidelines of such program applicable to a provider shall be disclosed upon request of the health care provider within fourteen days after the date of the request.

(2) (a) The disclosure of payment and compensation terms pursuant to subsection (1) of this section shall include information sufficient for the health care provider to determine the compensation or payment for the health care services and shall include the following:

- (I) The manner of payment, such as fee-for-service, capitation, or risk sharing;
- (II) (A) The methodology used to calculate any fee schedule, such as relative value unit system and conversion factor, percentage of medicare payment system, or percentage of billed charges. As applicable, the methodology disclosure shall include the name of any relative value system; its version, edition, or publication date; any applicable conversion or geographic factor; and any date by which compensation or fee schedules may be changed by such methodology if allowed for in the contract.

(B) The fee schedule for codes reasonably expected to be billed by the health care provider for services provided pursuant to the contract, and, upon request, the fee schedule for other codes used by or which may be used by the health care provider. Such fee schedule shall include, as may be applicable, service or procedure codes such as current procedural terminology (CPT) codes or health care common procedure coding system (HCPCS) codes and the associated payment or compensation for each service code.

(C) The fee schedule required in sub-subparagraph (B) of this subparagraph (II) may be provided electronically.

(D) A fee schedule for the codes described by sub-subparagraph (B) of this subparagraph (II) shall be provided when a material change related to payment or compensation occurs. Additionally, a health care provider may request that a written fee schedule be provided up to twice per year, and the person or entity must provide such fee schedule promptly.

(III) The person or entity shall state the effect of edits, if any, on payment or compensation. A person or entity may satisfy this requirement by providing a clearly understandable, readily available mechanism, such as through a web site, that allows a health care provider to determine the effect of edits on payment or compensation before service is provided or a claim is submitted.

(b) Notwithstanding any provision of this subsection (2) to the contrary, disclosure of a fee schedule or the methodology used to calculate a fee schedule is not required:

(I) From a person or entity if the fee schedule is for a plan for dental services, its providers include licensed dentists, the fee schedule is based upon fees filed with the person or entity by dental providers, and the fee schedule is revised from time to time based upon such filings. Specific numerical parameters are not required to be disclosed.

(II) If the fee schedule is for pharmacy services or drugs such as a fee schedule based on use of national drug codes.

(3) When a proposed contract is presented by a person or entity for consideration by a health care provider, the person or entity shall provide in writing or make reasonably available the information required in subsections (1) and (2) of this section. If the information is not disclosed in writing, it shall be disclosed in a manner that allows the health care provider to timely evaluate the payment or compensation for services under the proposed contract. The disclosure obligations in this article shall not prevent a person or entity from requiring a reasonable confidentiality agreement regarding the terms of a proposed contract.

(4) Nothing in this article shall be construed to require the renegotiation of a contract in existence before the applicable compliance date in this article, and any disclosure required by this article for such contracts may be by notice to the health care provider.

(5) A contract subject to this article may include an agreement for binding arbitration.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1416, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (3), (4), (6), (9), and (19) as they existed prior to 2010.

25-37-104. Material change in health care contract - written advance notice.

(1) A material change to a contract shall occur only if the person or entity provides in writing to the health care provider the proposed change and gives ninety days' notice before the effective date of the change. The writing shall be conspicuously entitled "notice of material change to contract".

(2) If the health care provider objects in writing to the material change within fifteen days and there is no resolution of the objection, either party may terminate the contract upon written notice of termination provided to the other party not later than sixty days before the effective date of the material change.

(3) If the health care provider does not object to the material change pursuant to subsection (2) of this section, the change shall be effective as specified in the notice of material change to the contract.

(4) If a material change is the addition of a new category of coverage and the health care provider objects, the addition shall not be effective as to the health care provider, and the objection shall not be a basis upon which the person or entity may terminate the contract.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1418, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (7) as it existed prior to 2010.

25-37-105. Contract modification by operation of law. Notwithstanding section 25-37-103 (3), a contract may be modified by operation of law as required by any applicable state or federal law or regulation, and the person or entity may disclose this change by any reasonable means.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1418, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (8) as it existed prior to 2010.

25-37-106. Clean claims - development of standardized payment rules and code edits - task force to develop - legislative recommendations - short title - applicability - repeal. (1) This section shall be known and may be cited as the “Medical Clean Claims Transparency and Uniformity Act”.

(2) (a) (I) For purposes of facilitating the development of a standardized set of payment rules and claim edits for use by health care providers and payers in the processing of medical claims, the executive director of the department of health care policy and financing shall establish a task force by November 30, 2010, consisting of representatives of all industry segments directly affected by this section, including:

(A) Health care providers or employees thereof from a diverse group of settings, which shall include providers from health care community clinics, ambulatory surgical centers, urgent care centers, and hospitals;

(B) Persons or entities that pay for health care services, referred to in this section as “payers”;

(C) Practice management system vendors;

(D) Billing and revenue cycle management service companies; and

(E) State and federal government entities and agencies that pay for or are otherwise involved in the payment or provision of health care services.

(II) The task force should be comprised of individuals with expertise in the areas of payment rules and claim edits and their impact on the submission and payment of health insurance claims.

(III) The task force shall work to develop a standardized set of payment rules and claim edits as required by this subsection (2) and, while fulfilling its duties, shall monitor and stay informed of the national initiative so as to avoid duplication or creation of competing or conflicting payment rules and claim edits.

(b) Within two years after the task force is established, the task force shall develop a base set of standardized payment rules and claim edits to be used by payers and health care providers in the processing of medical claims that can be implemented into computerized medical claims processing systems. The base set of rules and edits shall be identified through existing national industry sources that are represented by the following:

(I) The NCCI;

(II) CMS directives, manuals, and transmittals;

(III) The medicare physician fee schedule;

(IV) The CMS national clinical laboratory fee schedule;

(V) The HCPCS coding system and directives;

(VI) The CPT coding guidelines and conventions; and

(VII) National medical specialty society coding guidelines.

(c) (I) As the base set of rules and edits developed pursuant to paragraph (b) of this subsection (2) may not address every type of health care service involved in a medical claim, the task force shall work to develop a complete set of uniform, standardized payment rules and claim edits to cover all types of professional services. In working to develop a complete set of rules and edits, the task force shall request to participate in the national initiative or work with national experts to identify any rules and edits that are not encompassed by the national industry sources identified in paragraph (b) of this subsection (2) or that potentially conflict with each other. Additionally, the task force shall consider the CMS medically unlikely edits and commercial claims editing systems that source their edits to national industry sources on a code and code edit pair level in order to create a complete set of payment rules and claim edits.

(II) In developing a complete set of uniform, standardized payment rules and claim edits, the task force shall consider standardizing the following types of edits, without limitation:

(A) Unbundle;

(B) Mutually exclusive;

(C) Multiple procedure reduction;

(D) Age;

(E) Gender;

(F) Maximum frequency per day;

- (G) Global surgery days;
- (H) Place of service;
- (I) Type of service;
- (J) Assistant at surgery;
- (K) Co-surgeon;
- (L) Team surgeons;
- (M) Total, professional, or technical splits;
- (N) Bilateral procedures;
- (O) Anesthesia services; and
- (P) The effect of CPT and HCPCS modifiers on these edits as applicable.

(d) (I) The task force shall submit a report and recommendations concerning the set of uniform, standardized payment rules and claim edits to the executive director of the department of health care policy and financing and the health and human services committees of the senate and house of representatives, or their successor committees, by November 30, 2012, and shall present its report and recommendations to a joint meeting of the said health and human services committees by January 31, 2013.

(II) If, at the time the task force submits its report, the national initiative has reached consensus on a complete or partial set of standardized payment rules and claim edits that the task force determines to be in the best interests of Colorado, the task force shall recommend that standardized set of payment rules and claim edits for use by all payers doing business in Colorado, which shall be implemented by payers as follows:

(A) Payers that are commercial health plans shall implement the standardized set of payment rules and claim edits within their claims processing systems according to a schedule outlined under the national initiative or by January 1, 2014, whichever occurs first; and

(B) Payers that are domestic, nonprofit health plans shall implement the standardized set of payment rules and claim edits within their claims processing systems by January 1, 2015.

(III) If, at the time the task force submits its report, the national initiative work group has not reached consensus on a complete or partial set of standardized payment rules and claim edits:

(A) The base set of standardized payment rules and claim edits developed pursuant to paragraph (b) of this subsection (2) shall become the standards used in Colorado by payers and health care providers; and

(B) The task force shall continue working to develop a complete set of uniform, standardized payment rules and claim edits and, by December 31, 2013, shall submit a report and may recommend implementation of a set of uniform, standardized payment rules and claim edits to be used by payers and health care providers.

(IV) As part of its recommendations pursuant to this paragraph (d), the task force shall make recommendations concerning the implementation, updating, and dissemination of the standardized set of payment rules and claim edits, including identifying who is responsible for establishing a central repository for accessing the rules and edits set and enabling electronic access, including downloading capability, to the rules and edits set.

(V) The standardized payment rules and claim edits developed pursuant to subparagraph (III) of this paragraph (d) shall be implemented by payers as follows:

(A) Payers that are commercial health plans shall implement the standardized set of payment rules and claim edits within their claims processing systems according to a schedule outlined in the task force recommendations or by January 1, 2015, whichever occurs first; and

(B) Payers that are domestic, nonprofit health plans shall implement the standardized set of payment rules and claim edits within their claims processing systems by January 1, 2016.

(3) Once the standardized set of payment rules and claim edits is established and implemented, no other proprietary or other claims edits, other than those edits described in paragraph (c) of subsection (4) of this section, shall be applied to modify the payment of charges for covered services; except that, if national standards are later identified for

standardized payment rules and claim edits, Colorado payers shall comply with the national standards according to the implementation schedule required by federal law.

(4) Nothing in this section shall be construed to:

(a) Interfere with or modify the actual contracted rate that is reimbursed by a contracting person or entity to a health care provider for any procedure or grouping of procedures;

(b) Limit contractual arrangements or terms negotiated between the contracting person or entity and the health care provider; or

(c) Limit the ability of the contracting person or entity to apply proprietary or other claims edits used to determine whether or not a covered service is reasonable and necessary for the patient's condition or treatment. The edits permissible pursuant to this paragraph (c) are those used in utilization review or monitoring for suspected cases of abuse or fraud, and the edits may limit coverage based on the diagnosis or frequency reported on the claim. Information pertaining to these edits shall be disclosed within fourteen days after the request of the health care provider in accordance with section 25-37-103 (1) (d).

(5) Nothing in this section requires the department of health care policy and financing to provide administrative or research support or assistance to the task force in carrying out its duties under this section.

(6) (a) The executive director of the department of health care policy and financing shall designate a nonprofit or private organization as the custodian of funds for the task force. The designated organization is authorized to accept and expend funds as necessary for the operation of the task force and may solicit and accept monetary and in-kind gifts, grants, and donations for use in furtherance of the task force's duties and responsibilities. Any moneys donated or awarded to the designated organization for the benefit of the task force are not subject to appropriation by the general assembly, and any such moneys that are unexpended or unencumbered at the time the task force is dissolved or this section repeals pursuant to subsection (7) of this section shall be returned to the donors or grantors on a pro rata basis, as determined by the designated organization.

(b) The designated organization, on behalf of the task force, may accept in-kind staff support from nonprofit agencies or private groups or may contract with nonprofit agencies or private groups for the purpose of providing staff support to assist the task force in conducting its duties and responsibilities under this section. Any staff support provided by a nonprofit agency or private group, whether donated or engaged through a contract, shall not be considered employees of the task force or the designated organization.

(c) The designated organization shall prepare an operating budget for the task force. Prior to expending any moneys it receives, the designated organization, on behalf of the task force, shall transmit a copy of the budget to the executive director of the department of health care policy and financing and shall certify to the executive director that the designated organization has received or has available adequate funding to cover the expenses of the task force as identified in the budget.

(7) This section is repealed, effective June 30, 2012, unless the executive director of the department of health care policy and financing notifies the revisor of statutes, in writing, that the organization designated pursuant to subsection (6) of this section has certified that, as of June 30, 2012, it has received or has available sufficient moneys to implement this section.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1418, § 1, effective May 26.

Editor's note: On June 27, 2012, the revisor of statutes received the notice referred to in subsection (7) from the executive director of the department of health care policy and financing that the designated organization has available sufficient moneys to implement this section.

25-37-107. Claim adjudication information - balance owing. Upon completion of processing of a claim, the person or entity shall provide information to the health care provider stating how the claim was adjudicated and the responsibility for any outstanding balance of any party other than the person or entity.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1423, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (5) as it existed prior to 2010.

25-37-108. Assignment of rights - requirements. (1) A person or entity shall not assign, allow access to, sell, rent, or give the person's or entity's rights to the health care provider's services pursuant to the person's or entity's contract unless the person or entity complies with the requirements of this section.

(2) A person or entity may assign, allow access to, sell, rent, or give his, her, or its rights to the health care provider's services pursuant to the person's or entity's contract if one of the following situations exists:

(a) The third party accessing the health care provider's services under the contract is an employer or other entity providing coverage for health care services to its employees or members and such employer or entity has, with the person or entity contracting with the health care provider, a contract for the administration or processing of claims for payment or service provided pursuant to the contract with the health care provider;

(b) The third party accessing the health care provider's services under the contract is an affiliate of, subsidiary of, or is under common ownership or control with the person or entity; or, is providing or receiving administrative services from the person or entity or an affiliate of, or subsidiary of, or is under common ownership or control with the person or entity; or

(c) The health care contract specifically provides that it applies to network rental arrangements and states that it is for the purpose of assigning, allowing access to, selling, renting, or giving the person's or entity's rights to the health care provider's services.

(3) In addition to satisfying the requirements of subsection (2) of this section, a person or entity may assign, allow access to, sell, rent, or give his, her, or its rights under the contract to the services of the health care provider only if:

(a) The individuals receiving services under the health care provider's contract are provided with appropriate identification stating where claims should be sent and where inquiries should be directed; and

(b) The third party accessing the health care provider's services through the health care provider's contract is obligated to comply with all applicable terms and conditions of the contract; except that a self-funded plan receiving administrative services from the person or entity or its affiliates shall be solely responsible for payment to the provider.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1423, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (10) as it existed prior to 2010.

25-37-109. Waiver of rights prohibited. Except as permitted by this article, a person or entity shall not require, as a condition of contracting, that a health care provider waive or forego any right or benefit to which the health care provider may be entitled under state or federal law, rule, or regulation that provides legal protections to a person solely based on the person's status as a health care provider providing services in this state.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1424, § 1, effective May 26.

Editor's note: This section is similar to former § 25-37-101 (11) as it existed prior to 2010.

25-37-110. Provider declining service to new patients - notice - definition. (1) Upon sixty days' notice, a health care provider may decline to provide service pursuant to a contract to new patients covered by the person or entity. The notice shall state the reason or reasons for this action.

(2) As used in this section, “new patients” means those patients who have not received services from the health care provider in the immediately preceding three years. A patient shall not become a “new patient” solely by changing coverage from one person or entity to another person or entity.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1424, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (12) as it existed prior to 2010.

25-37-111. Termination of contract - effect on payment terms - right to terminate - termination of pharmacy contracts. (1) A term for compensation or payment shall not survive the termination of a contract, except for a continuation of coverage required by law or with the agreement of the health care provider.

(2) In addition to the right to terminate a contract in accordance with section 25-37-104 (2) based on a material change to the contract, a contract with a duration of less than two years shall provide to each party a right to terminate the contract without cause, which termination shall occur with at least ninety days’ written notice. For contracts with a duration of two or more years, termination without cause may be as specified in the contract.

(3) A contract between a pharmacist or a pharmacy and a pharmacy benefit manager, such as a pharmacy benefit management firm as defined in section 10-16-102, C.R.S., shall be terminated if the federal drug enforcement agency or other federal law enforcement agency ceases the operations of the pharmacist or pharmacy due to alleged or actual criminal activity.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1424, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (13), (15), and (17) as they existed prior to 2010.

25-37-112. Disclosure to third parties - confidentiality. A contract shall not preclude its use or disclosure to a third party for the purpose of enforcing the provisions of this article or enforcing other state or federal law. The third party shall be bound by the confidentiality requirements set forth in the contract or otherwise.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1425, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (14) as it existed prior to 2010.

25-37-113. Article inapplicable - when. (1) This article shall not apply to:

(a) An exclusive contract with a single medical group in a specific geographic area to provide or arrange for health care services; however, this article shall apply to contracts for health care services between the medical group and other medical groups;

(b) A contract or agreement for the employment of a health care provider or a contract or agreement between health care providers;

(c) A contract or arrangement entered into by a hospital or health care facility that is licensed or certified pursuant to section 25-3-101;

(d) A contract between a health care provider and the state or federal government or their agencies for health care services provided through a program for workers’ compensation, medicaid, medicare, the children’s basic health plan provided for in article 8 of title 25.5, C.R.S., or the Colorado indigent care program created in part 1 of article 3 of title 25.5, C.R.S.;

(e) Contracts for pharmacy benefit management, such as with a pharmacy benefit management firm as defined in section 10-16-102, C.R.S.; except that this exclusion shall not apply to a contract for health care services between a person or entity and a pharmacy, pharmacist, or professional corporation or corporate entity consisting of pharmacies or pharmacists as permitted by the laws of this state; or

(f) A contract or arrangement entered into by a hospital or health care facility that is licensed or certified pursuant to section 25-3-101, or any outpatient service provider that has entered into a joint venture with the hospital or is owned by the hospital or health care facility.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1425, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (16) and (18) as they existed prior to 2010.

25-37-114. Enforcement. (1) With respect to the enforcement of this article, including arbitration, there shall be available:

- (a) Private rights of action at law and in equity;
 - (b) Equitable relief, including injunctive relief;
 - (c) Reasonable attorney fees when the health care provider is the prevailing party in an action to enforce this article, except to the extent that the violation of this article consisted of a mere failure to make payment pursuant to a contract;
 - (d) The option to introduce as persuasive authority prior arbitration awards regarding a violation of this article.
- (2) Arbitration awards related to the enforcement of this article may be disclosed to those who have a bona fide interest in the arbitration.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1426, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (20) as it existed prior to 2010.

25-37-115. Providers obligated to comply with law. No provision of this article shall be used to justify any act or omission by a health care provider that is prohibited by any applicable professional code of ethics or state or federal law prohibiting discrimination against any person.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1426, § 1, effective May 26.

Editor’s note: This section is similar to former § 25-37-101 (21) as it existed prior to 2010.

25-37-116. Copyrights protected. Nothing in this article, including the designation of standards, code sets, rules, edits, or related specifications, divests copyright holders of their copyrights in any work referenced in this article.

Source: L. 2010: Entire article amended with relocations, (HB 10-1332), ch. 300, p. 1426, § 1, effective May 26.

ARTICLE 38

Physician Designation and Disclosure

25-38-101.	Short title.	25-38-103.	Definitions.
25-38-102.	Legislative declaration.	25-38-104.	Minimum requirements for

	designations - disclaimer required.	25-38-106.	Notice of use or change of designation required - appeal process.
25-38-105.	Disclosure required upon request - information not proprietary.	25-38-107.	Enforcement.
		25-38-108.	Severability.

25-38-101. Short title. This article shall be known and may be cited as the “Physician Designation Disclosure Act”.

Source: L. 2008: Entire article added, p. 2012, § 1, effective September 1.

25-38-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Health care entities have instituted or are instituting quantitative and qualitative designations of physicians;

(b) Physician designations are disclosed and represented to consumers and others as part of marketing, sales, and other efforts, and such designations may be used by consumers in selecting the physicians from whom they receive care;

(c) Designations are based on claims data, practice criteria or guidelines, and other criteria, not all of which are made known to consumers or to the physicians designated;

(d) Health care entities differ in the extent to which they provide access to some or all of the data, criteria, and methodologies;

(e) Regulatory agencies in other states have taken action against health care entities to require disclosure of designation information and to set certain criteria by which designations may be used;

(f) For the protection of consumers and physicians and to avoid improper profiling of physicians, health care entities must ensure that they are using designations that are fair and accurate and must accord physicians the right to challenge and correct erroneous designations, data, and methodologies;

(g) Full disclosure of the data and methodologies by which physicians are designated will encourage, to the fullest extent possible, the accuracy, fairness, and usefulness of such designations. Disclosures will help keep patients from being exposed to inaccurate, misleading, and incorrect information about the nature and quality of the care of physicians. The disclosure required by this article will encourage the use of guidelines and criteria from well-recognized professional societies and groups using evidence-based and consensus practice recommendations. Disclosure will allow health care consumers and physicians an opportunity to better understand the criteria, basis, and methods by which physicians are evaluated, and disclosure will foster competition among health care entities to improve the way in which designations are used. Accordingly, the general assembly finds that requiring full disclosure of designation data and methodologies and setting certain minimum standards for making such designations will help improve the quality and efficiency of health care delivered in Colorado.

(h) The general assembly intends this article to serve as the initial stage of a multipart process to increase transparency of information about health care quality and costs in Colorado. Future actions may include, but are not limited to, creation of a multistakeholder work group, comprised of health care entities, health plans, businesses, consumer groups, and others as identified, to develop a system for aggregating cost and quality information across health care entities and consumers. The ultimate goal is to develop standardized quality reporting arrangements, consistent with national standards and subject to evaluation by an independent entity, that are accessible and meaningful to consumers and other stakeholders.

Source: L. 2008: Entire article added, p. 2012, § 1, effective September 1.

25-38-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Carrier” shall have the same meaning as set forth in section 10-16-102, C.R.S.

(2) “Commissioner” means the commissioner of insurance.

(3) “Consumer” includes members of the public, health care consumers and potential health care consumers, purchasers of health insurance plans, or patients.

(4) “Designation” means an award, assignment, characterization, or representation of the cost efficiency, quality, or other assessment or measurement of the care or clinical performance of any physician that is disclosed or intended for disclosure to the public or persons actually or potentially covered by a health plan, by use of a grade, star, tier, rating, profile, or any other form of designation. “Designation” does not include:

(a) Information that is derived solely from health plan member feedback such as satisfaction ratings; or

(b) Information for programs designed to assist health plan members with estimating a physician’s routine fees or costs.

(5) “Health care entity” means any carrier or other entity that provides a plan of health care coverage to beneficiaries under a plan.

(6) “Methodology” means the method by which a designation is determined, including, but not limited to, the use of algorithms or studies, evaluation of data, application of guidelines, or performance measures.

(7) “Physician” means any physician licensed under the “Colorado Medical Practice Act”, article 36 of title 12, C.R.S.

Source: L. 2008: Entire article added, p. 2013, § 1, effective September 1.

25-38-104. Minimum requirements for designations - disclaimer required.

(1) Any designation of a physician shall include, at a minimum, the following:

(a) A quality of care component that may be satisfied by incorporating a practice guideline or performance measure pursuant to paragraph (f) of this subsection (1), and a clear representation of the weight given to quality of care in comparison with other designation factors;

(b) Statistical analyses that are accurate, valid, and reliable and, where reasonably possible, that appropriately adjust for patient population, case mix, severity of patient condition, comorbidity, outlier events, or other known statistical anomalies;

(c) A period of assessment of data, pertinent to the designation, that shall be updated by the health care entity at appropriate intervals;

(d) If claims data are used in the designation process, accurate claims data appropriately attributed to the physician. When reasonably available, the health care entity shall use aggregated data to supplement its own claims data.

(e) The physician’s responsibility for health care decisions and the financial consequences of those decisions, which shall be fairly and accurately attributed to the physician;

(f) If practice guidelines or performance measures are used in the designation process:

(I) Practice guidelines or performance measures that are promulgated or endorsed by nationally recognized health care organizations that establish or promote guidelines and performance measures emphasizing quality of health care, such as the national quality forum or the AQA alliance, or their successors, or other such national physician specialty organizations, or the Colorado clinical guidelines collaborative or its successor;

(II) Practice guidelines or performance measures that are:

(A) Evidence-based, whenever possible;

(B) Consensus-based, whenever possible; and

(C) Pertinent to the area of practice, location, and characteristics of the patient population of the physician being designated.

(2) (a) Any disclosure of a designation to a physician or consumer shall be accompanied by a conspicuous disclaimer written in bold-faced type. The disclaimer shall state that designations are intended only as a guide to choosing a physician, that designations should not be the sole factor in selecting a physician, that designations have a risk of error, and that consumers should discuss designations with a physician before choosing him or her.

(b) Failure to include the disclaimer makes the use of the designation a violation of this article.

Source: L. 2008: Entire article added, p. 2014, § 1, effective September 1.

25-38-105. Disclosure required upon request - information not proprietary.

(1) Upon request by or on behalf of the designated physician or the commissioner, a health care entity shall disclose to the requesting person a description of the methodology upon which the health care entity's designation is based and all data upon which the designation was based within forty-five days of receiving the request. The description shall be sufficiently detailed to allow the designated physician or commissioner to determine the effect of the methodology on the data being reviewed. The disclosure of the data shall be made in a manner that is reasonably understandable and allows the physician or commissioner to verify the data against his or her records. Where law or the health care entity's contractual obligations with a bona fide third party prevents disclosure of any of the data required to be disclosed by this section, the health care entity shall nonetheless provide sufficient information to allow the physician to determine how the withheld data affected the physician's designation.

(2) After the disclosure of the description of the methodology provided for in subsection (1) of this section and upon further request by or on behalf of the designated physician or the commissioner, the health care entity shall provide the complete methodology within thirty days of such further request.

(3) The "Uniform Trade Secrets Act", article 74 of title 7, C.R.S., shall not be used by a health care entity to prevent it from complying with this section.

Source: L. 2008: Entire article added, p. 2015, § 1, effective September 1.

25-38-106. Notice of use or change of designation required - appeal process.

(1) At least forty-five days before using, changing, or declining to award a designation in an existing program of designation, a health care entity shall provide the physician with written notice of such designation decision. The written notice shall describe the procedures by which the physician may:

(a) Obtain the information pursuant to section 25-38-105, including all of the data upon which the designation was based or declined; and

(b) Request an appeal of the designation decision, including the opportunity for a face-to-face meeting pursuant to subparagraph (IV) of paragraph (a) of subsection (2) of this section.

(2) (a) Any health care entity providing designations of physicians shall establish procedures for the designated physician to appeal the designation, including a change in designation or a declination to award a designation in an existing program of designation. Such procedures, in addition to the written notice provided for in subsection (1) of this section, shall provide for the following:

(I) A reasonable method by which the designated physician shall provide notice of his or her desire to appeal;

(II) If requested by the designated physician, disclosure of the methodology and data upon which the health care entity's decision is based;

(III) The name, title, qualifications, and relationship to the health care entity of the person or persons responsible for the appeal of the designated physician;

(IV) An opportunity to submit or have considered corrected data relevant to the designation decision and to have considered the applicability of the methodology used in the designation decision. If requested by the designated physician, such opportunity may be afforded by the health care entity in a face-to-face meeting with those responsible for the appeal decision at a location reasonably convenient to the physician or by teleconference. All data submitted to the entity by a designated physician shall be presumed valid and accurate. However, this presumption shall not be construed to permit a health care entity to unreasonably withhold consideration of corrected or supplemented data pursuant to this subparagraph (IV).

(V) The right of the physician to be assisted by a representative;

(VI) An opportunity, if so desired, to be considered as part of the appeal, an explanation of the designation decision which is the subject of the appeal by a person or persons deemed by the health care entity as responsible for the designation decision;

(VII) A written decision regarding the physician’s appeal that states the reasons for upholding, modifying, or rejecting the physician’s appeal.

(b) The appeal shall be made to a person or persons with the authority granted by the designating health care entity to uphold, modify, or reject the designation decision or to require additional action to ensure that the designation is fair, reasonable, and accurate.

(c) The appeal process shall be complete within forty-five days from the date upon which the data and methodology are disclosed unless otherwise agreed to by the parties to the appeal.

(3) No change or modification of a designation that is the subject of an appeal shall be implemented or used by the health care entity until the appeal is final.

(4) With respect to any designation previously disclosed publicly, the health care entity shall update any changes to such designation within thirty days after the appeal is final.

Source: L. 2008: Entire article added, p. 2016, § 1, effective September 1. **L. 2009:** (2)(a)(IV) amended, (SB 09-292), ch. 369, p. 1973, § 93, effective August 5.

25-38-107. Enforcement. (1) No health care entity shall limit, by contract or other means, the right of a physician to enforce this article.

(2) This article may be enforced in a civil action, and any remedies at law and in equity shall be available.

(3) A violation of this article by a health care entity shall constitute an unfair or deceptive act or practice under part 11 of article 3 of title 10, C.R.S.

Source: L. 2008: Entire article added, p. 2017, § 1, effective September 1.

25-38-108. Severability. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 2008: Entire article added, p. 2017, § 1, effective September 1.

ARTICLE 39

Colorado Alzheimer’s Coordinating Council

25-39-101 to 25-39-108. (Repealed)

Editor’s note: (1) This article was added in 2008 and was not amended prior to its repeal in 2012. For the text of this article prior to 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 25-39-108 provided for the repeal of this article, effective July 1, 2012. (See L. 2008, p. 881.)

ARTICLE 40

Umbilical Cord Blood Collection and Awareness

25-40-101.	Short title.	25-40-104.	Standards for cord blood collection and donation - administrative costs.
25-40-102.	Legislative declaration.		
25-40-103.	Adult stem cells cure fund - creation.		

25-40-101. Short title. This article shall be known and may be cited as the “Colorado Cures Act”.

Source: L. 2008: Entire article added, p. 2070, § 1, effective June 3.

25-40-102. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) The national marrow donor program reports that researchers are studying umbilical cord blood, also known as cord blood, as a source of adult blood stem cells that can be used to treat leukemia, lymphoma, and other life-threatening diseases;

(b) For many patients with a life-threatening disease, a cord blood transplant may be the best and only hope for a cure;

(c) Cord blood is desirable for use in stem cell transplants because it has a large number of adult blood stem cells;

(d) Blood from each donated umbilical cord is frozen and made available for transplant, and if it cannot be used for transplant, the cord blood stem cells may be used for research;

(e) Cord blood donations are urgently needed to keep up with the demand for transplants and research; and

(f) Many women in good health may be eligible to voluntarily donate their children’s cord blood but are unaware of its unique value or of the existence of donation programs.

(2) Therefore, it is the intent of the general assembly to create the adult stem cells cure fund for the purpose of advancing umbilical cord blood collection for public blood banks and promoting awareness across the state.

Source: L. 2008: Entire article added, p. 2070, § 1, effective June 3.

25-40-103. Adult stem cells cure fund - creation. (1) There is hereby created in the state treasury the adult stem cells cure fund, referred to in this section as the “fund”. The fund shall consist of gifts, grants, and donations transferred to the fund, which the department of public health and environment is authorized to accept, and any voluntary contributions to the fund pursuant to part 35 of article 22 of title 39, C.R.S.

(2) The department of public health and environment shall transfer any gifts, grants, and donations to the fund to the state treasurer, who shall credit the same to the fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. All moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be deposited into any other fund. The moneys in the fund shall be annually appropriated by the general assembly to the department for the purposes of this article.

Source: L. 2008: Entire article added, p. 2071, § 1, effective June 3.

25-40-104. Standards for cord blood collection and donation - administrative costs. (1) The department of public health and environment shall set standards for hospitals for the voluntary donation and collection of umbilical cord blood for hospitals that volunteer to participate in umbilical cord donation. The department is encouraged to take part in efforts to increase the number of umbilical cord donations to public blood banks and to promote public awareness of the availability of umbilical cord donation as an option for new mothers.

(2) The department may use up to five percent of the moneys appropriated from the adult stem cells cure fund, created in section 25-40-103, for administrative costs incurred in the implementation of this article. The department may use up to twenty-five percent of the moneys appropriated to the department from the fund for umbilical cord collection awareness. The department shall work with public cord blood banks and shall use the remaining moneys appropriated to the department from the fund for activities in connection with umbilical cord blood collection for public cord blood banks.

Source: L. 2008: Entire article added, p. 2071, § 1, effective June 3.

ARTICLE 41**Restroom Access Act**

25-41-101. Restroom access - short title -
definitions - retail establish-
ments - liability - penalty.

25-41-101. Restroom access - short title - definitions - retail establishments - liability - penalty. (1) This article shall be known and may be cited as the "Restroom Access Act".

(2) As used in this article, unless the context otherwise requires:

(a) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(b) "Eligible medical condition" means Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a toilet facility.

(c) "Retail establishment" means a place of business open to the general public for the sale of goods or services. "Retail establishment" does not include a filling station or service station that has an enclosed floor area of eight hundred square feet or less and that has an employee toilet facility located within that enclosed floor area.

(3) A retail establishment that has a toilet facility for its employees shall allow a customer to use the toilet facility during normal business hours if the toilet facility is reasonably safe and all of the following conditions are met:

(a) The customer requesting the use of the employee toilet facility suffers from an eligible medical condition or utilizes an ostomy device and offers a physician's note indicating the eligible medical condition or device;

(b) Three or more employees of the retail establishment are working at the time the customer requests use of the employee toilet facility;

(c) The employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment; and

(d) A public restroom is not immediately accessible to the customer.

(4) A retail establishment or an employee of a retail establishment is not civilly liable for any act or omission in allowing a customer that has an eligible medical condition to use an employee toilet facility that is not a public restroom if the act or omission:

(a) Is not willful or grossly negligent;

(b) Occurs in an area of the retail establishment that is not accessible to the public; and

(c) Results in injury to or death of the customer or any individual other than an employee accompanying the customer.

(5) This article shall not be construed to require a retail establishment to make any physical changes to an employee toilet facility.

(6) A retail establishment or an employee of a retail establishment that violates this article is guilty of a petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

Source: L. 2008: Entire article added, p. 1233, § 3, effective May 27.

ARTICLE 42**Taxing Authority of Unit of
Government Hospital Care Providers**

25-42-101. Legislative declaration.

25-42-102. Definitions.

25-42-103. Grant of taxing authority.

25-42-104.

Use of revenues derived from
sales tax.

25-42-105.

Preservation of enterprise sta-

	tus of certain providers and activities.		tax elections.
25-42-106.	Call, notice, conduct, and determination of results of	25-42-107.	Authority granted supplemental to other authority.

25-42-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

- (a) State and local governmental hospital care providers form a critical part of the health care delivery system in Colorado; and
- (b) Federal programs require the state to further define a unit of government for certain state and local governmental hospital care providers.

Source: L. 2008: Entire article added, p. 1181, § 1, effective May 22.

25-42-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Eligible elector” means an eligible elector as defined in section 32-1-103 (5) (a) (I), C.R.S., of the taxing area of a unit of government hospital provider.
- (2) “Qualified purchaser” means a person domiciled in Colorado who has been issued a direct payment permit number pursuant to section 39-26-103.5, C.R.S.
- (3) “Taxing area” means:
 - (a) In the case of the Denver health and hospital authority, the city and county of Denver;
 - (b) In the case of a county hospital, the county in which the hospital is located;
 - (c) In the case of a hospital within a health service district, the health service district;
 - (d) In the case of the university of Colorado hospital authority, the counties of Adams, Arapahoe, Boulder, Douglas, and Jefferson and the city and county of Broomfield; and
 - (e) In the case of a municipal hospital, the county in which the hospital is located.
- (4) “Unit of government hospital care provider” means:
 - (a) The Denver health and hospital authority created pursuant to section 25-29-103;
 - (b) The board of any county hospital created pursuant to section 25-3-301;
 - (c) A health service district within the meaning of section 32-1-103 (9), C.R.S.;
 - (d) The university of Colorado hospital authority created pursuant to part 5 of article 21 of title 23, C.R.S.; or
 - (e) A municipally owned hospital created pursuant to section 31-15-711 (1) (e), C.R.S.

Source: L. 2008: Entire article added, p. 1181, § 1, effective May 22.

25-42-103. Grant of taxing authority. (1) Each unit of government hospital care provider, upon the affirmative action of its governing body, shall have the authority to levy and collect a sales tax as follows:

- (a) Upon the approval of the eligible electors of the unit of government hospital care provider’s taxing area at an election held in accordance with section 20 of article X of the state constitution and this article, the unit of government hospital care provider may levy a uniform sales tax throughout its entire taxing area upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S.
- (b) A sales tax imposed pursuant to paragraph (a) of this subsection (1) shall not be levied on:
 - (I) The sale of tangible personal property delivered by a retailer or a retailer’s agent or to a common carrier for delivery to a destination outside the taxing area; or
 - (II) The sale of tangible personal property on which a specific ownership tax has been paid or is payable when such sale meets the following conditions:
 - (A) The purchaser does not reside in the taxing area or the purchaser’s principal place of business is outside the taxing area; and
 - (B) The personal property is registered or required to be registered outside the taxing area under the laws of this state.

(c) The sales tax imposed pursuant to paragraph (a) of this subsection (1) shall be in addition to any other sales or use tax imposed pursuant to law.

(2) (a) The collection, administration, and enforcement of a sales tax imposed pursuant to subsection (1) of this section shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax imposed pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director of the department of revenue shall make monthly distributions of sales tax collections to the unit of government hospital care provider. The unit of government hospital care provider shall pay the net incremental cost incurred by the department of revenue in the administration and collection of the sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to a vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax imposed on the sale that is paid for directly from the qualified purchasers' funds and not the personal funds of any individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be imposed on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) A sales tax shall not be levied by a unit of government hospital care provider without first complying with this section and section 25-42-106.

Source: L. 2008: Entire article added, p. 1182, § 1, effective May 22. L. 2009: (1)(c) amended, (SB 09-292), ch. 369, p. 1973, § 94, effective August 5.

25-42-104. Use of revenues derived from sales tax. The revenues derived by a unit of government hospital care provider from the levy and collection of the sales tax authorized by this article shall be in addition to and shall not be used to replace any state funding that the unit of government hospital care provider or any other state or local government entity would otherwise be entitled to receive from the state. The unit of government hospital care provider may use said revenues for any purpose permitted by law or by the terms of its organizational documents.

Source: L. 2008: Entire article added, p. 1184, § 1, effective May 22.

25-42-105. Preservation of enterprise status of certain providers and activities. The authority granted in this article shall be subject to affirmative action of the governing body of a unit of government hospital care provider to avail itself of this authority and shall be contingent upon electoral approval at an election held pursuant to sections 25-42-103 (1) (a) and 25-42-106. The enactment of this article shall not affect the treatment of any existing or future activity of a unit of government hospital care provider as an enterprise for purposes of section 20 of article X of the state constitution.

Source: L. 2008: Entire article added, p. 1184, § 1, effective May 22.

25-42-106. Call, notice, conduct, and determination of results of tax elections. An election held pursuant to this article may be conducted under the provisions of either the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., or the "Colorado Municipal Election Code of 1965", article 10 of title 31, C.R.S.

Source: L. 2008: Entire article added, p. 1184, § 1, effective May 22.

25-42-107. Authority granted supplemental to other authority. The authority granted by this article shall be in addition and supplemental to, and not in lieu of, the authority granted by other laws.

Source: L. 2008: Entire article added, p. 1184, § 1, effective May 22.

ARTICLE 43

Required Head Trauma Guidelines

25-43-101.	Short title.	25-43-103.	Organized school athletic activities - concussion guidelines required.
25-43-102.	Definitions.		

25-43-101. Short title. This article shall be known and may be cited as the “Jake Snakenberg Youth Concussion Act”.

Source: L. 2011: Entire article added, (SB 11-040), ch. 67, p. 176, § 1, effective January 1, 2012.

25-43-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Health care provider” means a doctor of medicine, doctor of osteopathic medicine, licensed nurse practitioner, licensed physician assistant, or licensed doctor of psychology with training in neuropsychology or concussion evaluation and management.

(2) “Public recreation facility” means a recreation facility owned or leased by the state of Colorado or a political subdivision thereof.

(3) “Youth athletic activity” means an organized athletic activity where the majority of the participants are eleven years of age or older and under nineteen years of age, and are engaging in an organized athletic game or competition against another team, club, or entity or in practice or preparation for an organized game or competition against another team, club, or entity. A “youth athletic activity” does not include college or university activities. “Youth athletic activity” does not include an activity that is entered into for instructional purposes only, an athletic activity that is incidental to a nonathletic program, or a lesson.

Source: L. 2011: Entire article added, (SB 11-040), ch. 67, p. 176, § 1, effective January 1, 2012.

25-43-103. Organized school athletic activities - concussion guidelines required.

(1) (a) Each public and private middle school, junior high school, and high school shall require each coach of a youth athletic activity that involves interscholastic play to complete an annual concussion recognition education course.

(b) Each private club or public recreation facility and each athletic league that sponsors youth athletic activities shall require each volunteer coach for a youth athletic activity and each coach with whom the club, facility, or league directly contracts, formally engages, or employs who coaches a youth athletic activity to complete an annual concussion recognition education course.

(2) (a) The concussion recognition education course required by subsection (1) of this section shall include the following:

- (I) Information on how to recognize the signs and symptoms of a concussion;
 - (II) The necessity of obtaining proper medical attention for a person suspected of having a concussion; and
 - (III) Information on the nature and risk of concussions, including the danger of continuing to play after sustaining a concussion and the proper method of allowing a youth athlete who has sustained a concussion to return to athletic activity.
- (b) An organization or association of which a school or school district is a member may designate specific education courses as sufficient to meet the requirements of subsection (1) of this section.

(3) If a coach who is required to complete concussion recognition education pursuant to subsection (1) of this section suspects that a youth athlete has sustained a concussion following an observed or suspected blow to the head or body in a game, competition, or practice, the coach shall immediately remove the athlete from the game, competition, or practice.

(4) (a) If a youth athlete is removed from play pursuant to subsection (3) of this section and the signs and symptoms cannot be readily explained by a condition other than concussion, the school coach or private or public recreational facility's designated personnel shall notify the athlete's parent or legal guardian and shall not permit the youth athlete to return to play or participate in any supervised team activities involving physical exertion, including games, competitions, or practices, until he or she is evaluated by a health care provider and receives written clearance to return to play from the health care provider. The health care provider evaluating a youth athlete suspected of having a concussion or brain injury may be a volunteer.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), a doctor of chiropractic with training and specialization in concussion evaluation and management may evaluate and provide clearance to return to play for an athlete who is part of the United States olympic training program.

(c) After a concussed athlete has been evaluated and received clearance to return to play from a health care provider, an organization or association of which a school or school district is a member, a private or public school, a private club, a public recreation facility, or an athletic league may allow a registered athletic trainer with specific knowledge of the athlete's condition to manage the athlete's graduated return to play.

(5) Nothing in this article abrogates or limits the protections applicable to public entities and public employees pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.; volunteers and board members pursuant to sections 13-21-115.7 and 13-21-116, C.R.S.; or ski area operators pursuant to sections 33-44-112 and 33-44-113, C.R.S.

Source: L. 2011: Entire article added, (SB 11-040), ch. 67, p. 177, § 1, effective January 1, 2012.

TITLE 25.5
HEALTH CARE POLICY
AND FINANCING

WITH 23

PLATE ILLUSTRATIONS
AND 17 FIGURES

TITLE 25.5

HEALTH CARE POLICY AND FINANCING

Cross references: For the legislative declaration contained in the 1993 act enacting this title, see section 1 of chapter 230, Session Laws of Colorado 1993.

ADMINISTRATION

- Art. 1. Department of Health Care Policy and Financing, 25.5-1-101 to 25.5-1-516.
Art. 2. State-funded Health and Medical Care, 25.5-2-101 and 25.5-2-102.

PRESCRIPTION DRUGS

- Art. 2.5. Colorado Cares Prescription Drug Program, 25.5-2.5-101 to 25.5-2.5-106.

INDIGENT CARE

- Art. 3. Indigent Care, 25.5-3-101 to 25.5-3-303.

COLORADO MEDICAL ASSISTANCE ACT

- Art. 4. Colorado Medical Assistance Act - General Medical Assistance, 25.5-4-101 to 25.5-4-503.
Art. 5. Colorado Medical Assistance Act - Services and Programs, 25.5-5-101 to 25.5-5-703.
Art. 6. Colorado Medical Assistance Act - Long-term Care, 25.5-6-101 to 25.5-6-1406.

CHILDREN'S BASIC HEALTH PLAN

- Art. 8. Children's Basic Health Plan, 25.5-8-101 to 25.5-8-113.

ADMINISTRATION

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Department of Health Care Policy and Financing

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| | 25.5-1-108. | Executive director - rules. |
| | 25.5-1-109. | Department of health care policy and financing cash fund. |
| | 25.5-1-109.5. | Clinical standards - development - reports. |
| | 25.5-1-110. | Study of children's access to health care coverage - acceptance of donations - repeal. (Repealed) |
| | 25.5-1-111. | Waiver applications - authorization. (Deleted by amendment) |
| | 25.5-1-112. | Drug-purchasing pool - report - repeal. (Repealed) |
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| 25.5-1-102. | | Legislative declaration. |
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| 25.5-1-104. | | Department of health care policy and financing created - executive director - powers, duties, and functions. |
| 25.5-1-105. | | Transfer of functions. |
| 25.5-1-105.5. | | Chief medical officer - qualifications. |
| 25.5-1-106. | | Restructure of health and human services - development of plan - participation of department required. (Deleted by amendment) |

- 25.5-1-113.5. Children's access to health care - reports.
- 25.5-1-114. Grants-in-aid - county supervision.
- 25.5-1-115. Locating violators - recoveries.
- 25.5-1-115.5. Medical assistance client fraud - report.
- 25.5-1-116. Records confidential - authorization to obtain records of assets - release of location information to law enforcement agencies - outstanding felony arrest warrants.
- 25.5-1-117. County departments - district departments.
- 25.5-1-118. Duties of county departments.
- 25.5-1-119. County staff.
- 25.5-1-120. Appropriations.
- 25.5-1-121. County expenditures - advancements - procedures.
- 25.5-1-122. County appropriation increases - limitations.
- 25.5-1-123. Medical homes for children - legislative declaration - duties of the department - reporting requirements.
- 25.5-1-124. Early intervention payment system - participation by state department - rules.
- 25.5-1-125. Centennial care choices - value benefit plans - request for information - request for proposals - report to general assembly - definitions - legislative declaration.
- 25.5-1-126. Discounted prices for durable medical equipment and supplies.
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- 25.5-1-128. Provider payments - compliance with state fiscal requirements - definitions - rules.
- 25.5-1-202. Advisory committee on covering all children in Colorado - reports - definitions - repeal. (Repealed)
- 25.5-1-203. Prescription drug information and technical assistance program - expansion.
- 25.5-1-204. Advisory committee to establish an all-payer health claims database - creation - members - duties - creation of all-payer health claims database - rules - repeal.
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PART 3

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- 25.5-1-301. Medical services board - creation.
- 25.5-1-302. Medical services board - organization.
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AGREEMENTS INVOLVING HOSPITALS

- 25.5-1-501 to
25.5-1-516. (Repealed)

PART 2

PROGRAMS TO BE ADMINISTERED BY
THE DEPARTMENT

- 25.5-1-201. Programs to be administered by

PART 1

GENERAL PROVISIONS

25.5-1-101. Short title. This title shall be known and may be cited as the "State Health Care Policy and Financing Act".

Source: L. 93: Entire title added, p. 1097, § 15, effective July 1, 1994. L. 2006: Entire part amended, p. 1781, § 1, effective July 1.

25.5-1-102. Legislative declaration. (1) The general assembly declares that state and local policymakers and health and human services administrators recognize that the

management of and the delivery system for health and human services have become complex, fragmented, and costly and that the health and human services delivery system in this state should be restructured to adequately address the needs of Colorado citizens.

(2) The general assembly further finds and declares that a continuing budget crisis makes it unlikely that funding sources will keep pace with the increasing demands of health and human services.

(3) Therefore, the general assembly finds that it is appropriate to restructure principal departments responsible for overseeing the delivery of health and human services and to reform the state's health and human services administration and delivery system, using guiding principles and within the time frames set forth in article 1.7 of title 24, C.R.S., as said article existed prior to July 1, 1997. It is the general assembly's intent that the departments of public health and environment, health care policy and financing, and human services be operational, effective July 1, 1994.

Source: L. 93: Entire title added, p. 1097, § 15, effective July 1, 1994. **L. 2006:** Entire part amended, p. 1781, § 1, effective July 1.

25.5-1-103. Definitions. As used in this title, unless the context otherwise requires:

(1) "County board" means the county or district board of social services; except that, in the city and county of Denver, "county board" means the department or agency with the responsibility for public assistance and welfare activities, and, in the city and county of Broomfield, "county board" means the city council or a board or commission with the responsibility for public assistance and welfare activities appointed by the city and county of Broomfield.

(2) "County department" means the county or district department of social services.

(3) "County director" means the director of the county or district department of social services.

(4) "Executive director" means the executive director of the department of health care policy and financing.

(5) "Medical assistance" means any program administered by the state department, including but not limited to the "Colorado Medical Assistance Act", as specified in articles 4, 5, and 6 of this title, the "Children's Basic Health Plan Act", article 8 of this title, the old age pension health and medical care program, and the supplemental old age pension health and medical care program; except that "medical assistance" for purposes of articles 4, 5, and 6 of this title shall have the meaning as defined in section 25.5-4-103 (13).

(5.5) "Medical home" means an appropriately qualified medical specialty, developmental, therapeutic, or mental health care practice that verifiably ensures continuous, accessible, and comprehensive access to and coordination of community-based medical care, mental health care, oral health care, and related services for a child. A medical home may also be referred to as a health care home. If a child's medical home is not a primary medical care provider, the child must have a primary medical care provider to ensure that a child's primary medical care needs are appropriately addressed. All medical homes shall ensure, at a minimum, the following:

- (a) Health maintenance and preventive care;
- (b) Anticipatory guidance and health education;
- (c) Acute and chronic illness care;
- (d) Coordination of medications, specialists, and therapies;
- (e) Provider participation in hospital care; and
- (f) Twenty-four-hour telephone care.

(6) "Recipient" means any person who has been determined eligible to receive benefits or services under this title.

(7) "State board" or "board" means the medical services board created pursuant to section 25.5-1-301.

(8) "State department" means the department of health care policy and financing.

(9) "State designated agency" means an agency designated to perform specified functions that would otherwise be performed by the county departments, including the single entry point agencies and medical assistance sites.

Source: **L. 93:** Entire title added, p. 1098, § 15, effective July 1, 1994. **L. 95:** (2.5) added, p. 903, § 2, effective May 25. **L. 96:** (1) repealed, p. 1473, § 25, effective June 1. **L. 2006:** Entire part amended, p. 1782, § 1, effective July 1. **L. 2007:** (5.5) added, p. 1487, § 1, effective May 31.

25.5-1-104. Department of health care policy and financing created - executive director - powers, duties, and functions. (1) There is hereby created the department of health care policy and financing, the head of which shall be the executive director of the department of health care policy and financing, which office is hereby created. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after an initial election of a governor shall be subject to the provisions of section 24-20-109, C.R.S. The executive director has those powers, duties, and functions prescribed for the heads of principal departments in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S., and any powers, duties, and functions set forth in this title.

(2) The department of health care policy and financing shall consist of an executive director of the department of health care policy and financing, the medical services board, and such divisions, sections, and other units as shall be established by the executive director pursuant to the provisions of subsection (3) of this section.

(3) The executive director may establish such divisions, sections, and other units within the state department as are necessary for the proper and efficient discharge of the powers, duties, and functions of the state department; except that such action by the executive director shall not conflict with the implementation requirements for the plan for restructuring the delivery of health and human services in this state, as set forth in article 1.7 of title 24, C.R.S.

(4) The department of health care policy and financing shall be responsible for the administration of the functions and programs as set forth in this title.

(5) (a) The executive director of the state department shall appoint an internal auditor who shall have the status of a division director and, as such, shall have the authority to appoint such personnel as may be necessary to carry out the duties of the internal auditor.

(b) The internal auditor appointed by the executive director pursuant to paragraph (a) of this subsection (5) shall:

(I) Conduct and supervise internal audits of the state department;

(II) Coordinate and facilitate external audits that are performed on the state department by state and federal entities;

(III) Conduct and supervise performance audits for the purpose of determining the efficiency and effectiveness of the state department's operation and administration of programs; and

(IV) Conduct such other audits and perform such other duties as may be specified by the executive director.

Source: **L. 93:** Entire title added, p. 1098, § 15, effective July 1, 1994. **L. 94:** (2) amended, p. 1559, § 4, effective July 1. **L. 96:** (2) amended, p. 1474, § 26, effective June 1. **L. 2006:** Entire part amended, p. 1783, § 1, effective July 1. **L. 2010:** (5) added, (SB 10-167), ch. 296, p. 1376, § 2, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-1-105. Transfer of functions. (1) The state department shall, on and after July 1, 1994, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 1994, in the Colorado health data commission within the department of local affairs, the department of social services concerning the "Colorado Medical Assistance Act", and the university of Colorado health sciences center concerning health care for the medically indigent.

(2) All rules, regulations, and orders of the department of local affairs, the state department of social services, the state board of social services, the department of regulatory agencies, and the university of Colorado health sciences center adopted prior to July 1, 1994, in connection with the powers, duties, and functions transferred to the state department shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. On and after July 1, 1994, the state board or the executive director, whichever is appropriate, shall adopt rules necessary for the administration of the state department and the administration of the programs set forth in this title.

(3) No suit, action, or other judicial or administrative proceeding lawfully commenced prior to July 1, 1994, or which could have been commenced prior to such date, by or against the department of local affairs, the state department of social services, the department of regulatory agencies, or the university of Colorado health sciences center, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties, shall abate by reason of the transfer of duties and functions from said departments to the state department.

(4) The executive director, or a designee of the executive director, may accept, on behalf of and in the name of the state, gifts, donations, and grants for any purpose connected with the work and programs of the state department. Any property so given shall be held by the state treasurer, but the executive director, or the designee therefor, shall have the power to direct the disposition of any property so given for any purpose consistent with the terms and conditions under which such gift was created.

(5) The revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the department of local affairs, the state department of social services, the department of regulatory agencies, and the university of Colorado health sciences center from said references to the state department, as appropriate and with respect to the powers, duties, and functions transferred to the state department. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to this section.

(6) On and after July 1, 2003, the powers, duties, and functions relating to the old age pension health and medical care program, as specified in section 25.5-2-101, are transferred by a **type 2** transfer to the department of health care policy and financing.

Source: **L. 93:** Entire title added, p. 1099, § 15, effective July 1, 1994. **L. 94:** (2) amended, p. 2610, § 12, effective July 1; (6) amended, p. 1559, § 5, effective July 1. **L. 2003:** (10) added, p. 2583, § 1, effective July 1. **L. 2005:** (1) amended, p. 772, § 50, effective June 1. **L. 2006:** Entire part amended, p. 1783, § 1, effective July 1. **L. 2011:** (6) amended, (SB 11-210), ch. 187, p. 721, § 6, effective July 15, 2012.

25.5-1-105.5. Chief medical officer - qualifications. (1) The executive director shall appoint a chief medical officer who shall:

(a) Have a degree of doctor of medicine or doctor of osteopathy and be licensed to practice medicine in the state of Colorado;

(b) Have at least two years of postgraduate experience in primary care; and

(c) Have at least two years of experience in an administrative capacity in a health care organization.

(2) The chief medical officer shall, with the assistance of advisory committees of the state department, provide medical judgment and advice regarding all medical issues involving programs administered by the state department.

(3) The chief medical officer shall receive a salary within the limits of moneys made available to the state department by appropriation of the general assembly or otherwise.

Source: **L. 2007:** Entire section added, p. 1492, § 3, effective July 1. **L. 2010:** (1) amended and (3) added, (SB 10-167), ch. 296, p. 1377, § 3, effective May 26.

Cross references: (1) For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 347, Session Laws of Colorado 2007.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-1-106. Restructure of health and human services - development of plan - participation of department required. (Deleted by amendment)

Source: L. 93: Entire title added, p. 1101, § 15, effective July 1, 1994. L. 2006: Entire part amended, p. 1785, § 1, effective July 1.

25.5-1-107. Final agency action - administrative law judge - authority of executive director. (1) The executive director may appoint one or more persons to serve as administrative law judges for the state department pursuant to section 24-4-105, C.R.S., and pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel. Except as provided in subsection (2) of this section, hearings conducted by the administrative law judge shall be considered initial decisions of the state department and shall be reviewed by the executive director or a designee of the executive director. In the event exceptions to the initial decision are filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., such review shall be in accordance with section 24-4-105 (15), C.R.S. In the absence of any exception filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., the executive director shall review the initial decision in accordance with a procedure adopted by the state board. Such procedure shall be consistent with federal mandates concerning the single state agency requirement. Review by the executive director in accordance with section 24-4-105 (15), C.R.S., or the procedure adopted by the state board pursuant to this section shall constitute final agency action. The administrative law judge may conduct hearings on appeals from decisions of county departments of social services brought by recipients of and applicants for medical assistance and welfare which are required by law in order for the state to qualify for federal funds, and the administrative law judge may conduct other hearings for the state department. Notice of any such hearing shall be served at least ten days prior to such hearing.

(2) Hearings initiated by a licensed or certified provider of services shall be conducted by an administrative law judge for the state department and shall be considered final agency action and subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S., for any party, including the state department, which shall be considered a person for such purposes.

Source: L. 93: Entire title added, p. 1101, § 15, effective July 1, 1994. L. 95: (1)(a) and (2) amended, p. 903, § 3, effective May 25; (1)(a) and (1)(c) amended, p. 664, § 101, effective July 1. L. 97: (1)(b) amended, p. 1190, § 10, effective July 1. L. 2005: (1)(c) amended, p. 859, § 25, effective June 1. L. 2006: Entire part amended, p. 1785, § 1, effective July 1.

Editor's note: (1) Amendments to subsection (1)(a) by Senate Bill 95-78 and House Bill 95-1362 were harmonized.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective January 1, 2001. (See L. 97, p. 1190.)

Cross references: For the legislative declaration contained in the 1995 act amending subsections (1)(a) and (1)(c), see section 112 of chapter 167, Session Laws of Colorado 1995.

ANNOTATION

Under the governing regulations, the department of health care policy and financing lacks authority to base its final agency decision on information that was not presented to

the ALJ. Martelon v. Colo. Dept. of Health Care Policy & Fin., 124 P.3d 914 (Colo. App. 2005) (decided prior to the 2006 amendment).

25.5-1-108. Executive director - rules. (1) The executive director shall have authority to promulgate rules in connection with the policies and procedures governing the administration of the department including, but not limited to, rules concerning the following:

- (a) Matters of internal administration of the department, including organization, staffing, records, reports, systems, and procedures;
- (b) Fiscal and personnel administration for the department;
- (c) Accounting and fiscal reporting policies and procedures for disbursement of federal funds, contingency funds, and distribution of available appropriations;
- (d) Such other rules relating to those functions the executive director is required to carry out pursuant to the provisions of this title.

(2) Nothing in this section shall be construed to affect any specific statutory provision granting rule-making authority in relation to a specific program to the executive director.

Source: **L. 94:** Entire section added, p. 1556, § 1, effective July 1. **L. 95:** (4) amended, p. 1105, § 43, effective May 31. **L. 2006:** Entire part amended, p. 1786, § 1, effective July 1.

25.5-1-109. Department of health care policy and financing cash fund. All moneys collected by the state department as fees or otherwise shall be transmitted to the state treasurer, who shall credit the same to the department of health care policy and financing cash fund, which fund is hereby created in the state treasury. Moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the state department's duties as provided by law.

Source: **L. 94:** Entire section added, p. 1941, § 3, effective July 1. **L. 2006:** Entire part amended, p. 1787, § 1, effective July 1.

25.5-1-109.5. Clinical standards - development - reports. (1) The general assembly finds that:

(a) It is important to collect and analyze objective clinical standards to maximize the scarce dollars available for medical care; and

(b) The development of an ongoing, transparent measurement of health outcomes is essential to ensure quality health care for Coloradans.

(2) (a) The state department, following consultation with external clinical advisors, shall develop clinical standards and methods for collecting, analyzing, and disclosing information regarding clinical performance, including but not limited to immunization rates, medical home standards, clinical care guidelines, care coordination, case management, disease management, and coordination and integration of mental health services. The standards and methods shall be consistent with national guidelines and standards regarding the collection and analysis of health data, where feasible, and shall meet the federal reporting requirements established under Titles XIX and XXI of the federal "Social Security Act", 42 U.S.C. secs. 1396 and 1397.

(b) The state department shall review data collected pursuant to paragraph (a) of this subsection (2) and assess the health outcomes for programs administered by the state department. On or before July 1, 2008, and on or before each July 1 thereafter, based on the review of this data, the state department shall recommend to the health and human services committees of the senate and the house of representatives, or any successor committees, strategies to improve health outcomes.

Source: **L. 2007:** Entire section added, p. 1495, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-1-110. Study of children's access to health care coverage - acceptance of donations - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 1612, § 1, effective June 7. L. 2003: (4) amended, p. 2009, § 89, effective May 22. L. 2006: Entire part amended, p. 1787, § 1, effective July 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2005. (See L. 2002, p. 1612.)

25.5-1-111. Waiver applications - authorization. (Deleted by amendment)

Source: L. 2002: Entire section added, p. 1308, § 27, effective June 7. L. 2006: Entire part amended, p. 1787, § 1, effective July 1.

Editor's note: This section was originally numbered as 25.5-1-110 in House Bill 02-1003 but has been renumbered on revision for ease of location.

25.5-1-112. Drug-purchasing pool - report - repeal. (Repealed)

Source: L. 2004: Entire section added, p. 1995, § 9, effective June 5. L. 2006: Entire part amended, p. 1787, § 1, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2005. (See L. 2004, p. 1995.)

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 401, Session Laws of Colorado 2004.

25.5-1-113. Federal authorization - repeal. (Deleted by amendment)

Source: L. 2005: Entire section added, p. 1230, § 9, effective June 3. L. 2006: Entire part amended, p. 1787, § 1, effective July 1.

25.5-1-113.5. Children's access to health care - reports. (1) On or before January 1, 2008, and on or before each January 1 thereafter, the state department shall submit a report to the health and human services committees of the senate and the house of representatives, or any successor committees, on measures of access to and quality of health care for children eligible for programs pursuant to this title, including but not limited to data showing whether:

(a) Providers for children are participating in the programs and are accepting eligible children as patients on a regular basis;

(b) Eligible children are enrolling in programs under this title and are remaining enrolled so that the children have continuity of care;

(c) Eligible children are receiving the early and periodic screening, diagnosis, and treatment services required by federal law, including but not limited to regular preventive care and, when appropriate, timely specialty care, and that providers are accurately reporting the data from these visits; and

(d) Providers are using other appropriate measures of access and quality to improve health outcomes and maximize the expenditure of health care resources.

Source: L. 2007: Entire section added, p. 1494, § 8, effective July 1.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-1-114. Grants-in-aid - county supervision. (1) The state department shall consult with and coordinate with the counties before making any changes that affect county operations in the implementation of this section, when possible under state statutes and federal statutes and regulations.

(2) In administering any funds appropriated or made available to the state department for medical assistance administration, the state department has the power to:

(a) Require as a condition for receiving grants-in-aid that each county in this state shall bear the proportion of the total expense of furnishing medical assistance administration as is fixed by law relating to such assistance;

(b) Terminate any grants-in-aid to any county of this state if the laws and regulations providing such grants-in-aid and the minimum standards prescribed by rules of the state department thereunder are not complied with;

(c) Undertake forthwith the administration of any or all medical assistance within any county of this state which has had any or all of its grants-in-aid terminated pursuant to paragraph (b) of this subsection (2); but the county shall continue to meet the requirements of paragraph (a) of this subsection (2);

(d) Recover any moneys owed by a county to the state by reducing the amount of any payments due from the state in connection with the administration of medical assistance;

(e) Take any other action which may be necessary or desirable for carrying out the provisions of this title.

(3) The state department, under the supervision of the executive director, shall provide supervision of county departments for the effective administration of medical assistance as set out in the rules of the executive director and the rules of the state board pursuant to section 25.5-1-301; except that nothing in this subsection (3) shall be construed to allow counties to continue to receive an amount equal to the increased funding in the event the said funding is no longer available from the federal government.

Source: L. 2006: Entire part amended, p. 1787, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-115. Locating violators - recoveries. (1) The executive director of the state department, or district attorneys may request and shall receive from departments, boards, bureaus, or other agencies of the state or any of its political subdivisions, and the same are authorized to provide, such assistance and data as will enable the state department and county departments properly to carry out their powers and duties to locate and prosecute any person who has fraudulently obtained medical assistance under this title. Any records established pursuant to the provisions of this section shall be available only to the state department, the department of human services, the county departments, the attorney general, and the district attorneys, county attorneys, and courts having jurisdiction in fraud or recovery proceedings or actions.

(2) (a) All departments and agencies of the state and local governments shall cooperate in the location and prosecution of any person who has fraudulently obtained medical assistance under this title, and, on request of the county board, the county director, the state department, or the district attorney of any judicial district in this state, shall supply all information on hand relative to the location, employment, income, and property of such persons, notwithstanding any other provision of law making such information confidential, except the laws pertaining to confidentiality of any tax returns filed pursuant to law with the department of revenue. The department of revenue shall furnish at no cost to inquiring departments and agencies such information as may be necessary to effectuate the purposes of this article. The procedures whereby this information will be requested and provided shall be established by rule of the state department. The state department or county departments shall use such information only for the purposes of administering medical assistance under this title, and the district attorney shall use it only for the prosecution of persons who have fraudulently obtained medical assistance under this title, and shall not use the information, or disclose it, for any other purpose.

(b) (I) Whenever the state department, or a district attorney for the state department, or the state department on behalf of a county department, recovers any amount of fraudulently obtained medical assistance funds, the federal government shall be entitled to a share proportionate to the amount of federal funds paid unless a different amount is otherwise provided by federal law, the state shall be entitled to a share proportionate to the amount of state funds paid and such additional amounts of federal funds recovered as provided by federal law, and the county department shall be entitled to a share proportionate to the amount of county funds paid unless a different amount is provided pursuant to federal law or this section.

(II) (A) Whenever a county department, a county board, a district attorney, or a state department on behalf of a county department recovers any amount of fraudulently obtained public assistance funds in the form of assistance payments, it shall be deposited in the county social services fund, and the federal government is entitled to a share proportionate to the amount of federal funds paid, unless a different amount is provided for by federal law, the state is entitled to a share proportionate to one-half the amount of state funds paid, and the county is entitled to a share proportionate to the amount of county funds paid and, in addition, a share proportionate to one-half the amount of state funds paid.

(B) Whenever a county department, a county board, a district attorney, or a state department on behalf of a county department recovers any amount of fraudulently obtained medical assistance, it shall be deposited in the county social services fund, and the federal government is entitled to a share proportionate to the amount of federal funds paid, unless a different amount is provided for by federal law, and the county is entitled to the remaining funds.

(3) Whenever a county department, a county board, a district attorney, or the state department on behalf of the county recovers any amount of medical assistance payments that were obtained through unintentional client error, the federal government shall be entitled to a share proportionate to the amount of federal funds paid, unless a different amount is provided for by federal law, the state shall be entitled to a share proportionate to seventy-five percent of the amount of state funds paid, the county shall be entitled to a share proportionate to the amount of county funds paid, if any, and, in addition, a share proportionate to twenty-five percent of the amount of state funds paid.

(4) Actual costs and expenses incurred by the district attorney's office in carrying out the provisions of subsection (2) of this section shall be billed to counties or a county within the judicial district in the proportions specified in section 20-1-302, C.R.S. Each county shall make an annual accounting to the state department on all amounts recovered.

Source: L. 2006: Entire part amended, p. 1788, § 1, effective July 1. L. 2012: (2)(b)(II) amended, (SB 12-060), ch. 166, p. 578, § 3, effective August 8.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-115.5. Medical assistance client fraud - report. (1) On or before January 15, 2013, and on or before January 15 each year thereafter, the state department shall submit a written report to the judiciary committee and the health and environment committee of the house of representatives, or their successor committees, and to the judiciary committee and the health and human services committee of the senate, or their successor committees, relating to fraudulent receipt of medicaid benefits including, at a minimum:

- (a) Investigations of client fraud during the year;
- (b) Termination of client medicaid benefits due to fraud;
- (c) District attorney action, including, at a minimum, criminal complaints requested, cases dismissed, cases acquitted, convictions, and confessions of judgment;
- (d) Recoveries, including fines and penalties, restitution ordered, and restitution collected; and
- (e) Trends in methods used to commit client fraud, excluding law enforcement-sensitive information.

Source: L. 2012: Entire section added, (SB 12-060), ch. 166, p. 577, § 1, effective August 8.

25.5-1-116. Records confidential - authorization to obtain records of assets - release of location information to law enforcement agencies - outstanding felony arrest warrants. (1) The state department may establish reasonable rules to provide safeguards restricting the use or disclosure of information concerning applicants, recipients, and former and potential recipients of medical assistance to purposes directly connected with the administration of such medical assistance and related state department activities and covering the custody, use, and preservation of the records, papers, files, and communications of the state and county departments. Whenever, under provisions of law, names and addresses of applicants for, recipients of, or former and potential recipients of medical assistance are furnished to or held by another agency or department of government, such agency or department shall be required to prevent the publication of lists thereof and their uses for purposes not directly connected with the administration of such medical assistance.

(2) (a) (I) Except as provided in subparagraphs (II) and (III) of this paragraph (a), it is unlawful for any person to solicit, disclose, or make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names of or any information concerning persons applying for or receiving public assistance and welfare directly or indirectly derived from the records, papers, files, or communications of the state or county departments or subdivisions or agencies thereof or acquired in the course of the performance of official duties. No financial institution or insurance company that provides the data, whether confidential or not, required by the state department, in accordance with the provisions of this subsection (2), shall be liable for the provision of the data to the state department nor for any use made thereof by the state department.

(II) The information described in subparagraph (I) of this paragraph (a) may be disclosed for purposes directly connected with the administration of medical assistance and in accordance with this paragraph (a) and paragraphs (b) and (c) of this subsection (2) and with the rules of the state department.

(III) (A) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the state department shall provide the bureau with information concerning the location of any person whose name appears in the department's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the state department. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The state department and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the state department nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this sub-subparagraph (A).

(B) As used in sub-subparagraph (A) of this subparagraph (III), "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

(b) By signing an application or redetermination of eligibility form for medical assistance, an applicant authorizes the state department to obtain records pertaining to information provided in that application or redetermination of eligibility form from a financial institution, as defined in section 15-15-201 (4), C.R.S., or from any insurance company. The application or redetermination of eligibility form shall contain language clearly indicating that signing constitutes such an authorization.

(c) (I) In order to determine if applicants for or recipients of medical assistance have assets within eligibility limits, the state department may provide a list of information identifying these applicants or recipients to any financial institution, as defined in section 15-15-201 (4), C.R.S., or to any insurance company. This information may include identification numbers or social security numbers. The state department may require any

such financial institution or insurance company to provide a written statement disclosing any assets held on behalf of individuals adequately identified on the list provided. Before a termination notice is sent to the recipient, the county department or the medical assistance site in verifying the accuracy of the information obtained as a result of the match shall contact the recipient and inform the recipient of the apparent results of the computer match and give the recipient the opportunity to explain or correct any erroneous information secured by the match. The requirement to run a computerized match shall apply only to information that is entered in the financial institution's or insurance company's data processing system on the date the match is run and shall not be deemed to require any such institution or company to change its data or make new entries for the purpose of comparing identifying information. The cost of providing such computerized match shall be borne by the state department.

(II) For the fiscal year beginning July 1, 1984, and thereafter, all funds expended by the state department to pay the cost of providing such computerized matches shall be subject to an annual appropriation by the general assembly.

(III) The state department may expend funds appropriated pursuant to subparagraph (II) of this paragraph (c) in an amount not to exceed the amount of annualized general fund savings that result from the termination of recipients from medical assistance specifically due to disclosure of assets pursuant to this subsection (2).

(d) No applicant shall be denied nor any recipient discontinued due to the disclosure of their assets unless and until the county department or medical assistance site has assured that such assets taken together with other assets exceed the limit for eligibility of countable assets. Any information concerning assets found may be used to determine if such applicant's or recipient's eligibility for other medical assistance is affected.

(3) The applicant for or recipient of medical assistance, or his or her representative, shall have an opportunity to examine all applications and pertinent records concerning said applicant or recipient which constitute a basis for denial, modification, or termination of such medical assistance or to examine such records in case of a fair hearing.

(4) Any person who violates subsection (1) or (2) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 2006: Entire part amended, p. 1790, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-117. County departments - district departments. (1) Except as provided in subsection (2) of this section, there shall be established in each county of the state a county department of social services that shall consist of a county board of social services, a county director of social services, and any additional employees as may be necessary for the efficient performance of public assistance, as defined in section 26-2-103 (7), C.R.S., and medical assistance.

(2) Single entry point agencies established pursuant to part 1 of article 6 of this title, other than county departments acting as single entry point agencies, may act as state designated agencies and are hereby authorized to carry out functions as specified in part 1 of article 6 of this title that are otherwise performed by county departments.

(3) With the approval of the department of human services, two or more counties may jointly establish a district department of social services. All duties and responsibilities for county departments set forth in this title shall also apply to district departments of social services.

Source: L. 2006: Entire part amended, p. 1792, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-118. Duties of county departments. (1) The county departments or other state designated agencies, where applicable, shall serve as agents of the state department and shall be charged with the administration of medical assistance and related activities in the respective counties in accordance with the rules of the state department.

(2) The county departments or other state designated agencies, where applicable, shall report to the state department at such times and in such manner and form as the state department may from time to time direct.

(3) The county department or other state designated agencies, where applicable, in each county shall submit quarterly and annually to the board of county commissioners a budget containing an estimate and supporting data setting forth the amount of money needed to carry out the provisions of this title.

Source: L. 2006: Entire part amended, p. 1793, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-119. County staff. The county director, with the approval of the county board, shall appoint such staff as may be necessary as determined by the state department rules to administer medical assistance within the county. The staff shall be appointed and shall serve in accordance with a merit system for the selection, retention, and promotion of county department employees as described in section 26-1-120, C.R.S. The salaries of the staff members shall be fixed in accordance with the rules and salary schedules prescribed by the state department or the department of human services, whichever is appropriate; except that, once a county transfers its county employees to a successor merit system as provided in section 26-1-120, C.R.S., the salaries shall be fixed by the county commissioners.

Source: L. 2006: Entire part amended, p. 1793, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-120. Appropriations. (1) (a) For carrying out the duties and obligations of the state department and county departments under the provisions of this title and for matching such federal funds or meeting maintenance of effort requirements as may be available for public assistance and welfare activities in the state, including medical assistance administration and related activities, the general assembly, in accordance with the constitution and laws of the state of Colorado, shall make adequate appropriations for the payment of such costs, pursuant to the budget prepared by the executive director.

(b) If the federal law shall provide federal funds, in cash or in another form such as medical assistance, not otherwise provided for in this title, the state department is authorized to make such payments or offer such services in accordance with the requirements accompanying said federal funds within the limits of available state appropriations.

(c) When the executive director determines that adequate appropriations for the payment of the costs described in paragraph (a) of this subsection (1) have not been made and that an overexpenditure of an appropriation will occur based upon the state department's estimates, the state board may take actions consistent with state and federal law to bring the rate of expenditure into line with available funds. The general assembly declares that case load and utilization based on medical necessity are legitimate reasons for supplemental funding.

(2) The general assembly shall appropriate from the general fund to the state department moneys for the costs of administering medical assistance programs and the state's share of the costs of administering such functions by the county departments amounts sufficient for the proper and efficient performance of the duties imposed upon them by law, including a legal advisor appointed by the attorney general. The general assembly shall make two separate appropriations, one for the administrative costs of the state department

and another for the administrative costs of the county departments. Any applicable matching federal funds shall be apportioned in accordance with the federal regulations accompanying such funds. Any unobligated and unexpended balances of appropriated state general funds remaining at the end of each fiscal year shall be credited to the state general fund.

(3) The expenses of training personnel for special skills relating to medical assistance, as such expenses shall be determined and approved by the state department, may be paid from state and federal funds available for such training purposes.

Source: L. 2006: Entire part amended, p. 1793, § 1, effective July 1.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-121. County expenditures - advancements - procedures. (1) For purposes of this article, under rules of the state department, administrative costs shall include: Salaries of the county director and employees of the county department staff engaged in the performance of medical assistance activities; the county's payments on behalf of such employees for old age and survivors' insurance or pursuant to a county officers' and employees' retirement plan and for any health insurance plan, if approved by the state department; the necessary travel expenses of the county board and the administrative staff of the county department in the performance of their duties; necessary telephone and other electronic means of communication; necessary equipment and supplies; necessary payments for postage and printing, including the printing and preparation of county warrants required for the administration of the county department; and such other administrative costs as may be approved by the state department; but advancements for office space, utilities, and fixtures may be made from state funds only if federal matching funds are available.

(2) Notwithstanding any other provision of this article, the county department may spend in excess of twenty percent of actual costs for the purpose of matching federal funds for the administration of the child support enforcement program or for the administrative costs of activities involving food stamp, public assistance, or medical assistance fraud investigations or prosecutions.

(3) (a) Notwithstanding any other provision of this article, the county department may receive and spend federal funds to which it is entitled based on the county's certification of public expenditures for administrative costs made by other entities within the county, which expenditures:

(I) Are from sources other than the county social services fund;

(II) Are in excess of the county department's portion, as required pursuant to section 25.5-1-114 (2) (a), of the administrative costs; and

(III) Are for an administrative activity that has been approved by the state department as an activity that is eligible for reimbursement under a federal program.

(b) Acceptance and expenditure of federal funds pursuant to paragraph (a) of this subsection (3) shall not affect the state's share of and contribution to the administrative costs. The county shall be solely responsible for certifying the nonfederal share that is in excess of the county's required portion of the administrative costs. The state department may retain up to five percent of any federal funds received by a county department pursuant to this subsection (3). In addition, the state, in accordance with the provisions of section 26-1-109 (4) (d), C.R.S., shall recover any federal funds received by the county through the certification of public expenditures that are subsequently determined to be ineligible for federal reimbursement.

Source: L. 2006: Entire part amended, p. 1794, § 1, effective July 1. **L. 2011:** (3) added, (HB 11-1196), ch. 160, p. 555, § 6, effective August 10.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-122. County appropriation increases - limitations. (1) Beginning in calendar fiscal year 1994 and for each calendar fiscal year thereafter to and including calendar fiscal year 1997, the board of county commissioners in each county of this state shall annually appropriate funds for the county share of the administrative costs of medical assistance in the county in an amount equal to the actual county share for the previous fiscal year adjusted by an amount equal to the actual county share for the previous fiscal year multiplied by the percentage of change in property tax revenue.

(2) For the purposes of this section:

(a) "County share" means the actual amount of the county share for the previous fiscal year. "County share" shall not include:

(I) The amount expended by the county from the county contingency fund or the county tax base relief fund pursuant to section 26-1-126, C.R.S.;

(II) The amount expended by the county for general assistance pursuant to part 1 of article 17 of title 30, C.R.S.; and

(III) The amount expended by the county for programs or services provided by the county on its own, without requirements or funding from any other governmental agency.

(b) "Percentage of change in property tax revenue" means the difference between the total property tax levied for the previous fiscal year less the amount levied for debt service for the previous fiscal year and the total property tax levied for the year for which the percentage of change in tax revenue is being calculated less the amount levied for debt service for the year in which the percentage of change in tax revenue is being calculated divided by the total property tax levied for the previous fiscal year less the amount levied for debt service for the previous fiscal year.

(3) Notwithstanding the provisions of section 25.5-1-121, a county in the state shall not be required to contribute more than the amount set forth in subsection (1) of this section in any fiscal year. Nothing in this section shall be construed to limit the ability of a county to establish programs or services provided by the county on its own, without requirements or funding from any other governmental agency.

(4) (Deleted by amendment, L. 2008, p. 1812, § 3, effective June 2, 2008.)

(5) Any amounts remaining in the county social services fund created in section 26-1-123, C.R.S., at the end of any fiscal year shall remain in the county fund for expenditure as determined by the board of county commissioners for administrative costs of public assistance, medical assistance, and food stamps, and program costs of public assistance and food stamps.

(6) The limitation set forth in this section on the increase in the county share of the administrative costs of medical assistance will result in increased costs to the state. By making state funds available, the state is encouraging counties not to exercise any right a county may have pursuant to section 20 (9) of article X of the Colorado constitution to reduce or end its share of the costs of medical assistance administration for the county for three fiscal years following the fiscal year in which the state funds are received. If a county accepts funds from the state based on the limitation provided in this section for any fiscal year, the county agrees not to exercise any rights the county may have to reduce or end its share of the costs of medical assistance administration for the fiscal year in which the funds are accepted. Nothing in this subsection (6) or any agreement pursuant to this subsection (6) shall be construed to affect the existence or status of any rights accruing to the state or any county pursuant to section 20 (9) of article X of the Colorado constitution.

Source: L. 2006: Entire part amended, p. 1795, § 1, effective July 1. L. 2008: (2)(a)(I) and (4) amended, p. 1812, § 3, effective June 2.

Editor's note: This section was contained in a 2006 act that amended this part, resulting in the addition of this section.

25.5-1-123. Medical homes for children - legislative declaration - duties of the department - reporting requirements. (1) The general assembly hereby finds and declares that:

(a) The best medical care for infants, children, and adolescents is provided through a medical home, as defined in section 25.5-1-103, and that is consistent with the joint

principles of a patient-centered medical home. Those principles shall include a whole-person orientation, care that is coordinated and integrated across all elements of the complex health care system and the patient's community, and care that provides for quality and safety of the patient where qualified health care practitioners provide primary care and help manage and facilitate all aspects of medical care.

(b) Infants, children, and adolescents and their families work best with a health care practitioner who knows the family and who develops a partnership of mutual responsibility and trust;

(c) Medical care provided through emergency departments, walk-in clinics, and other urgent-care facilities is often more costly and less effective than care given by a physician with prior knowledge of the child and his or her family; and

(d) The state department should strive to find a medical home for each child receiving services through the state medical assistance program, articles 4, 5, and 6 of this title, or the children's basic health plan, article 8 of this title.

(2) On or before July 1, 2008, the state department, in conjunction with the Colorado medical home initiative in the department of public health and environment, shall develop systems and standards to maximize the number of children enrolled in the state medical assistance program or the children's basic health plan who have a medical home. The systems and standards developed shall include, but need not be limited to, ways to ensure that a medical home shall offer family-centered, compassionate, culturally effective care and sensitive, respectful communication to a child and his or her family.

(3) On or before January 30, 2008, and every January 30 thereafter, the state department shall report to the health and human services committees of the house of representatives and the senate, or any successor committees, on progress made toward maximizing the number of children with a medical home who are enrolled in the state medical assistance program or the children's basic health plan.

Source: L. 2007: Entire section added, p. 1488, § 2, effective May 31.

25.5-1-124. Early intervention payment system - participation by state department - rules. (1) The state department shall participate in the development and implementation of the coordinated system of payment for early intervention services authorized pursuant to part 7 of article 10.5 of title 27, C.R.S., and Part C of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended.

(2) The state department shall ensure that the early intervention services and payments for recipients of medical assistance under this title are integrated into the coordinated early intervention payment system developed pursuant to part 7 of article 10.5 of title 27, C.R.S. To the extent necessary to achieve the coordinated payment system and coverage of those early intervention services under this title, the state department shall amend the state plan for medical assistance or seek the necessary federal authorization, promulgate rules, and modify the billing system for medical assistance to facilitate the coordinated payment system.

(3) The state department shall also make any modifications necessary to the "Children's Basic Health Plan Act", article 8 of this title, including promulgating rules, to ensure that the children's basic health plan is integrated into the coordinated early intervention payment system developed pursuant to part 7 of article 10.5 of title 27, C.R.S.

(4) Repealed.

(5) (a) As used in this section, unless the context otherwise requires, "early intervention services" means those services defined as early intervention services by the department of human services in accordance with section 27-10.5-702 (7), C.R.S., that are determined, through negotiation between the state department and the department of human services, to be medically necessary under medical assistance and cost-effective. After negotiating the scope of early intervention services to be covered under medical assistance, the state department and the department of human services shall submit to the joint budget committee of the general assembly, as part of each department's annual budget request, a proposal for the scope of coverage of early intervention services under medical assistance,

including the anticipated costs of such coverage and whether the payment of such costs through medical assistance is cost-effective.

(b) “Early intervention services” shall not include the following:

(I) Nonemergency medical transportation;

(II) Respite care;

(III) Service coordination, as defined in 34 CFR 303.12 (d) (11); and

(IV) (A) Assistive technology.

(B) The exclusion of assistive technology shall not apply to durable medical equipment that is otherwise covered under the children’s basic health plan, as defined in section 25.5-8-103 (2).

Source: **L. 2007:** Entire section added, p. 888, § 2, effective July 1. **L. 2008:** (5)(a) amended, p. 1468, § 14, effective August 5. **L. 2012:** (4) repealed, (HB 12-1247), ch. 53, p. 196, § 6, effective March 22.

25.5-1-125. Centennial care choices - value benefit plans - request for information - request for proposals - report to general assembly - definitions - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The blue ribbon commission for health care reform, established pursuant to section 10-16-131, C.R.S., as it existed prior to July 1, 2008, submitted its recommendations to the general assembly in January 2008, regarding comprehensive proposals to reform health care in Colorado, including methods to reduce or eliminate Colorado’s uninsured population;

(b) The general assembly recognizes that while comprehensive health care reform is a laudable goal, the state lacks the financial resources to fully solve all the problems facing this state’s health care system;

(c) It is also critical that the state maximize federal funds for medical assistance programs so as to provide services and access to health care to the state’s needy population;

(d) Colorado cannot wait to address the current problems related to the delivery of affordable health care to residents of the state, and it is therefore critical to start the process toward developing a balanced partnership between private and public sectors in Colorado to begin to provide affordable health insurance to those who are uninsured;

(e) To that end, this section creates the opportunity for health insurance carriers and other interested parties, including the state of Colorado, to develop and offer to individuals throughout the state an affordable, baseline health insurance product, representing the minimum benefits package for the state’s individual market, that is not currently available in the individual market, to provide access to health care coverage for the state’s uninsured population;

(f) In addition, the state department, in coordination with the division of insurance and the panel of expert advisors appointed by the governor pursuant to this section, is urged to conduct the request for information process expeditiously and to submit its reports to the legislative committees earlier than the dates specified in this section, but in no case later than those dates, so as to afford the general assembly sufficient time to consider the reports and take any legislative action the general assembly may deem appropriate during the 2009 legislative session; and

(g) The appropriation and expenditure of state general fund moneys to implement this section shall not exceed one hundred twenty-eight thousand seven hundred dollars, and if the state costs to implement the requirements of this section exceed such amount, the state department shall solicit gifts, grants, and donations to cover any state costs that exceed such appropriated amount.

(2) (a) (I) The state department, in coordination with the division of insurance and a panel of expert advisors appointed by the governor by July 1, 2008, which shall include persons with expertise in actuarial sciences, persons with expertise in designing health benefit plans, persons experienced in the implementation and management of health benefit plans, persons with expertise in disability issues, persons with expertise regarding long-term care, consumers, and persons representing health care providers, shall prepare a request for information to be issued to health insurance carriers and other interested parties, including the state of Colorado, regarding the development of the centennial care choices program, as

described in this section. The state department and division shall begin preparing the request for information by July 1, regardless of whether the panel has been appointed by that date. If the governor fails to appoint the panel of expert advisors by July 1, 2008, then the president of the senate and the speaker of the house of representatives shall be responsible for appointing the panel of expert advisors and shall each appoint at least five expert advisors meeting the criteria specified in this subparagraph (I) by July 15, 2008. The request for information shall request interested health insurance carriers and other interested parties, including the state of Colorado, to provide information regarding:

(A) The design of and benefits included in value benefit plans, referred to in this section as VBPs, to be offered in the individual market with a benchmark standard of approximately eighty percent of the actuarial value of a preferred provider organization plan offered to employees of the state of Colorado at the time the request for information is issued, as specified in the request for information. In addition, the state department, with assistance from the division and the panel, may develop and include a request for information about additional benchmark standards in the request for information process.

(B) The percentage differential in rates for VBPs if all Colorado residents are required to obtain creditable coverage and if no such individual mandate is imposed.

(II) Except as authorized in this section, the request for information shall not specify benefits or other details to be included in the proposed VBP. In developing the request for information, the state department, in coordination with the division and the panel, shall consider the potential risks of adverse selection, crowd out, and other factors that may destabilize the small group and individual markets as a result of offering VBPs in the individual market.

(b) In responding to the request for information, a health insurance carrier or other interested party shall assume the following:

(I) That a VBP will, at a minimum:

(A) Include benefits for primary and preventive care and participation in wellness programs and incentives for plan participants to engage in healthy behavior;

(B) Provide the lowest level of benefits that may be offered in the state's individual market;

(C) Encourage the use of health information technology and telemedicine, including, without limitation, health information exchange, electronic health records, and electronic prescriptions;

(D) Encourage the use of a pay-for-performance system for reimbursing health care providers, where appropriate;

(E) Provide consumers with educational materials regarding how to access internet-based health care tools;

(F) Specify an adequate network of providers available under the VBP;

(G) Encourage the use of regional networks of hospitals, physicians, community health centers and other safety net providers, and other health care professionals, including, but not limited to, hospice and palliative care providers, where available, and innovative or collaborative efforts within communities for the provision of health care services;

(H) Include optional coverage choices for purchase by consumers to add to their VBPs and the estimated consumer cost for each particular coverage option;

(I) Limit the demographic characteristics used by health insurance carriers in determining premium rates to the age of the individuals to be covered under the VBP and the geographic location of the policyholder;

(J) Specify premium levels for each VBP by age group, region by region;

(K) Be offered statewide and issued to any Colorado resident eligible pursuant to the terms of the approved VBP who agrees to make the premium payments required for that person;

(L) Allow for the payment of all or a portion of the covered person's premium from a state-paid premium subsidy, if made available by the state for low-income individuals and families; and

(M) Not destabilize the existing small group and individual markets or the CoverColorado program.

(II) That the state may impose a requirement that all Coloradans obtain creditable coverage, either through a state-sanctioned VBP, another health insurance product available in the private market for individuals or groups, participation in a state or federal program providing benefits or coverage for health care, or any other creditable coverage;

(III) That the state will establish a mechanism to enforce the requirement that all Colorado residents obtain creditable coverage through the state tax laws, if such requirement is imposed;

(IV) That a VBP will be the minimum benefits package available in the state's individual market;

(V) That the state will create a sliding scale premium subsidy program to assist low-income individuals and families in paying the premium costs for health insurance;

(VI) That the state will amend the state plan to expand eligibility for the Colorado medical assistance program to adults whose family income does not exceed one hundred percent of the federal poverty line, adjusted for family size; and

(VII) That the state will create a dedicated source of revenue, if necessary, to fund the premium subsidy program or other new state costs.

(3) (a) By December 15, 2008, the state department, in coordination with the division and the panel, shall submit a progress report to the legislative committees. The progress report shall provide an update on the status of the request for information process.

(b) On or before March 1, 2009, the state department, in coordination with the division and the panel, shall submit a final report to the legislative committees. Prior to submitting the final report, the state department, in coordination with the division and the panel, shall acquire relevant actuarial projections and research potential cost savings. The final report shall detail the results of the request for information process and the actuarial and cost savings research, including a detailed summary of the information submitted by health insurance carriers and other interested parties and an evaluation and analysis of the results of the request for information process. In addition, the final report shall include information regarding any legislation that would be required should the general assembly proceed to implement the centennial care choices program, VBPs, and a premium subsidy program, if applicable, and cost projections regarding the funding needed to implement the program.

(c) After receipt of the final report, the legislative committees, meeting jointly, shall consider the information included in the final report and determine whether to proceed with the centennial care choices program and whether to recommend legislation to the general assembly that is necessary to:

(I) Implement the centennial care choices program, VBPs, and a premium subsidy program; and

(II) Create a funding source to fund a premium subsidy program or other costs of the centennial care choices program.

(d) If the legislative committees recommend legislation to the general assembly to implement the centennial care choices program, including the authorization for the development of VBPs, the creation of a premium subsidy program, and the creation of a funding source, the recommendation should specify inclusion of the following elements in the legislation:

(I) Standards that VBPs must satisfy in order to be certified by the state department and the division and authorized to be offered to Colorado residents by any health insurance carrier, regardless of whether the health insurance carrier developed the VBP in response to the request for proposals, as long as the health insurance carrier offers a VBP that meets such standards and the requirements of this section;

(II) Creation of a process for periodic review of VBPs;

(III) Creation of a consumer advisory council for the centennial care choices program;

(IV) A mechanism to encourage the use of evidence-based medicine through creation of a patient safety council to evaluate patient care with the goals of improving quality of care and minimizing medical care mistakes;

(V) Authorization for the state department and the division to establish health marts through which an individual eligible for a state subsidy, if created, may select a VBP that best meets his or her needs; and

(VI) If the funding source would be created through a new or increased tax or tax rate, a ballot question to seek voter approval at a future general election for the revenue source.

(4) (a) If the general assembly enacts legislation to create the centennial care choices program, including authorization for the development of VBPs, the creation of a premium subsidy program, and the creation of a funding source, the state department, in coordination with the division and the panel, shall determine whether a funding source has been identified to fund the centennial care choices program. If a funding source has been identified and approved by the voters, if necessary, the state department may develop a request for proposals to be issued to interested health insurance carriers and other interested parties, including the state of Colorado. The request for proposals shall request interested parties to submit proposals for plan designs for VBPs to be offered in the individual market, which shall be based on the parameters outlined in subsection (2) of this section in the request for information, as modified by any legislation enacted by the general assembly pursuant to this section.

(b) Prior to issuing a request for proposals, the state department, in consultation with the division and the panel, and based on the information obtained through the request for information process and any other relevant information, shall develop a benchmark price or affordability standard for VBPs to ensure that eligible individuals can afford to purchase VBPs that are developed by interested parties.

(c) The state department shall include the same assumptions in the request for proposals that were included in the request for information pursuant to subsection (2) of this section and shall modify those assumptions to the extent necessary to conform to any legislation enacted by the general assembly pursuant to this section.

(5) The state department shall ensure that the request for information and request for proposals processes encourage collaboration and negotiation between the interested parties responding to the requests and the state department, division, and panel regarding the price for and benefits included in VBPs.

(6) A health insurance carrier or other interested party shall not be required to have a certificate of authority issued by the commissioner of insurance pursuant to section 10-3-105, C.R.S., in order to respond to the request for information or request for proposals, but the health insurance carrier or other interested party shall be allowed to offer an approved VBP to eligible Colorado residents only if the party obtains a certificate of authority to transact the business of insurance in this state prior to offering the VBP.

(7) A health insurance carrier or other interested party that submits information or a proposal in response to the request for information or the request for proposals, respectively, shall not be obligated to offer a VBP if, after submission of information or a proposal, the general assembly, by bill, modifies the design of the VBP.

(8) Nothing in this section shall be construed to establish a requirement for individuals to purchase health insurance or to preclude or limit the ability of the general assembly to use information obtained through the request for information to enact reforms that do not include such a requirement.

(9) As used in this section:

(a) "Colorado medical assistance program" means the program established in the "Colorado Medical Assistance Act", articles 4, 5, and 6 of this title.

(b) "CoverColorado program" means the program created in part 5 of article 8 of title 10, C.R.S.

(c) "Creditable coverage" shall have the same meaning as set forth in section 10-16-102, C.R.S.

(d) "Division of insurance" or "division" means the division of insurance in the department of regulatory agencies.

(e) "Health insurance carrier" shall have the same meaning as "carrier", as defined in section 10-16-102, C.R.S., and shall include a carrier that is not currently providing health coverage in the state or that does not, at the time the request for information or request for proposals is issued, have a certificate of authority from the commissioner of insurance pursuant to section 10-3-105, C.R.S.

(f) "Interested party" means a person or entity that possesses applicable actuarial expertise and has administered or has the capacity to administer a health insurance program.

(g) “Legislative committees” means the health and human services committees of the senate and house of representatives, or their successor committees.

(h) “Panel” means the panel of expert advisors appointed by the governor pursuant to subsection (2) of this section.

(i) “Value benefit plan” or “VBP” means a policy, contract, certificate, or agreement to provide, deliver, arrange for, pay for, or reimburse the costs of health care services that is developed in response to the request for proposals issued pursuant to this section.

Source: **L. 2008:** Entire section added, p. 2057, § 1, effective June 3. **L. 2010:** (2)(b)(VI) amended, (HB 10-1422), ch. 419, p. 2109, § 137, effective August 11.

25.5-1-126. Discounted prices for durable medical equipment and supplies.

(1) The state department shall work with one or more nonprofit organizations to develop a link of approved vendors who are willing to sell durable medical equipment and medical supplies at discounted prices to persons who have applied for, but are not yet receiving, benefits under the “Colorado Medical Assistance Act”. The state department shall provide the exclusive criteria for a nonprofit organization to use to approve a vendor for placement on the approved vendor list.

(2) The state department shall maintain a link of approved vendors developed pursuant to this section and shall:

(a) Make the link available on the state department’s web site; and

(b) Provide copies of the list to county departments and to sites authorized to accept medical assistance applications pursuant to section 25.5-4-205 (1), through the survey given to applicants.

Source: **L. 2010:** Entire section added, (HB 10-1029), ch. 219, p. 958, § 1, effective May 10.

25.5-1-127. Third-party benefit denials information. The state department shall provide information to recipients of benefits under this title concerning their right to appeal a denial of benefits by a third party and shall post information on the state department’s web site concerning recipients’ abilities to appeal a third party’s denial of benefits, including but not limited to providing a link to information on the insurance commissioner’s web site regarding such appeals.

Source: **L. 2010:** Entire section added, (SB 10-002), ch. 366, p. 1727, § 2, effective June 7.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 366, Session Laws of Colorado 2010.

25.5-1-128. Provider payments - compliance with state fiscal requirements - definitions - rules. (1) (a) Notwithstanding any provision of law to the contrary, when the state department has regulatory authority over a program and when the provider has already signed a state department-approved provider application to provide a service or to bill the state department or its authorized contractor for a service, the state department-approved provider application shall serve to fulfill the requirements of a commitment voucher and the fiscal requirements of section 24-30-202 (1), C.R.S.

(b) The executive director may promulgate rules to exempt a provider who provides services through a program as described in paragraph (a) of this subsection (1) for any program the state department is authorized by law to administer, including but not limited to:

(I) The “Colorado Medical Assistance Act”, articles 4 to 6 of this title;

(II) The “Children’s Basic Health Plan Act”, article 8 of this title;

(III) The “Colorado Indigent Care Program”, part 1 of article 3 of this title;

(IV) The school health services program authorized by section 25.5-5-318;

(V) Programs that are funded through the primary care fund, created in section 24-22-117 (2) (b), C.R.S.; and

(VI) The state-funded old age pension health and medical care program pursuant to article 2 of this title.

(2) As used in this section, unless the context otherwise provides, “provider” means a health care provider, a mental health care provider, a pharmacist, a home health agency, a general provider as defined in section 25.5-3-103 (3), school district as defined in section 25.5-5-318 (1) (a), or any other entity that provides health care, health care coordination, outreach, enrollment, or administrative support services to recipients through fee-for-service, the primary care physician program, a managed care entity, a behavioral health organization, a medical home, or any system of care that coordinates health care or services as defined and authorized through rules promulgated by the state board or by the executive director.

Source: L. 2012: Entire section added, (HB 12-1054), ch. 14, p. 36, § 1, effective March 15.

PART 2

PROGRAMS TO BE ADMINISTERED BY THE DEPARTMENT

25.5-1-201. Programs to be administered by the department of health care policy and financing. (1) Programs to be administered and functions to be performed by the department of health care policy and financing shall be as follows:

(a) The “Colorado Medical Assistance Act”, as specified in articles 4, 5, and 6 of this title;

(b) The “Colorado Indigent Care Program”, as specified in part 1 of article 3 of this title;

(c) Effective July 1, 1996, school entry immunization, as specified in part 9 of article 4 of title 25, C.R.S. Commencing on and after the fiscal year beginning July 1, 1996, the state department is authorized to contract with the department of public health and environment for the purpose of enforcing the school entry immunization requirements.

(d) Repealed.

(e) The “Children’s Basic Health Plan Act”, as specified in article 8 of this title; and

(f) The old age pension health and medical care program, as specified in section 25.5-2-101.

Source: L. 93: Entire title added, p. 1102, § 15, effective July 1, 1994. **L. 94:** (1)(f) and (1)(g) amended and (1)(h) added, p. 1669, § 4, effective July 1. **L. 95:** (1)(g) and (1)(h)(II) amended and (1)(j) added, p. 511, § 4, effective May 16; (1)(j) added, p. 916, § 15, effective May 25. **L. 96:** (1)(b) and (1)(h)(I) repealed, p. 1474, § 27, effective June 1; (1)(i) and (1)(j) amended and (1)(k) added, p. 1437, § 7, effective July 1. **L. 99:** (1)(l) added, p. 700, § 6, effective July 1. **L. 2001:** (1)(m) added, p. 916, § 11, effective August 8. **L. 2002:** (1)(h) repealed, p. 427, § 5, effective July 1. **L. 2003:** (1)(l) and (1)(m) amended and (1)(n) added, p. 2583, § 3, effective July 1. **L. 2005:** (1)(a) repealed, p. 772, § 51, effective June 1. **L. 2006:** Entire part amended, p. 1796, § 2, effective July 1. **L. 2007:** (1)(d) repealed, p. 2042, § 70, effective June 1. **L. 2011:** (1)(f) amended, (SB 11-210), ch. 187, p. 721, § 7, effective July 15, 2012.

Editor’s note: Subsection (1)(j) was enacted as subsection (1)(i) in Senate Bill 95-78, but has been renumbered on revision for ease of location. (See L. 95, p. 916.)

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (1)(l), see section 1 of chapter 203, Session Laws of Colorado 1999.

25.5-1-202. Advisory committee on covering all children in Colorado - reports - definitions - repeal. (Repealed)

Source: **L. 2007:** Entire section added, p. 1491, § 2, effective July 1. **L. 2008:** (3)(b)(IV.5) added, p. 2027, § 3, effective June 3. **L. 2012:** Entire section repealed, (HB 12-1207), ch. 65, p. 229, § 1, effective March 24.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-1-203. Prescription drug information and technical assistance program - expansion. The state department may expand the prescription drug information and technical assistance program created in section 25.5-5-507 to include persons receiving drug benefits pursuant to any program that is administered by the state department.

Source: **L. 2008:** Entire section added, p. 231, § 1, effective August 5.

25.5-1-204. Advisory committee to establish an all-payer health claims database - creation - members - duties - creation of all-payer health claims database - rules - repeal. (1) (a) Within forty-five business days after August 11, 2010, the executive director shall appoint an advisory committee to make recommendations regarding the creation of the framework and implementation plan for a Colorado all-payer claims database for the purpose of facilitating the reporting of health care and health quality data that results in transparent and public reporting of safety, quality, cost, and efficiency information at all levels of health care. The executive director shall appoint an administrator of the database.

(b) The executive director shall appoint the members of the advisory committee, consisting of the following members:

(I) A member of academia with experience in health care data and cost efficiency research;

(II) A representative of a statewide association of hospitals;

(III) A representative of an integrated multi-specialty organization;

(IV) A representative of physicians and surgeons;

(V) A representative of small employers that purchase group health insurance for employees, which representative is not a supplier or broker of health insurance;

(VI) A representative of large employers that purchase health insurance for employees, which representative is not a supplier or broker of health insurance;

(VII) A representative of self-insured employers, which representative is not a supplier or broker of health insurance;

(VIII) A representative of an organization that processes insurance claims or certain aspects of employee benefit plans for a separate entity;

(IX) A representative of a nonprofit organization that demonstrates experience working with employers to enhance value and affordability in health insurance;

(X) A person with a demonstrated record of advocating health care privacy issues on behalf of consumers;

(XI) A person with a demonstrated record of advocating health care issues on behalf of consumers;

(XII) Two representatives of health insurers, one who represents nonprofit insurers and one who represents for-profit insurers;

(XIII) A representative of dental insurers;

(XIV) A representative from a community mental health center that has experience in behavioral health data collection;

(XV) A representative of pharmacists or an affiliate society;

(XVI) A representative of pharmacy benefit managers; and

(XVII) Two representatives of nonprofit organizations that facilitate health information exchange to improve health care for all Coloradans.

(c) The following persons shall serve as ex officio members of the advisory committee:

(I) The executive director or his or her designee;

(II) A representative of the department of personnel and administration;

(III) The commissioner of insurance or his or her designee;

(IV) The director of the office of information technology or his or her designee; and

(V) Two members of the general assembly, one from the majority party and one from the minority party.

(d) When making appointments to the advisory committee, the executive director shall include at least two members who reside in a rural community with a population of less than fifty thousand or who represent rural interests.

(e) (I) This subsection (1) is repealed, effective July 1, 2013.

(II) Prior to the repeal of this subsection (1), the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

(2) The advisory committee shall make recommendations to the administrator regarding the database that:

(a) Include specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;

(b) Focus on data elements that foster quality improvement and peer group comparisons;

(c) Facilitate value-based, cost-effective purchasing of health care services by public and private purchasers and consumers;

(d) Result in usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost-effective, high-quality health care services;

(e) Use and build upon existing data collection standards and methods to establish and maintain the database in a cost-effective and efficient manner;

(f) Are designed to measure the following performance domains: Safety, timeliness, effectiveness, efficiency, equity, and patient-centeredness;

(g) Incorporate and utilize claims, eligibility, and other publicly available data to the extent it is the most cost-effective method of collecting data to minimize the cost and administrative burden on data sources;

(h) Include recommendations about whether to include data on the uninsured;

(i) Discuss the harmonization of a Colorado database with other states', regions', and federal efforts concerning all-payer claims databases;

(j) Discuss the harmonization of a Colorado database with federal legislation concerning an all-payer claims database;

(k) Discuss a limit on the number of times the administrator may require submission of the required data elements;

(l) Discuss a limit on the number of times the administrator may change the required data elements for submission in a calendar year considering administrative costs, resources, and time required to fulfill the requests; and

(m) Discuss compliance with the "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, and other proprietary information related to collection and release of data.

(3) The advisory committee shall make recommendations to the executive director to determine how the ongoing oversight of the operations of the all-payer health claims database should function, including where the database should be housed.

(4) The administrator shall seek funding for the creation of the all-payer health claims database and develop a plan for the financial stability of the database. On or before March 1, 2011, the administrator shall report to the governor and the general assembly on the status of the funding effort and on the status of the recommendations of the advisory committee. The report shall include the final data elements recommended by the advisory committee, the final provisions contemplated to comply with the "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, and any other final recommendations that are ready at the time of the report. If sufficient funding is received through gifts, grants, and donations on or before January 1, 2012, as determined by the executive director,

the administrator shall, in consultation with the advisory committee, create the Colorado all-payer claims database. The Colorado all-payer claims database shall be operational no later than January 1, 2013.

(5) If sufficient funding is received, the executive director shall direct the administrator to create the database and the administrator shall:

(a) Determine the data to be collected from payers and the method of collection, including mandatory and voluntary reporting of health care and health quality data. If the administrator requires mandatory reporting, CoverColorado, created in part 5 of article 8 of title 10, C.R.S., shall be included in the mandatory reporting requirements.

(b) Seek to establish agreements for voluntary reporting of health care claims data from health care payers that are not subject to mandatory reporting requirements in order to ensure availability of the most comprehensive and systemwide data on health care costs and quality;

(c) Seek to establish agreements or requests with the federal centers for medicare and medicaid services to obtain medicare health claims data;

(d) Determine the measures necessary to implement the reporting requirements in a manner that is cost-effective and reasonable for data sources and timely, relevant, and reliable for consumers, public and private purchasers, providers, and policymakers;

(e) Determine the reports and data to be made available to the public with recommendations from the advisory committee in order to accomplish the purposes of this section, including conducting studies and reporting the results of the studies;

(f) Collect, aggregate, distribute, and publicly report performance data on quality, health outcomes, health disparities, cost, utilization, and pricing in a manner accessible for consumers, public and private purchasers, providers, and policymakers;

(g) Protect patient privacy in compliance with state and federal medical privacy laws while preserving the ability to analyze data and share with providers and payers to ensure accuracy prior to the public release of information;

(h) Report to the governor and the general assembly on or before March 1 of each year on the status of implementing the database and any recommendations for statutory or regulatory changes, with input from the advisory committee or its successor governance entity, that would advance the purposes of this section;

(i) Provide leadership and coordination of public and private health care quality and performance measurements to ensure efficiency, cost-effectiveness, transparency, and informed choice by consumers and public and private purchasers.

(6) The administrator, with input from the advisory committee:

(a) Shall incorporate and utilize publicly available data other than administrative claims data if necessary to measure and analyze a significant health care quality, safety, or cost issue that cannot be adequately measured with administrative claims data alone;

(b) Shall require payer data sources to submit data necessary to implement the all-payer claims database;

(c) Shall determine the data elements to be collected, the reporting formats for data submitted, and the use and reporting of any data submitted. Data collection shall align with national, regional, and other uniform all-payer claims databases' standards where possible.

(d) May audit the accuracy of all data submitted;

(e) May contract with third parties to collect and process the health care data collected pursuant to this section. The contract shall prohibit the collection of unencrypted social security numbers and the use of the data for any purpose other than those specifically authorized by the contract. The contract shall require the third party to transmit the data collected and processed under the contract to the administrator or other designated entity.

(f) May share data regionally or help develop a multi-state effort if recommended by the advisory committee.

(7) The all-payer health claims database shall:

(a) Be available to the public when disclosed in a form and manner that ensures the privacy and security of personal health information as required by state and federal law, as a resource to insurers, consumers, employers, providers, purchasers of health care, and state agencies to allow for continuous review of health care utilization, expenditures, and quality and safety performance in Colorado;

(b) Be available to state agencies and private entities in Colorado engaged in efforts to improve health care, subject to rules promulgated by the executive director;

(c) Be presented to allow for comparisons of geographic, demographic, and economic factors and institutional size;

(d) Present data in a consumer-friendly manner.

(8) The collection, storage, and release of health care data and other information pursuant to this section is subject to the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended.

(9) The executive director shall promulgate rules as necessary to implement this section, which rules shall include the assessment of a fine for a payer required to submit data that does not comply with this section. Any fines collected shall be deposited in the all-payer health claims database cash fund, which is hereby created in the state treasury. The moneys in the fund shall be appropriated to the department of health care policy and financing for the purpose of maintaining the all-payer health claims database. The moneys in the fund shall remain in the fund and not revert to the general fund or any other fund at the end of any fiscal year.

(10) This section is repealed, January 1, 2012, unless the executive director notifies the revisor of statutes on or before such date that sufficient funding to create the database, as determined by the executive director, advisory committee, and administrator, has been received through gifts, grants, and donations.

(11) If at any time, there is not sufficient funding to finance the ongoing operations of the database, the database shall cease operating and the advisory committee and administrator shall no longer have the duty to carry out the functions required pursuant to this section. If the database ceases to operate, the data submitted shall be destroyed or returned to its original source.

Source: L. 2010: Entire section added, (HB 10-1330), ch. 299, p. 1406, § 1, effective August 11.

Editor's note: The revisor of statutes received the notice required pursuant to subsection (10) on November 22, 2011.

25.5-1-205. Providing for the efficient provision of health care through state-supervised cooperative action - rules. (1) Cooperation among health care payors, including both private sector entities and federal and state-administered health care programs, has the potential to eliminate needless and costly complexity in the administration of the programs and to benefit patients, payors, and the government. Further, alignment of financial incentives among private and public entities may accelerate and reinforce improvements in health care quality and patient outcomes.

(2) The executive director shall facilitate departmental oversight of collaboration among providers, medicaid clients and advocates, and payors that is designed to improve health outcomes and patient satisfaction and support the financial sustainability of the medicaid program.

(3) The executive director may promulgate rules relating to the collaborative process set forth in this section.

Source: L. 2012: Entire section added, (HB 12-1281), ch. 246, p. 1182, § 1, effective June 4.

PART 3

MEDICAL SERVICES BOARD

25.5-1-301. Medical services board - creation. (1) There is hereby created in the state department a medical services board, referred to in this part 3 as the "board", which shall consist of eleven members appointed by the governor with the consent of the senate. The governor shall appoint persons to the board who have knowledge of medical assistance

programs, and one or more of the appointments may include a person or persons who have received services through programs administered by the department within two years of the date of appointment. No more than six members of the board shall be members of the same political party. Of the eleven members appointed to the board, at least one shall be appointed from each congressional district. In making appointments to the board, the governor shall include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2), C.R.S., a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this subsection (1) are met.

(2) Members shall serve at the pleasure of the governor for a term of four years; except that, of the members first appointed, three shall serve for a term of two years and three shall serve for a term of three years. On July 1, 2001, the governor shall appoint one member from the private sector to the board who shall have experience with the delivery of health care, who shall be appointed for a term of two years, and one member who shall have experience or expertise in caring for medically underserved children, who shall be appointed for a term of three years.

(3) Members shall receive no compensation but shall be reimbursed for reasonable and necessary actual expenses incurred in the performance of their official duties as members of the board.

(4) Vacancies on the board shall be filled by appointment of the governor for the remainder of any unexpired term.

Source: L. 94: Entire part added, p. 1557, § 2, effective July 1. L. 2001: (1) and (2) amended, p. 916, § 12, effective August 8. L. 2006: Entire part amended, p. 1797, § 3, effective July 1. L. 2009: (1) amended, (HB 09-1281), ch. 399, p. 2154, § 4, effective August 5. L. 2011: (1) amended, (SB 11-183), ch. 132, p. 465, § 2, effective August 10.

25.5-1-302. Medical services board - organization. (1) The board shall elect from its members a president, a vice-president, and such other board officers as it shall determine. All board officers shall hold their offices at the pleasure of the board.

(2) Regular meetings of the board shall be held not less than once every three months at such times as may be fixed by resolution of the board. All meetings of the board, in every suit and proceeding, shall be considered to have been duly called and regularly held and all orders and proceedings of the board to have been authorized, unless the contrary is proven.

(3) The board shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the board. The vote of a majority of a quorum of the board shall constitute the action of the board. The board shall act only by resolution adopted at a duly called meeting of the board, and no individual of the board shall exercise any individual administrative authority with respect to the department.

Source: L. 94: Entire part added, p. 1557, § 2, effective July 1. L. 2006: Entire part amended, p. 1798, § 3, effective July 1.

25.5-1-303. Powers and duties of the board - scope of authority - rules. (1) The board shall have the authority set forth in subsection (3) of this section over the following programs administered by the state department:

(a) The “Colorado Medical Assistance Act”, as specified in articles 4, 5, and 6 of this title;

(b) The “Colorado indigent care program”, as specified in part 1 of article 3 of this title;

(c) Repealed.

(d) The “Children’s Basic Health Plan Act”, as specified in article 8 of this title;

(e) The old age pension health and medical care program, as specified in section 25.5-2-101.

(2) Nothing in this section shall be construed to affect any specific statutory provision granting rule-making authority to the board in relation to a specific program.

(3) The board shall adopt rules in connection with the programs set forth in subsection (1) of this section governing the following:

(a) The implementation of legislative and departmental policies and procedures for such programs; except that no rules shall be promulgated for any policy or procedure which governs the administration of the state department as specified in section 25.5-1-108 (1);

(b) The establishment of eligibility requirements for persons receiving services from the state department;

(c) The establishment of the type of benefits that a recipient of services may obtain if eligibility requirements are met, subject to the authorization, requirements, and availability of such benefits;

(d) The requirements, obligations, and rights of clients and recipients;

(e) The establishment of a procedure to resolve disputes that may arise between clients and the state department or clients and providers;

(f) The requirements, obligations, and rights of providers, including policies and procedures related to provider payments that may affect client benefits;

(g) The establishment of a procedure to resolve disputes that may arise between providers and between the state department and providers.

(4) At the request of the executive director, the board shall advise the executive director as to any proposed policies or rules governing programs administered by the state department that are not set forth in subsection (1) of this section.

(5) The board shall have no authority over the revenue of the state department.

(6) All rules and orders of the department of human services in connection with the old age pension health and medical care program shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(7) The rules issued by the state board shall be binding upon the county departments. At any public hearing relating to a proposed rule-making, interested persons shall have the right to present their data, views, or arguments orally. Proposed rules of the state board shall be subject to the provisions of section 24-4-103, C.R.S.

(8) To the extent that rules are promulgated by the state board of human services for programs or providers that receive either medicaid only or both medicaid and nonmedicaid funding, the rules shall be developed in cooperation with the state department and shall not conflict with state statutes or federal statutes or regulations.

Source: L. 94: Entire part added, p. 1558, § 2, effective July 1. L. 95: (3)(e) to (3)(g) amended, p. 928, § 32, effective May 25. L. 99: (1)(c) amended and (1)(e) added, p. 701, § 7, effective July 1. L. 2001: (1)(f) and (7) added, pp. 916, 917, §§ 13, 14, effective August 8. L. 2003: (7) amended, p. 2009, § 90, effective May 22; (4) amended and (8) added, p. 2584, § 4, effective July 1. L. 2006: Entire part amended, p. 1798, § 3, effective July 1. L. 2007: (1)(c) repealed, p. 2042, § 71, effective June 1. L. 2011: (1)(e) and (6) amended, (SB 11-210), ch. 187, p. 722, § 8, effective July 15, 2012.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1)(c) and enacting subsection (1)(e), see section 1 of chapter 203, Session Laws of Colorado 1999.

25.5-1-304. Repeal of part. (Deleted by amendment)

Source: L. 94: Entire part added, p. 1559, § 2, effective July 1. L. 2000: Entire section amended, p. 410, § 9, effective April 13. L. 2006: Entire part amended, p. 1800, § 3, effective July 1.

PART 4

HEALTH CARE COVERAGE COOPERATIVE
RULE-MAKING AUTHORITY**25.5-1-401. (Repealed)**

Source: L. 2004: Entire part repealed, p. 1011, § 23, effective August 4.

Editor's note: This part 4 was added in 1994. For amendments to this part 4 prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 5

COOPERATIVE HEALTH CARE AGREEMENTS
INVOLVING HOSPITALS**25.5-1-501 to 25.5-1-516. (Repealed)**

Source: L. 2006: Entire part repealed, p. 1800, § 4, effective July 1.

Editor's note: This part 5 was added in 1995. For amendments to this part 5 prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 2

State-funded Health and Medical Care

Editor's note: This article was added in 1994 and was repealed in 2002. This article was subsequently amended in 2006 resulting in the recreation of the article with relocated provisions. For amendments to this article prior to 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

25.5-2-101. Old age pension health and medical care fund - supplemental old age pension health and medical care fund - cash system of accounting - legislative declaration - rules.

25.5-2-102. Health and medical care program - aid to the needy disabled. (Repealed)

25.5-2-101. Old age pension health and medical care fund - supplemental old age pension health and medical care fund - cash system of accounting - legislative declaration - rules.

(1) (Deleted by amendment, L. 2011, (SB 11-210), ch. 187, p. 719, § 2, effective July 15, 2012.)

(2) Any moneys remaining in the state old age pension fund after full payment of basic minimum awards to qualified old age pension recipients and after establishment and maintenance of the old age pension stabilization fund in the amount of five million dollars shall be transferred to a fund to be known as the old age pension health and medical care fund, which is hereby created. The state board shall establish and promulgate rules for administration of a program to provide health and medical care to persons who qualify to receive old age pensions and who are not patients in an institution for tuberculosis or mental

diseases. The costs of such program, not to exceed ten million dollars in any fiscal year, shall be defrayed from such health and medical care fund, but all moneys available, accrued or accruing, received or receivable, in said health and medical care fund in excess of ten million dollars in any fiscal year shall be transferred to the general fund of the state to be used pursuant to law. Moneys in the old age pension health and medical care fund shall be subject to annual appropriation by the general assembly.

(3) Repealed.

(4) The state department shall utilize the cash system of accounting, as enunciated by the governmental accounting standards board, regardless of the source of revenues involved, for all activities of the state department relating to the financial administration of any nonadministrative expenditure for the health and medical care programs described in subsection (2) of this section.

Source: **L. 2006:** Entire article amended with relocations, p. 1800, § 5, effective July 1. **L. 2007:** (4) added, p. 465, § 1, effective July 1. **L. 2009:** (3) amended, (SB 09-261), ch. 201, p. 905, § 1, effective May 1. **L. 2010:** (3)(b)(III) amended and (3)(b)(IV) and (3)(b)(V) added, (HB 10-1380), ch. 215, p. 932, § 1, effective May 6. **L. 2011:** (3)(b)(VI) added, (SB 11-164), ch. 33, p. 93, § 5, effective March 18; (3) amended, (SB 11-210), ch. 187, p. 718, § 1, effective July 1; (1) and (4) amended, (SB 11-210), ch. 187, p. 719, § 2, effective July 15, 2012.

Editor's note: (1) This section is similar to former § 26-2-117 as it existed prior to 2006.

(2) Amendments to subsection (3) by Senate Bill 11-210 and Senate Bill 11-164 were harmonized.

(3) Subsection (3)(a)(II) provided for the repeal of subsection (3)(a), effective July 15, 2012. (See L. 2011, p. 718.) Subsection (3)(b)(V) provided for the repeal of subsection (3)(b), effective July 15, 2012. (See L. 2011, p. 718.)

25.5-2-102. Health and medical care program - aid to the needy disabled. (Repealed)

Source: **L. 2006:** Entire article amended with relocations, p. 1801, § 5, effective July 1. **L. 2007:** Entire section repealed, p. 2043, § 72, effective June 1.

Editor's note: This section was similar to former § 26-2-119.5 as it existed prior to 2006.

PREScription DRUGS

ARTICLE 2.5

Colorado Cares Prescription Drug Program

- | | |
|---|--|
| 25.5-2.5-101. Short title. | 25.5-2.5-104. Program - rules - repeal. (Repealed) |
| 25.5-2.5-102. Legislative declaration. | 25.5-2.5-105. Cash fund. (Repealed) |
| 25.5-2.5-103. Lower-cost prescription drugs - information - research - reporting. | 25.5-2.5-106. Repeal of article. (Repealed) |

25.5-2.5-101. Short title. This article shall be known and may be cited as the "Colorado Cares Rx Act".

Source: **L. 2007:** Entire article added, p. 1, § 1, effective February 5.

25.5-2.5-102. Legislative declaration. (1) The general assembly finds that:
(a) Uninsured, underinsured, and older Coloradans pay a disproportionately greater share of their income for prescription drugs. In many cases, current drug prices have the

effect of denying residents access to necessary medical care, thereby threatening their health and safety.

(b) Prescription drugs play an increasingly important role in improving or stabilizing a person's health and in reducing overall health care costs;

(c) Additionally, the new medicare prescription drug benefit restricts persons from purchasing insurance in order to fully cover their prescription drug needs. This restriction on a person's ability to purchase adequate coverage may threaten the person's health and safety;

(d) Currently, there is no limit on the amount that a pharmacy may charge for a generic or nonpatented drug, and, although some retail pharmacies are offering some generic and nonpatented drugs at discounted prices, there are no guarantees that the pharmacies will continue to do so.

(2) The general assembly, therefore, declares that it is important to make information available to the public concerning ways to purchase lower-cost generic and nonpatented prescription drugs through the "Colorado Cares Rx Act" in order to protect the health of uninsured, underinsured, and older Coloradans. The general assembly further declares that the state should continue to actively research cost-effective mechanisms or programs that may provide additional options to address this need in Colorado.

Source: L. 2007: Entire article added, p. 1, § 1, effective February 5. **L. 2009:** Entire section amended, (SB 09-132), ch. 224, p. 1011, § 1, effective May 4.

25.5-2.5-103. Lower-cost prescription drugs - information - research - reporting.

(1) The state department shall make information available to the public concerning lower-cost prescription drug programs. The information shall include, but need not be limited to:

(a) Ways in which low-income, uninsured persons can obtain lower-cost prescription drugs; and

(b) Contact information concerning programs for lower-cost prescription drugs.

(2) The state department shall research cost-effective programs or mechanisms by which low-income, uninsured persons may purchase lower-cost prescription drugs.

(3) The state department shall report annually to the health and human services committees of the house of representatives and the senate, or any successor committees, concerning the provisions of this article.

Source: L. 2007: Entire article added, p. 2, § 1, effective February 5. **L. 2009:** Entire section R&RE, (SB 09-132), ch. 224, p. 1012, § 2, effective May 4.

25.5-2.5-104. Program - rules - repeal. (Repealed)

Source: L. 2007: Entire article added, p. 2, § 1, effective February 5. **L. 2009:** Entire section repealed, (SB 09-132), ch. 224, p. 1012, § 3, effective May 4.

25.5-2.5-105. Cash fund. (Repealed)

Source: L. 2007: Entire article added, p. 4, § 1, effective February 5. **L. 2009:** Entire section repealed, (SB 09-132), ch. 224, p. 1012, § 3, effective May 4.

25.5-2.5-106. Repeal of article. (Repealed)

Source: L. 2007: Entire article added, p. 4, § 1, effective February 5. **L. 2009:** Entire section repealed, (SB 09-132), ch. 224, p. 1012, § 3, effective May 4.

INDIGENT CARE

ARTICLE 3

Indigent Care

Editor’s note: This article was added in 2005. This article was amended in 2006, resulting in the relocation of provisions. For the text of this article prior to 2006, consult the 2005 Colorado Revised Statutes. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1		PART 2	
COLORADO INDIGENT CARE PROGRAM		COMPREHENSIVE PRIMARY AND PREVENTIVE CARE GRANT PROGRAM	
25.5-3-101.	Short title.	25.5-3-201.	Short title. (Repealed)
25.5-3-102.	Legislative declaration.	25.5-3-202.	Legislative declaration. (Repealed)
25.5-3-103.	Definitions.	25.5-3-203.	Definitions. (Repealed)
25.5-3-104.	Program for the medically indigent established - eligibility - rules.	25.5-3-204.	Comprehensive primary and preventive care grant program - creation. (Repealed)
25.5-3-105.	Eligibility of legal immigrants for services.	25.5-3-205.	Grant-making process. (Repealed)
25.5-3-106.	No public funds for abortion - exception - definitions - repeal.	25.5-3-206.	Reports. (Repealed)
25.5-3-107.	Report concerning the program.	25.5-3-207.	Program funding - comprehensive primary and preventive care fund - creation - repeal. (Repealed)
25.5-3-108.	Responsibility of the department of health care policy and financing - provider reimbursement.	PART 3	
25.5-3-109.	Appropriations.	COMPREHENSIVE PRIMARY CARE SERVICES	
25.5-3-110.	Effect of part 1.	25.5-3-301.	Definitions.
25.5-3-111.	Penalties.	25.5-3-302.	Annual allocation - primary care services - qualified provider - rules.
25.5-3-112.	Health care services fund - creation - state plan amendment - primary care special distribution fund.	25.5-3-303.	Consultation.

PART 1

COLORADO INDIGENT CARE PROGRAM

25.5-3-101. Short title. This part 1 shall be known and may be cited as the “Colorado Indigent Care Program”.

Source: L. 2006: Entire article amended with relocations, p. 1802, § 6, effective July 1.

Editor’s note: This section is similar to former § 26-15-101 as it existed prior to 2006.

25.5-3-102. Legislative declaration. (1) The general assembly hereby determines, finds, and declares that:

(a) The state has insufficient resources to pay for all medical services for persons who are indigent and must therefore allocate available resources in a manner that will provide treatment of those conditions constituting the most serious threats to the health of such medically indigent persons, as well as increase access to primary medical care to prevent deterioration of the health conditions among medically indigent people; and

(b) Such allocation of resources will require the prioritization of medical services by providers and the coordination of administration and delivery of medical services.

(2) The general assembly further determines, finds, and declares that the eligibility of medically indigent persons to receive medical services rendered under the conditions specified in subsection (1) of this section exists only to the extent of available appropriations, as well as to the extent of the individual provider facility's physical, staff, and financial capabilities. The general assembly also recognizes that the program for the medically indigent is a partial solution to the health care needs of Colorado's medically indigent citizens. Therefore, medically indigent persons accepting medical services from such program shall be subject to the limitations and requirements imposed in this part 1.

Source: L. 2006: Entire article amended with relocations, p. 1802, § 6, effective July 1.

Editor's note: This section is similar to former § 26-15-102 as it existed prior to 2006.

25.5-3-103. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Emergency care" means treatment for conditions of an acute, severe nature which are life, limb, or disability threats requiring immediate attention, where any delay in treatment would, in the judgment of the responsible physician, threaten life or loss of function of a patient or viable fetus.

(2) "Executive director" means the executive director of the state department.

(3) "General provider" means a general hospital, birth center, or community health clinic licensed or certified by the department of public health and environment pursuant to section 25-1.5-103 (1) (a) (I) or (1) (a) (II), C.R.S.; a federally qualified health center, as defined in section 1861 (aa) (4) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa) (4); a rural health clinic, as defined in section 1861 (aa) (2) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa) (2); a health maintenance organization issued a certificate of authority pursuant to section 10-16-402, C.R.S.; and the health sciences center when acting pursuant to section 25.5-3-108 (5) (a) (I) or (5) (a) (II) (A). For the purposes of the program, "general provider" includes associated physicians.

(4) "Health sciences center" means the schools of medicine, dentistry, nursing, and pharmacy established by the regents of the university of Colorado under section 5 of article VIII of the Colorado constitution.

(5) "Program" means the program for the medically indigent established by section 25.5-3-104.

(6) "University hospital" means the university hospital operated pursuant to article 21 of title 23, C.R.S.

Source: L. 2006: Entire article amended with relocations, p. 1803, § 6, effective July 1. **L. 2011:** (3) amended, (HB 11-1101), ch. 94, p. 278, § 3, effective April 8; (3) amended, (HB 11-1323), ch. 265, p. 1199, § 3, effective June 2.

Editor's note: This section is similar to former § 26-15-103 as it existed prior to 2006.

25.5-3-104. Program for the medically indigent established - eligibility - rules.

(1) A program for the medically indigent is hereby established, to commence July 1, 1983, which shall be administered by the state department, to provide payment to providers for the provision of medical services to eligible persons who are medically indigent. The state board may promulgate rules as are necessary for the implementation of this part 1 in accordance with article 4 of title 24, C.R.S.

(2) A client's eligibility to receive discounted services under the program for the medically indigent shall be determined by rule of the state board based on a specified percentage of the federal poverty line, adjusted for family size, which percentage shall not be less than two hundred fifty percent.

Source: L. 2006: Entire section amended, p. 1606, § 2, effective June 2; entire article amended with relocations, p. 1803, § 6, effective July 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2109, § 138, effective August 11.

Editor's note: (1) This section is similar to former § 26-15-104 as it existed prior to 2006.

(2) Amendments to section 26-15-104 by Senate Bill 06-044 were harmonized with this section as it appeared in Senate Bill 06-219.

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 323, Session Laws of Colorado 2006.

25.5-3-105. Eligibility of legal immigrants for services. A legal immigrant who is a resident of the state of Colorado shall be eligible to receive services under this part 1 so long as he or she meets the eligibility requirements. As used in this section, "legal immigrant" has the same meaning as described in section 25.5-4-103 (10). As a condition of eligibility for services under this part 1, a legal immigrant shall agree to refrain from executing an affidavit of support for the purpose of sponsoring an alien on or after July 1, 1997, under rules promulgated by the immigration and naturalization service, or any successor agency, during the pendency of such legal immigrant's receipt of services under this part 1. Nothing in this section shall be construed to affect a legal immigrant's eligibility for services under this part 1 based upon such legal immigrant's responsibilities under an affidavit of support entered into before July 1, 1997.

Source: L. 2006: Entire article amended with relocations, p. 1804, § 6, effective July 1.

Editor's note: This section is similar to former § 26-15-104.3 as it existed prior to 2006.

25.5-3-106. No public funds for abortion - exception - definitions - repeal. (1) It is the purpose of this section to implement the provisions of amendment 3 to article V of the Colorado constitution, adopted by the registered electors of the state of Colorado at the general election November 6, 1984, which prohibits the use of public funds by the state of Colorado or its agencies or political subdivisions to pay or otherwise reimburse, directly or indirectly, any person, agency, or facility for any induced abortion.

(2) If every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services, not otherwise provided for by law.

(3) (a) Except as provided in paragraph (b) of this subsection (3), any necessary medical services performed pursuant to this section shall be performed only in a licensed health care facility by a provider who is a licensed physician.

(b) However, such services may be performed in other than a licensed health care facility if, in the medical judgment of the attending physician, the life of the pregnant woman or her unborn child is substantially threatened and a transfer to a licensed health care facility would further endanger the life of the pregnant woman or her unborn child. Such medical services may be performed in other than a licensed health care facility if the medical services are necessitated by a life-endangering circumstance described in subparagraph (II) of paragraph (b) of subsection (6) of this section and if there is no licensed health care facility within a thirty-mile radius of the place where such medical services are performed.

(4) (a) Any physician who renders necessary medical services pursuant to subsection (2) of this section shall report the following information to the state department:

(I) The age of the pregnant woman and the gestational age of the unborn child at the time the necessary medical services were performed;

(II) The necessary medical services which were performed;

(III) The medical condition which necessitated the performance of necessary medical services;

(IV) The date such necessary medical services were performed and the name of the facility in which such services were performed.

(b) The information required to be reported pursuant to paragraph (a) of this subsection (4) shall be compiled by the state department and such compilation shall be an ongoing public record; except that the privacy of the pregnant woman and the attending physician shall be preserved.

- (5) For purposes of this section, pregnancy is a medically diagnosable condition.
- (6) For the purposes of this section:
- (a) (I) “Death” means:
- (A) The irreversible cessation of circulatory and respiratory functions; or
- (B) The irreversible cessation of all functions of the entire brain, including the brain stem.
- (II) A determination of death under this section shall be in accordance with accepted medical standards.
- (b) “Life-endangering circumstance” means:
- (I) The presence of a medical condition, other than a psychiatric condition, as determined by the attending physician, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term;
- (II) The presence of a lethal medical condition in the unborn child, as determined by the attending physician and one other physician, which would result in the impending death of the unborn child during the term of pregnancy or at birth; or
- (III) The presence of a psychiatric condition which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. In such case, unless the pregnant woman has been receiving prolonged psychiatric care, the attending licensed physician shall obtain consultation from a licensed physician specializing in psychiatry confirming the presence of such a psychiatric condition. The attending physician shall report the findings of such consultation to the state department.
- (c) “Necessary medical services” means any medical procedures deemed necessary to prevent the death of a pregnant woman or her unborn child due to life-endangering circumstances.
- (7) If any provision of this section or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and, to this end, provisions of this section are declared severable.
- (8) Use of the term “unborn child” in this section is solely for the purposes of facilitating the implementation of section 50 of article V of the state constitution and its use shall not affect any other law or statute nor shall it create any presumptions relating to the legal status of an unborn child or create or affect any distinction between the legal status of an unborn child and the legal status of a fetus.
- (9) This section shall be repealed if section 50 of article V of the Colorado constitution is repealed.

Source: L. 2006: Entire article amended with relocations, p. 1804, § 6, effective July 1.

Editor’s note: This section is similar to former § 26-15-104.5 as it existed prior to 2006.

Cross references: For the text of “amendment 3 to article V of the Colorado constitution” referenced in subsection (1) of this section, see section 50 of article V of the state constitution.

ANNOTATION

Annotator’s note. Since § 25.5-3-106 is similar to § 26-15-104.5 as it existed prior to the 2006 amendments relocating article 15 of title 26 to title 25.5, a relevant case construing that provision has been included in the annotations to this section.

This section does not violate section 50 of article V of the constitution. Under this statutory section, reimbursement may not be provided for an abortion that is not necessary to prevent the death of the pregnant woman. Therefore this section is consistent with section 50 of article V which expresses the intention of the

people that no induced abortion shall be paid for by public funds unless necessary to prevent the death of the pregnant woman and unless every reasonable effort also has been made to preserve the life of the unborn child. *Urbish v. Lamm*, 761 P. 2d 756 (Colo. 1988).

Statutory authority for rules interpreting the exception to the expenditure of public funds for abortions exists where legislation found in this section specifically states that “if every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this

section to pay or reimburse for necessary medical services, not otherwise provided by law.” Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

Rule promulgated by department of social services which provided that when a pregnant woman’s life is endangered, public funds may be used for an abortion of a viable unborn child before term only in circumstances where every reasonable effort has been made to preserve the lives of both the mother and the unborn child is

within the scope of the exception to the prohibition on the use of public funds to pay for abortions. In contrast, a rule which allowed the public funding of abortions of unborn children who would die of natural causes at or before birth even if the mother’s life was not threatened by carrying the unborn child for a longer period was beyond the scope of the exception. Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

25.5-3-107. Report concerning the program. The executive director shall prepare an annual report concerning the status of the medically indigent program to be submitted to the health and human services committees of the senate and the house of representatives, or any successor committees, no later than February 1 of each year. The report shall be prepared following consultation with providers in the program, state department personnel, and other agencies, organizations, or individuals as the executive director deems appropriate in order to obtain comprehensive and objective information about the program.

Source: L. 2006: Entire article amended with relocations, p. 1806, § 6, effective July 1.

Editor’s note: This section is similar to former § 26-15-105 as it existed prior to 2006.

25.5-3-108. Responsibility of the department of health care policy and financing - provider reimbursement. (1) The state department shall be responsible for:

(a) Execution of such contracts with providers for partial reimbursement of costs for medical services rendered to the medically indigent as the state department shall determine are necessary for the program;

(b) Promulgation of such reasonable rules as are necessary for the program;

(c) Submission of the report required in section 25.5-3-107; and

(d) Application for federal financial participation under the program.

(2) The contracts required by paragraph (a) of subsection (1) of this section shall be negotiated between the state department and the various general providers, as defined in section 25.5-3-103 (3), and shall include contracts with providers to provide tertiary or specialized services. The state department may award such contracts upon a determination that it would not be cost effective nor result in adequate quality of care for such services to be developed by the contract providers, or upon a determination that the contract providers are unable or unwilling to provide such services.

(3) The state department shall establish procedures requiring the provider to provide for proof of indigency to be submitted by the person seeking assistance, but the provider shall be responsible for the determination of eligibility.

(4) The state department shall establish procedures so that the providers of medical services rendered to the medically indigent cover geographic regions of the state.

(5) (a) The responsibilities of providers who provide medical care through the program for the medically indigent are as follows:

(I) Denver health and hospitals, including associated physicians, shall, up to its physical, staff, and financial capabilities as provided for under this program, be the primary providers of medical services to the medically indigent for the city and county of Denver.

(II) (A) University hospital and the physicians and other faculty members of the health sciences center shall, up to their physical, staff, and financial capabilities as provided for under this program, be the primary provider of medical services to the medically indigent for the Denver primary metropolitan statistical area.

(B) University hospital and the physicians and other faculty members of the health sciences center shall be the primary provider of such complex care as is not available or is not contracted for in the remaining areas of the state up to their physical, staff, and financial capabilities as provided for under this program.

(b) Any two or more providers awarded contracts may, with the approval of the state department, redistribute their respective populations and associated funds.

(c) Every provider who provides medical care through the program for the medically indigent shall comply with all procedures established by the state department.

(6) The state department shall establish procedures that allocate funds to providers based on the anticipated utilization of services.

(7) A provider receiving reimbursement pursuant to this section shall transfer a medically indigent patient to another provider only with the prior agreement of the provider.

(8) (a) Every provider receiving reimbursement pursuant to this section shall prioritize for each fiscal year the medical services which it will be able to render, within the limits of the funds which will be made available by the state department.

(b) Such medical services shall be prioritized in the following order:

(I) Emergency care for the full year;

(II) Any additional medical care for those conditions the state department determines to be the most serious threat to the health of medically indigent persons;

(III) Any other additional medical care.

(9) A provider receiving reimbursement pursuant to this section shall not be liable in civil damages for refusing to admit for treatment or for refusing to treat any medically indigent person for a condition which the state department or the provider has determined to be outside of the scope of the program.

(10) (a) A medically indigent person who wishes to be determined eligible for assistance under this part 1 shall comply with the eligibility requirements set by the state department.

(b) A medically indigent person requesting assistance under this part 1 specifically authorizes the state department or provider to:

(I) Use any information required by the eligibility requirements set by the state department for the purpose of verifying eligibility; and

(II) Obtain records pertaining to eligibility from a financial institution, as defined in section 15-15-201 (4), C.R.S., or from any insurance company.

(c) A medically indigent person requesting assistance under this part 1 shall be provided language clearly explaining the provisions of this subsection (10).

(11) With the approval of the state department, any provider awarded a contract may enter into subcontracts or other agreements for services related to the program.

(12) Providers awarded contracts shall not be paid from funds made available for this program up to the extent, if any, of their annual financial obligation under the Hill-Burton act.

(13) When adopting or modifying procedures under this part 1, the state department shall notify each provider, who is contracted to provide medical care through the program for the medically indigent, at least thirty days prior to implementation of a new procedure. The state department shall hold a meeting for all providers at least thirty days prior to the implementation of a new procedure.

(14) The state department shall require any hospital provider who may receive payment under the program to annually submit data relating to the hospital's number of medicaid-eligible in-patient days and the hospital's total in-patient days in a form specified by the state department. The hospital provider shall verify the data to the state department through the program audit procedures required by the state department. The state department shall include this information by hospital in the department's annual budget request to the joint budget committee of the general assembly and in the report required by section 25.5-3-107.

(15) To qualify for the program's payment formula disproportionate share hospital factor, as described in rule by the state board consistent with the provisions of this part 1, a hospital provider's percent of medicaid-eligible in-patient days relative to total in-patient days shall be equal to or exceed one standard deviation above the mean.

(16) After receiving approval by the state department, a community health clinic may utilize moneys received pursuant to this article, and any gifts, grants, and donations, for the development and implementation of demonstration projects that may include but need not be limited to coordination of care and disease management.

(17) Subject to adequate funding made available under section 25.5-4-402.3, the state department shall increase hospital reimbursements up to one hundred percent of hospital costs for providing medical care under the program.

(18) Repealed.

Source: **L. 2006:** (1) amended and (16) added, p. 1606, § 3, effective June 2; entire article amended with relocations, p. 1806, § 6, effective July 1. **L. 2009:** (18) added, (SB 09-264), ch. 204, p. 928, § 4, effective May 1; (17) added, (HB 09-1293), ch. 152, p. 644, § 3, effective July 1.

Editor's note: (1) This section is similar to former § 26-15-106 as it existed prior to 2006.

(2) (a) Amendments to section 26-15-106 (1) by Senate Bill 06-044 were harmonized with subsection (1) as it appeared in Senate Bill 06-219.

(b) Subsection (16) was enacted as § 26-15-106 (20) in Senate Bill 06-044 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

(3) Subsection (18)(b) provided for the repeal of subsection (18), effective July 1, 2011. (See L. 2009, p. 928.)

Cross references: (1) For the legislative declaration contained in the 2006 act amending subsection (1) and enacting subsection (16), see section 1 of chapter 323, Session Laws of Colorado 2006.

(2) For the "Hill-Burton Act" referenced in subsection (12), also known as the "Hospital Survey and Construction Act", see Pub.L. 725, 79th Congress, 60 Stat. 1040.

25.5-3-109. Appropriations. The general assembly shall make annual appropriations to the state department to accomplish the purposes of this part 1.

Source: **L. 2006:** Entire article amended with relocations, p. 1809, § 6, effective July 1.

Editor's note: This section is similar to former § 26-15-110 as it existed prior to 2006.

25.5-3-110. Effect of part 1. This part 1 shall not affect the department of human services' responsibilities for the provision of mental health care in accordance with article 66 of title 27, C.R.S., and this part 1 shall not affect any provisions of article 22 of title 23, C.R.S., or any other provisions of law relating to the university of Colorado psychiatric hospital.

Source: **L. 2006:** Entire article amended with relocations, p. 1809, § 6, effective July 1. **L. 2010:** Entire section amended, (SB 10-175), ch. 188, p. 800, § 64, effective April 29.

Editor's note: This section is similar to former § 26-15-111 as it existed prior to 2006.

25.5-3-111. Penalties. Any person who represents that any medical service is reimbursable or subject to payment under this part 1 when he or she knows that it is not and any person who represents that he or she is eligible for assistance under this part 1 when he or she knows that he or she is not commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 2006:** Entire article amended with relocations, p. 1809, § 6, effective July 1.

Editor's note: This section is similar to former § 26-15-112 as it existed prior to 2006.

25.5-3-112. Health care services fund - creation - state plan amendment - primary care special distribution fund. (1) (a) There is hereby created in the state treasury the Colorado health care services fund, referred to in this section as the "fund". The fund shall consist of moneys credited thereto pursuant to this section.

(b) In fiscal year 2005-06, the general assembly shall appropriate fourteen million nine hundred sixty-two thousand four hundred eight dollars from the general fund to the fund. Of the moneys in the general fund exempt account created in section 24-77-103.6 (2), C.R.S., the following amounts shall be appropriated by the general assembly to the fund:

(I) In fiscal year 2007-08, fifteen million dollars; and

(II) In fiscal year 2008-09, twelve million nine hundred eighteen thousand seven hundred fifty dollars.

(III) (Deleted by amendment, L. 2010, (HB 10-1321), ch. 48, p. 179, § 1, effective March 29, 2010.)

(b.5) In fiscal year 2009-10, the general assembly shall appropriate ten million three hundred ninety thousand dollars from the general fund to the fund.

(b.6) In fiscal year 2011-12, the treasurer shall transfer one million dollars from the general fund to the fund.

(c) All moneys appropriated to the fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or to any other fund. Notwithstanding any provision of section 24-36-114, C.R.S., to the contrary, all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(1.5) Notwithstanding any provision of subsection (1) of this section to the contrary, on April 20, 2009, the state treasurer shall deduct five hundred thousand dollars from the fund and transfer such sum to the general fund.

(2) In fiscal year 2006-07, and each of the two fiscal years thereafter, notwithstanding the requirements of section 25.5-3-108 (8) (b), the moneys deposited into the fund shall be appropriated as follows:

(a) Of the moneys appropriated pursuant to this subsection (2), eighteen percent of the moneys annually appropriated shall be to Denver health and hospitals as the community health clinic provider for the city and county of Denver.

(b) (I) For fiscal year 2006-07, eighty-two percent of the moneys remaining after the appropriation pursuant to paragraph (a) of this subsection (2) shall be appropriated to community health clinics to provide primary care services pursuant to this article.

(II) For fiscal year 2006-07, eighteen percent of the moneys remaining after the appropriation pursuant to paragraph (a) of this subsection (2) shall be appropriated to primary care clinics operated by a licensed or certified health care facility to provide primary care services pursuant to this article.

(III) For fiscal years 2007-08 and 2008-09, the allocation of the moneys remaining after the appropriation pursuant to paragraph (a) of this subsection (2) shall be determined based on prior utilization as specified in rule by the state board.

(2.5) In fiscal year 2009-10, notwithstanding the requirements of section 25.5-3-108 (8) (b), the moneys deposited into the fund shall be appropriated as follows:

(a) Twenty percent of the moneys shall be appropriated to the state department for distribution to Denver health and hospitals as the community health clinic provider for the city and county of Denver;

(b) Eighty percent of the moneys shall be appropriated to the state department for distribution to community health clinics based upon prior utilizations as determined by the state department to mitigate reductions the clinics experience due to reductions in moneys available from the primary care fund created pursuant to section 24-22-117 (2) (b), C.R.S.

(2.7) In the 2010-11 fiscal year, notwithstanding the requirements of section 25.5-3-108 (8) (b), the moneys deposited into the fund shall be appropriated to the state department for distribution to Denver health and hospitals, as the community health clinic for the city and county of Denver, and to community health clinics. The state department shall develop a distribution formula specifying the distributions based upon prior utilizations and, to the extent possible, mitigation of the reductions in funding that the clinics experience due to reductions in moneys available from the primary care fund established pursuant to section 24-22-117 (2) (b), C.R.S.

(2.8) In the 2011-12 fiscal year, notwithstanding the requirements of section 25.5-3-108 (8) (b), the moneys deposited into the fund shall be appropriated to the state department for distribution to Denver health and hospitals, as the community health clinic for the city and county of Denver, to community health clinics, and to federally qualified health centers. The

state department shall develop a distribution formula specifying the distributions based upon prior utilizations and, to the extent possible, mitigation of the reductions in funding that the clinics experience due to reductions in moneys available from the primary care fund established pursuant to section 24-22-117 (2) (b), C.R.S.

(3) (a) The state department shall submit a state plan amendment for federal financial participation for moneys appropriated to primary care clinics operated by a licensed or certified health care facility. Upon approval of the state plan amendment, the state department is authorized to receive and expend all available federal moneys without a corresponding reduction in spending authority from the fund.

(b) To the extent possible under federal law, the state department shall pursue available federal financial participation for moneys appropriated to community health clinics.

(4) Repealed.

Source: **L. 2006:** Entire section added, p. 1606, § 4, effective June 2. **L. 2007:** (2) and (3) amended, p. 559, § 1, effective April 16; (2)(b)(III) amended, p. 2043, § 73, effective June 1. **L. 2008:** (3)(a) amended, p. 276, § 6, effective March 31. **L. 2009:** (1.5) added, (SB 09-208), ch. 149, p. 627, § 31, effective April 20; (1)(b) amended, (SB 09-264), ch. 204, p. 928, § 5, effective May 1. **L. 2010:** (1)(b), IP(2), and (2)(b)(III) amended and (1)(b.5), (2.5), and (4) added, (HB 10-1321), ch. 48, p. 179, §§ 1, 2, effective March 29; (4) amended and (2.7) added, (HB 10-1378), ch. 213, p. 927, § 3, effective May 27. **L. 2011:** (1)(b.6) and (2.8) added and (4) amended, (SB 11-219), ch. 188, p. 725, §§ 3, 4, 5, effective June 3.

Editor's note: (1) This section was originally numbered as § 26-15-114 in Senate Bill 06-044. Section 8 of the act provided for the renumbering and relocation of § 26-15-114 to this section. (See L. 2006, p. 1612.)

(2) Amendments to subsection (2) by House Bill 07-1258 and House Bill 07-1367 were harmonized.

(3) Subsection (4)(d) provided for the repeal of subsection (4), effective July 1, 2012. (See L. 2011, p. 725.)

Cross references: For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 323, Session Laws of Colorado 2006.

PART 2

COMPREHENSIVE PRIMARY AND PREVENTIVE CARE GRANT PROGRAM

25.5-3-201. Short title. (Repealed)

Source: **L. 2006:** Entire article amended with relocations, p. 1809, § 6, effective July 1. **L. 2011:** Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-202. Legislative declaration. (Repealed)

Source: **L. 2006:** Entire article amended with relocations, p. 1809, § 6, effective July 1. **L. 2010:** (3) amended, (HB 10-1422), ch. 419, p. 2109, § 139, effective August 11. **L. 2011:** Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-203. Definitions. (Repealed)

Source: **L. 2006:** Entire article amended with relocations, p. 1810, § 6, effective July 1. **L. 2010:** (7)(a) amended, (HB 10-1422), ch. 419, p. 2109, § 140, effective August 11. **L. 2011:** Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-204. Comprehensive primary and preventive care grant program - creation. (Repealed)

Source: L. 2006: Entire article amended with relocations, p. 1811, § 6, effective July 1.
L. 2011: Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-205. Grant-making process. (Repealed)

Source: L. 2006: Entire article amended with relocations, p. 1811, § 6, effective July 1.
L. 2011: Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-206. Reports. (Repealed)

Source: L. 2006: Entire article amended with relocations, p. 1812, § 6, effective July 1.
L. 2011: Entire section repealed, (SB 11-216), ch. 149, p. 520, § 4, effective May 5.

25.5-3-207. Program funding - comprehensive primary and preventive care fund - creation - repeal. (Repealed)

Source: L. 2006: (1) and (3) amended, p. 1039, § 9, effective May 25; entire article amended with relocations, p. 1813, § 6, effective July 1. **L. 2007:** (4) added, p. 149, § 9, effective March 22. **L. 2008:** (4)(b) amended, p. 276, § 7, effective March 31. **L. 2009:** (3) amended, (SB 09-269), ch. 333, p. 1768, § 8, effective June 1. **L. 2010:** (4)(c) added, (HB 10-1323), ch. 35, p. 131, § 4, effective March 22. **L. 2011:** Entire section amended, (SB 11-216), ch. 149, p. 520, § 5, effective May 5.

Editor's note: (1) This section is similar to former § 26-4-1007 as it existed prior to 2006.

(2) Amendments to section 26-4-1007 (1) and (3)(a) by House Bill 06-1310 were harmonized with subsections (1) and (3), respectively, as they appeared in Senate Bill 06-219.

(3) Subsection (4)(c) provided for the repeal of subsection (4), effective July 1, 2010. (See L. 2010, p. 131.)

(4) Subsection (5) provided for the repeal of this section, effective September 15, 2011. (See L. 2011, p. 520.)

(5) For the amendments to this section that were in effect from May 5, 2011, to September 15, 2011, see chapter 149, Session Laws of Colorado 2011. (L. 2011, p. 520.)

PART 3**COMPREHENSIVE PRIMARY CARE SERVICES**

Editor's note: This part 3 was added in 2006. It was repealed in 2011 and was subsequently recreated and reenacted in 2012, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 3 prior to 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

25.5-3-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Comprehensive primary care" means the basic, entry-level health care provided by health care practitioners or non-physician health care practitioners that is generally provided in an outpatient setting. "Comprehensive primary care", at a minimum, includes providing or arranging for the provision of the following services on a year-round basis: Primary health care; maternity care, including prenatal care; preventive, developmental, and diagnostic services for infants and children; adult preventive services; diagnostic laboratory

and radiology services; emergency care for minor trauma; pharmaceutical services; and coordination and follow-up for hospital care. “Comprehensive primary care” may also include optional services based on a patient’s needs. For the purposes of this subsection (1) and subsection (2) of this section, “arranging for the provision” means demonstrating established referral relationships with health care providers for any of the comprehensive primary care services not directly provided by an entity. An entity in a rural area may be exempt from this requirement if it can demonstrate that there are no providers in the community to provide one or more of the comprehensive primary care services.

(2) “Qualified provider” means an entity that provides comprehensive primary care services and that:

(a) Accepts all patients regardless of their ability to pay and uses a sliding fee schedule for payments or that provides comprehensive primary care services free of charge;

(b) Serves a designated medically underserved area or population, as provided in section 330(b) of the federal “Public Health Service Act”, 42 U.S.C. sec. 254b, or demonstrates to the state department that the entity serves a population or area that lacks adequate health care services for low-income, uninsured persons;

(c) Has a demonstrated track record of providing cost-effective care;

(d) Provides or arranges for the provision of comprehensive primary care services to persons of all ages; and

(e) Completes initial screening for eligibility for the state medical assistance program, the children’s basic health plan, and any other relevant government health care program and referral to the appropriate agency for eligibility determination.

(3) “Uninsured or medically indigent patient” means a patient receiving services from a qualified provider:

(a) Whose yearly family income is below two hundred percent of the federal poverty line; and

(b) Who is not eligible for medicaid, medicare, or any other type of governmental reimbursement for health care costs; and

(c) Who is not receiving third-party payments.

Source: L. 2012: Entire part RC&RE, (HB 12-1203), ch. 5, p. 15, § 1, effective March 1.

25.5-3-302. Annual allocation - primary care services - qualified provider - rules.

(1) The state department shall annually allocate the moneys appropriated by the general assembly to the primary care fund created in section 24-22-117 (2) (b), C.R.S., to all eligible qualified providers in the state who comply with the requirements of subsection (2) of this section. The state department shall allocate the moneys in amounts proportionate to the number of uninsured or medically indigent patients served by the qualified provider. For a qualified provider to be eligible for an allocation pursuant to this section, the qualified provider shall meet either of the following criteria:

(a) The qualified provider is a community health center, as defined in section 330 of the federal “Public Health Service Act”, 42 U.S.C. sec. 254b; or

(b) At least fifty percent of the patients served by the qualified provider are uninsured or medically indigent patients, or patients who are enrolled in the medical assistance program, articles 4, 5, and 6 of this title, or the children’s basic health plan, article 8 of this title, or any combination thereof.

(2) A qualified provider shall annually submit to the state department information sufficient to establish the provider’s eligibility status. A qualified provider, except for a provider specified in paragraph (a) of subsection (1) of this section, shall provide an annual report that includes the total number of patients served, the number of uninsured or medically indigent patients served, and the number of patients served who are enrolled in the medical assistance program, articles 4, 5, and 6 of this title, or the children’s basic health plan, article 8 of this title. A community health center specified in paragraph (a) of

subsection (1) of this section shall annually provide to the state department the number of uninsured or medically indigent patients served. Each eligible qualified provider shall annually develop and submit to the state department documentation regarding the quality assurance program in place at the provider’s facility to ensure that quality comprehensive primary care services are being provided. All qualified providers shall submit to the state department the information required under this section, as specified in rule by the state board. The data regarding the number of patients served shall be verified by an outside entity. For purposes of this part 3, the number of patients served is the number of unduplicated users of health care services and is not the number of visits by a patient.

(3) The state department shall make annual direct allocations of the total amount of money annually appropriated by the general assembly to the primary care fund pursuant to section 24-22-117 (2) (b), C.R.S., minus three percent for the administrative costs of the program, to all eligible qualified providers. An eligible qualified provider’s allocation shall be based on the number of uninsured or medically indigent patients served by the provider in proportion to the total number of uninsured or medically indigent patients served by all eligible qualified providers in the previous calendar year. The state department shall establish a schedule for allocating the moneys in the primary care fund for eligible qualified providers. The disbursement of moneys in the primary care fund to eligible qualified providers under this part 3 are exempt from the provisions of the “Procurement Code”, articles 101 to 112 of title 24, C.R.S.

(4) The state board shall adopt any rules necessary for the administration and implementation of this part 3.

Source: L. 2012: Entire part RC&RE, (HB 12-1203), ch. 5, p. 16, § 1, effective March 1.

25.5-3-303. Consultation. At least annually, the state department shall consult with representatives of federally qualified health centers, school-based health centers, family residency directors, certified rural health clinics, other qualified providers, and consumer advocates regarding the implementation and administration of the allocation of moneys to qualified providers under this part 3.

Source: L. 2012: Entire part RC&RE, (HB 12-1203), ch. 5, p. 17, § 1, effective March 1.

COLORADO MEDICAL ASSISTANCE ACT

ARTICLE 4

Colorado Medical Assistance Act -
General Medical Assistance

Editor’s note: This article was added with relocations in 2006 containing provisions of some sections formerly located in article 4 of title 26 or in article 1 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

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25.5-4-101.	Short title.		
25.5-4-102.	Legislative declaration.		
25.5-4-103.	Definitions.		
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PART 2

ADMINISTRATION

- 25.5-4-201. Cash system of accounting - financial administration of medical services premiums - medical programs administered by department of human services - federal contributions - rules.
- 25.5-4-202. Comprehensive plan for other services and benefits.
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- 25.5-4-206. Reimbursement to counties - costs of administration.
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- 25.5-4-209. Payments by third parties - copayments by recipients - review - appeal - children's waiting list reduction fund - repeal.
- 25.5-4-210. Purchase of health insurance for recipients.

PART 3

RECOVERY

- 25.5-4-300.4. Last resort for payment - legislative intent.
- 25.5-4-300.7. Prevention of coding errors - prepayment review of claims - report.
- 25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures.
- 25.5-4-302. Recovery of assets.
- 25.5-4-303. State income tax refund intercept - garnishment of earning - failure to provide medical support for child.
- 25.5-4-303.3. Provider fraud - attorney general report.
- 25.5-4-303.5. Short title.
- 25.5-4-304. Definitions.
- 25.5-4-305. False medicaid claims - liability for certain acts.
- 25.5-4-306. Civil actions for false medicaid claims.

- 25.5-4-307. False medicaid claims procedures.
- 25.5-4-308. False medicaid claims jurisdiction.
- 25.5-4-309. False medicaid claims civil investigation demands.
- 25.5-4-310. False medicaid claims reports.

PART 4

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- 25.5-4-401. Providers - payments - rules - repeal.
- 25.5-4-402. Providers - hospital reimbursement - rules.
- 25.5-4-402.3. Providers - hospital - provider fees - legislative declaration - federal waiver - fund created - rules - advisory board - repeal.
- 25.5-4-402.5. Providers - state university teaching hospitals.
- 25.5-4-403. Providers - community mental health center and clinics - reimbursement.
- 25.5-4-404. Payments for clinic services - restrictions on use.
- 25.5-4-405. Mental health managed care service providers - requirements.
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		25.5-4-503. Waiver applications - authorization.

PART 1

GENERAL PROVISIONS

25.5-4-101. Short title. This article and articles 5 and 6 of this title shall be known and may be cited as the “Colorado Medical Assistance Act”.

Source: L. 2006: Entire article added with relocations, p. 1815, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-101 as it existed prior to 2006.

ANNOTATION

Applied in *Sherman v. District Court*, 637 P.2d 378 (Colo. 1981) (decided prior to the 2006 amendments relocating article 4 of title 26 to title 25.5).

25.5-4-102. Legislative declaration. It is the purpose of the “Colorado Medical Assistance Act” to promote the public health and welfare of the people of Colorado by providing, in cooperation with the federal government, medical and remedial care and services for individuals and families whose income and resources are insufficient to meet the costs of such necessary services and to assist such individuals and families to attain or retain their capabilities for independence and self-care, as contemplated by the provisions of Title XIX of the social security act. The state of Colorado and its various departments, agencies, and political subdivisions are authorized to promote and achieve these ends by any appropriate lawful means, through cooperation with and the utilization of available resources of the federal government and private individuals and organizations.

Source: L. 2006: Entire article added with relocations, p. 1815, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-102 as it existed prior to 2006.

ANNOTATION

Annotator’s note. Since § 25.5-4-102 is similar to § 26-4-102 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5, relevant cases construing that provision have been included in the annotations to this section.

Program not limited to services and procedures available under Medicaid. While this statute furnishes a limiting guide for administra-

tion of Colorado’s medical assistance program, it does not limit the scope of that program to medical services and procedures for reimbursement under the federal Medicaid program. *Dodge v. State Dept. of Soc. Servs.*, 657 P.2d 969 (Colo. App. 1982).

Applied in *City of Colo. Springs v. State*, 640 P.2d 870 (Colo. App. 1982).

25.5-4-103. Definitions. As used in this article and articles 5 and 6 of this title, unless the context otherwise requires:

(1) "1931 medicaid recipient" means any person who is eligible for medicaid as provided in section 25.5-5-101 (1) (a), 25.5-5-201 (1) (a), or 25.5-5-201 (1) (h) and refers to section 1931 of Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396u-1.

(2) "Applicant" means any person who has applied for benefits under this article and articles 5 and 6 of this title.

(3) "Case management services" means services provided by community centered boards, as defined by section 27-10.5-102 (3), C.R.S., and community mental health centers and community mental health clinics, as defined by section 27-66-101, C.R.S., to assist developmentally disabled persons, as defined by section 27-10.5-102 (11), C.R.S., and persons with mental illness, as defined by section 27-65-102 (14), C.R.S., by case management agencies, as defined in section 25.5-6-303 (5), providing services, as defined in sections 25.5-6-104 (2) (b) and 25.5-6-303 (6), to elderly, blind, and disabled persons and long-term care clients, in gaining access to needed medical, social, educational, and other services.

(4) "Categorically needy" means those persons who are eligible for medical assistance under this article and articles 5 and 6 of this title due to their eligibility for one or more of the federal categories of public assistance. A person may be categorically needy and eligible for medical assistance under mandatory provisions as provided under section 25.5-5-101 or may be categorically needy under optional provisions as provided under section 25.5-5-201.

(5) "Clinic services" means those services as defined in section 25.5-5-301.

(6) "Essential person" means a person who meets the requirements of section 26-2-103 (5), C.R.S.

(7) "Home health services" is synonymous with "home health care" and includes the following services provided to an eligible person in his place of residence, through a certified home health agency, pursuant to a home health plan of care:

(a) Nursing services;

(b) Home health aide services;

(c) Provision of medical supplies, equipment, and appliances suitable for use in the home;

(d) Physical therapy, occupational therapy, or speech and hearing therapy.

(8) "Hospice care" means services provided by a public agency or private organization, or any subdivision thereof, which entity shall be known as a hospice and shall be primarily engaged in providing care to an individual for whom a certified medical prognosis has been made indicating a life expectancy of six months or less and who has elected to receive such care in lieu of other medical benefits available under this article and articles 5 and 6 of this title.

(9) "Intermediate nursing facility for the mentally retarded" means a tax-supported, state-administered intermediate nursing facility, or a distinct part of such facility, which meets the state nursing home licensing standards set forth in section 25-1.5-103 (1) (a) (I), C.R.S., and the requirements in 42 U.S.C. sec. 1396d and which:

(a) Is maintained primarily to provide health-related care on a regular basis for the mentally retarded or for persons with developmental disabilities, as defined in section 27-10.5-102 (11), C.R.S., who do not require the degree of care and treatment which a hospital or skilled nursing facility can provide but who, because of their mental or physical condition, require care and services above the level of room and board, which can be made available only through institutional facilities; and

(b) May provide care which includes but is not limited to moderate assistance or therapy functions; occasional direction, supervision, or therapy; moderate assistance or therapy for loss of mobility; routine, nonskilled nursing services; and monitoring of the drug regimen.

(10) "Legal immigrant" means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the immigration and naturalization service, or any successor agency, as an actual or prospective permanent resident or whose extended physical presence in the United States is known to and allowed by the immigration and naturalization service, or any successor agency.

(11) "Liable" or "liability" means the legal liability of a third party, either by reason of judgment, settlement, compromise, or contract, as the result of negligent acts or other

wrongful acts or otherwise for all or any part of the medical cost of an injury, a disease, or the disability of an applicant for or recipient of medical assistance.

(12) “Managed care system” means a system for providing health care services which integrates both the delivery and the financing of health care services in an attempt to provide access to medical services while containing the cost and use of medical care.

(13) “Medical assistance” means payment on behalf of recipients eligible for and enrolled in the program established in articles 4, 5, and 6 of this title, which is funded through Title XIX of the federal “Social Security Act”, 42 U.S.C. sec. 1396u-1, to enrolled providers under the state medical assistance program of medical care, services, goods, and devices rendered or provided to recipients under this article and articles 5 and 6 of this title, and other related payments, pursuant to this article and articles 5 and 6 of this title and the rules of the state department.

(14) “Nursing facility” means a facility, or a distinct part of a facility, which meets the state nursing home licensing standards in section 25-1.5-103 (1) (a) (I), C.R.S., is maintained primarily for the care and treatment of inpatients under the direction of a physician, and meets the requirements in 42 U.S.C. sec. 1396r for certification as a qualified provider of nursing facility services. The patients in such a facility require supportive, therapeutic, or compensating services and the availability of a licensed nurse for observation or treatment on a twenty-four-hour basis. Nursing care may include but is not limited to terminal care; extensive assistance or therapy in the activities of daily living; continual direction, supervision, or therapy; extensive assistance or therapy for loss of mobility; nursing assessment and services which involve assessment of the total needs of the patient, planning of patient care, and observing, monitoring, and recording the patient’s response to treatment; and monitoring, observing, and evaluating the drug regimen. “Nursing facility” includes private, nonprofit, or proprietary intermediate nursing facilities for the mentally retarded or developmentally disabled.

(15) “Overpayment” means the amount paid by an agency administering the medical assistance program to an enrolled provider under the state medical assistance program participating in the program, which amount is in excess of the amount that is allowable for services furnished and which is required by Title XIX of the social security act to be refunded to the appropriate medicaid agencies.

(16) “Patient personal needs trust fund” means any fund or account established by the nursing care facility or intermediate care facility or its agents, employees, or designees to manage the personal needs funds of the facility’s patients.

(17) “Personal needs funds” means moneys received by any person admitted to a nursing care facility or intermediate care facility, which moneys are received by said person to purchase necessary clothing, incidentals, or other personal needs items which are not reimbursed by any federal or state program, or items of value, which moneys or items of value are in any way surrendered to the management or control of said facility, its agents, employees, or designees.

(18) “Pilot program”, as used in section 25.5-5-319, means the family planning pilot program established in section 25.5-5-319, which is carried out by all medicaid providers who provide family planning services and which shall be repealed, effective July 1 five years after the issuance of the federal waiver or July 1 in the year in which the waiver is terminated, whichever occurs first.

(19) (a) “Provider” means any person, public or private institution, agency, or business concern providing medical care, services, or goods authorized under this article and articles 5 and 6 of this title and holding, where applicable, a current valid license or certificate to provide such services or to dispense such goods and enrolled under the state medical assistance program. These services must be provided and goods must be dispensed only if performed, referred, or ordered by a doctor of medicine or a doctor of osteopathy. Services of dentists, podiatrists, and optometrists or services provided by a school district under section 25.5-5-318 need not be referred or ordered by a doctor of medicine or a doctor of osteopathy.

(b) “Provider” includes a laboratory certified under the federal “Clinical Laboratories Improvement Act of 1967”, as amended, 42 U.S.C. sec. 263a, to perform high complexity testing.

(19.5) “Psychiatric residential treatment facility” means a facility that is licensed as a residential child care facility, as defined in section 26-6-102 (8), C.R.S., that is not a hospital, and that provides inpatient psychiatric services for individuals who are less than twenty-one years of age under the direction of a physician licensed pursuant to article 36 of title 12, C.R.S., and that meets any other requirement established in rule by the state board.

(20) “Qualified alien” shall have the meaning ascribed to that term in section 431 (b) of the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”, Public Law 104-193, as amended.

(21) “Recipient” means any person who has been determined eligible to receive benefits under this article and articles 5 and 6 of this title, whose need for medical care has been professionally established, and for whose care less than full payment is available through the legal obligation of a contractor, public or private, to pay for or provide such care.

(22) “Recovery” or “amount recovered” means the amount payable to the applicant or recipient or his heirs, assigns, or legal representatives as the result of any liability of a third party.

(23) “Rehabilitative services” means any medical or remedial services recommended by a physician which may reduce physical or mental disability and which may improve functional level.

(24) “Resident” means any individual who is living, other than temporarily, within the state. “Resident” includes any unemancipated child whose parent, or other person entitled to custody, lives within the state. The state board shall adopt rules for making this determination. Temporary absences from the state shall not cause an individual to lose his status as a resident of this state.

(25) “Social security act” means the federal “Social Security Act” and amendments thereto.

(25.5) “State university teaching hospital” means a hospital licensed or certified pursuant to section 25-1.5-103 (1) (a), C.R.S.:

(a) That provides supervised teaching experiences to graduate medical school interns and residents enrolled in a state institution of higher education as defined in section 23-18-102 (10), C.R.S.; and

(b) In which more than fifty percent of its credentialed physicians are members of the faculty at a state institution of higher education as defined in section 23-18-102 (10), C.R.S.

(26) “Third party” means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or any part of the medical cost of an injury, a disease, or the disability of an applicant for or recipient of medical assistance.

(27) “Title XIX” means Title XIX of the social security act, as amended, administered by the federal department of health and human services, or any successor agency, and includes amendments thereto and other federal social security laws replacing said title, in whole or in part.

(28) “Transitional medicaid” means the medical assistance provided to recipients eligible pursuant to section 25.5-5-101 (1) (b).

Source: L. 2006: (19.5) added, p. 1202, § 1, effective May 26; entire article added with relocations, p. 1815, § 7, effective July 1; (3) amended, p. 1389, § 18, effective August 7. **L. 2007:** (19.5) amended, p. 2043, § 74, effective June 1. **L. 2008:** (25.5) added, p. 1184, § 2, effective May 22. **L. 2010:** (3) amended, (SB 10-175), ch. 188, p. 800, § 65, effective April 29. **L. 2011:** (10) amended, (HB 11-1303), ch. 264, p. 1168, § 65, effective August 10.

Editor’s note: (1) This section is similar to former § 26-4-103 as it existed prior to 2006.

(2) Subsection (3) was originally numbered as § 26-4-103 (2), and the amendments to it in House Bill 06-1277 were harmonized with subsection (3) as it appeared in Senate Bill 06-219.

(3) Subsection (19.5) was enacted as § 26-4-103 (13.6) in House Bill 06-1395 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

25.5-4-104. Program of medical assistance - single state agency. (1) The state department, by rules, shall establish a program of medical assistance to provide necessary medical care for the categorically needy. The state department is hereby designated as the single state agency to administer such program in accordance with Title XIX and this article and articles 5 and 6 of this title. Such program shall not be required to furnish recipients under sixty-five years of age the benefits that are provided to recipients sixty-five years of age and over under Title XVIII of the social security act; but said program shall otherwise be uniform to the extent required by Title XIX of the social security act.

(2) The state department may review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time to determine the propriety of the action or failure to take timely action on an application for medical assistance. The state department shall make such additional investigation as it deems necessary and shall, after giving the county department an opportunity to rebut any findings or conclusions of the state department that the action or delay in taking action was a violation of or contrary to state department rules, make such decision as to the granting of medical benefits and the amount thereof as in its opinion is justifiable pursuant to the provisions of this article and articles 5 and 6 of this title and the rules of the state department. Applicants or recipients affected by such decisions of the state department, upon request, shall be given reasonable notice and opportunity for a fair hearing by the state department.

Source: L. 2006: Entire article added with relocations, p. 1819, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-104 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-4-104 is similar to § 26-4-104 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5, relevant cases construing that provision have been included in the annotations to this section.

Program for "medically needy" not required. The superimposition of a program for the medically needy could create much administrative difficulty and uncertainty and encourage excessive medical expenses and resultant waste. *Fullington v. Shea*, 320 F. Supp. 500 (D. Colo. 1970), *aff'd mem.*, 404 U.S. 963, 92 S. Ct. 345, 30 L. Ed.2d 282 (1971), *reh'g denied*, 404 U.S. 1027, 92 S. Ct. 692, 30 L. Ed.2d 678 (1972).

Since the federal laws relative to the "medically indigent" are optional, the failure of Colorado to extend medicaid to the "medically indigent" while at the same time extending it to the "categorical" recipients does not constitute an invalid discrimination violative of the equal protection clause of the fourteenth amendment to the constitution of the United States. *Fullington v. Shea*, 320 F. Supp. 500 (D. Colo. 1970), *aff'd mem.*, 404 U.S. 963, 92 S. Ct. 345, 30 L. Ed.2d 282 (1971), *reh'g denied*, 404 U.S. 1027, 92 S. Ct. 692, 30 L. Ed.2d 678 (1972).

Applied in *Dodge v. State Dept. of Soc. Servs.*, 657 P.2d 969 (Colo. App. 1982).

25.5-4-105. Federal requirements under Title XIX. Nothing in this article or articles 5 and 6 of this title shall prevent the state department from complying with federal requirements for a program of medical assistance in order for the state of Colorado to qualify for federal funds under Title XIX of the social security act and to maintain a program within the limits of available appropriations.

Source: L. 2006: Entire article added with relocations, p. 1820, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-105 as it existed prior to 2006.

25.5-4-106. Cooperation with federal government - grants-in-aid - cooperation with the department of human services in delivery of services. (1) The state department shall be the sole state agency for administering the state plans for health and medical assistance pursuant to this title, and any other state plan relating to medical assistance that

requires state action which is not specifically the responsibility of some other state department, division, section, board, commission, or committee under the provisions of federal or state law.

(2) (a) The state department may accept on behalf of the state of Colorado the provisions and benefits of acts of congress designed to provide funds or other property for particular medical assistance within the state, which funds or other property are designated for such purposes within the function of the state department, and may accept on behalf of the state any offers which have been or may from time to time be made of funds or other property by any persons, agencies, or entities for particular medical assistance activities within the state, which funds or other property are designated for such purposes within the function of the state department; but, unless otherwise expressly provided by law, such acceptance shall not be manifested unless and until the state department has recommended such acceptance to and received the written approval of the governor and the attorney general. Such approval shall authorize the acceptance of the funds or property in accordance with the restrictions and conditions for the purpose for which funds or property are intended.

(b) The state treasurer is designated as ex officio custodian of all medical assistance funds received by the state from the federal government and from any other source, if the approval provided for in paragraph (a) of this subsection (2) has been obtained.

(c) The state treasurer shall hold each such fund separate and distinct from state funds and is authorized to make disbursements from such funds for the designated purpose or for administrative costs, which may be provided in such grants upon warrants issued by the state controller upon the voucher of the state department.

(3) The state department shall cooperate with the federal department of health and human services and other federal agencies in any reasonable manner, in conformity with the laws of this state, which may be necessary to qualify for federal financial participation, including the preparation of state plans, the making of reports in such form and containing such information as any federal agency may from time to time require, and the compliance with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of the reports.

(4) The rules of the state department may include provisions to accommodate requirements of contracts entered into between the state department and the federal department of health and human services, or any successor agency, for studies of guaranteed annual income or other forms of income maintenance research projects; and for such purpose, the requirements of this title as to eligibility for medical assistance shall not apply for the term of and in accordance with the contract for such purpose.

(5) The state department is responsible for administering the delivery of medical assistance by county departments of social services or any other public or private entities participating in the delivery of medical assistance pursuant to this article and articles 5 and 6 of this title.

Source: L. 2006: Entire article added with relocations, p. 1820, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-110 as it existed prior to 2006.

25.5-4-107. Retaliation definition. (1) For purposes of any rules promulgated by the state department or state board and any action taken by the state department against any person, "retaliation" means taking any of the following actions against a recipient or someone acting on behalf of a recipient after the recipient or someone acting on behalf of the recipient files a complaint concerning services provided or not provided to the recipient:

(a) Indicating to a recipient that the recipient cannot have an advocate, family member, or other authorized representative assist the recipient; or

(b) (I) An adverse action that negatively affects a recipient's level of eligibility for or receipt of services received at the time of the complaint without verification of a change in the recipient's income, resources, or health care needs that justifies the adverse action.

(II) No adverse action shall be taken against a recipient after a complaint has been filed until the recipient is notified of the proposed action, informed of the reason for the proposed action, and provided an opportunity to appeal the proposed action.

(2) "Retaliation" shall not include instances where a recipient is not eligible for a service or program or where a provider documents a problem with a recipient and shares the documentation with the recipient or a third party prior to the recipient filing a complaint.

Source: L. 2006: Entire section added, p. 1019, § 1, effective May 25.

Editor's note: This section was originally numbered as § 26-4-402.5 in House Bill 06-1211. Section 2 of the act provided for the renumbering and relocation of § 26-4-402.5 to this section. (See L. 2006, p. 1020.)

PART 2

ADMINISTRATION

25.5-4-201. Cash system of accounting - financial administration of medical services premiums - medical programs administered by department of human services - federal contributions - rules. (1) The state department shall utilize the cash system of accounting, as enunciated by the governmental accounting standards board, regardless of the source of revenues involved, for all activities of the state department relating to the financial administration of any nonadministrative expenditure that qualifies for federal financial participation under Title XIX of the federal "Social Security Act", except for expenditures under the program for the medically indigent, article 3 of this title.

(1.5) (a) The state department shall utilize the cash system of accounting, as enunciated by the governmental accounting standards board, for the contributions required by 42 U.S.C. sec. 1396u-5 (c).

(b) The contributions required by 42 U.S.C. sec. 1396u-5 (c) shall be made in the manner required by the federal centers for medicare and medicaid services, or any successor agency. Nothing in this paragraph (b) shall require the state department to make the contribution before the contribution is due.

(2) The executive director shall promulgate rules to identify the programs utilizing the cash system of accounting.

Source: L. 2006: Entire section amended, p. 917, § 1, effective May 11; entire article added with relocations, p. 1821, § 7, effective July 1. **L. 2007:** (1.5) added, p. 465, § 2, effective July 1. **L. 2009:** (1.5) amended, (SB 09-265), ch. 205, p. 935, § 1, effective May 1.

Editor's note: (1) This section is similar to former § 26-4-110.7 as it existed prior to 2006.

(2) Amendments to section 26-4-110.7 by Senate Bill 06-129 were harmonized with this section as it appeared in Senate Bill 06-219.

25.5-4-202. Comprehensive plan for other services and benefits. In accordance with federal requirements pertaining to the development of a broad-based medical care program for low-income families, the state department shall prepare a comprehensive medical plan for consideration by the house and senate committees on health and human services, or any successor committees. The comprehensive plan shall include alternate means of expanding the medical care benefits and coverage provided in this article and articles 5 and 6 of this title. The comprehensive plan shall be reevaluated annually and shall be based upon a documented review of medical needs of low-income families in Colorado, a detailed analysis of priorities of service, coverage, and program costs, and an evaluation of progress. The medical advisory council appointed pursuant to this article shall assist the state department in the preparation of the comprehensive plan.

Source: L. 2006: Entire article added with relocations, p. 1821, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-107 as it existed prior to 2006.

ANNOTATION

Law reviews. For article, "Before the Miller Trust: Long-Term Care and HCBS Considerations", see 24 Colo. Law. 2721 (1995).

25.5-4-203. Advisory council established. There is hereby created a state medical assistance and services advisory council, referred to in this article as the "advisory council", consisting of sixteen members. Ex officio members of the advisory council shall be the executive directors of the state department and the department of health or their successors in function. The remaining members of the advisory council shall be appointed by the governor and shall be chosen by him to represent the various areas of medical services and the public. Specifically included shall be two members who are doctors of medicine licensed in this state, one doctor of osteopathy licensed in this state, one dentist licensed in this state, one optometrist licensed in this state, one owner or operator of a licensed nursing facility in this state, one member who shall represent licensed hospitals in this state, one pharmacist licensed in this state, one professional nurse licensed in this state, one member who has provided home health care services for three years, and three members who are not directly associated with the areas of medical services to represent the public. The remaining member may represent any other area of medical services not specifically enumerated but shall not be limited thereto. Members shall serve at the pleasure of the governor and shall receive no compensation but shall be reimbursed for their actual and necessary expenses. The advisory council shall advise the state department on the provision of health and medical care services to recipients.

Source: L. 2006: Entire article added with relocations, p. 1822, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-108 as it existed prior to 2006.

25.5-4-204. Automated medical assistance administration. (1) The general assembly hereby finds and declares that the agency responsible for the administration of the state's medical assistance program would be more effective in its ability to streamline administrative functions of program administrators and providers under the program through the implementation of an automated system that will provide for the following:

- (a) Electronic claim submittals;
- (b) On-line eligibility determinations;
- (c) Electronic remittance statements;
- (d) Electronic fund transfers; and
- (e) Automation of other administrative functions associated with the medical assistance program.

(2) Therefore, the general assembly declares that it is appropriate to enact legislation, as set forth in subsection (3) of this section, that authorizes the state department to develop and implement an automated system for processing claims and payments under the medical assistance program, as well as for other administrative functions associated with the program.

(3) The executive director of the state department shall develop and implement an automated system through which medical assistance claims and payments and eligibility determinations or other related transactions may be processed. The system shall provide for the use of automated electronic technologies. The automated system may be implemented in phases if deemed necessary by the executive director. The automated system shall be implemented only after the executive director determines that:

- (a) Technology is available and proven to perform satisfactorily in a production environment;
- (b) Adequate financing is available to facilitate the implementation and maintenance of the system. Financing may include, but is not limited to, federal funds, appropriations from the general fund, provider transaction fees, or any other financing mechanisms which the state department may impose, and grants or contributions from public or private entities.
- (c) The system has been successfully installed and fully tested; and
- (d) Adequate provider training has been provided for an orderly implementation.

Source: L. 2006: Entire article added with relocations, p. 1822, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-403.7 as it existed prior to 2006.

25.5-4-205. Application - verification of eligibility - demonstration project - rules.

(1) (a) Determination of eligibility for medical benefits shall be made by the county department in which the applicant resides, except as otherwise specified in this section. Local social security offices also determine eligibility for medicaid benefits at the same time they determine eligibility for supplemental security income. The state department may accept medical assistance applications and determine medical assistance eligibility and may designate the private service contractor that administers the children's basic health plan, Denver health and hospitals, a hospital that is designated as a regional pediatric trauma center, as defined in section 25-3.5-703 (4) (f), C.R.S., and other medical assistance sites determined necessary by the state department to accept medical assistance applications, to determine medical assistance eligibility, and to determine presumptive eligibility. When the state department determines that it is necessary to designate an additional medical assistance site, the state department shall notify the county in which the medical assistance site is located that an additional medical assistance site has been designated. Any person who is determined to be eligible pursuant to the requirements of this article and articles 5 and 6 of this title shall be eligible for benefits until such person is determined to be ineligible. Upon determination that any person is ineligible for medical benefits, the county department, the state department, or other entity designated by the state department shall notify the applicant in writing of its decision and the reason therefor. Separate determination of eligibility and formal application for benefits under this article and articles 5 and 6 of this title for persons eligible as provided in sections 25.5-5-101 and 25.5-5-201 shall be made in accordance with the rules of the state department.

(a.5) Repealed.

(a.7) As part of the medicaid eligibility modernization, the department is authorized to create a universal application for single point of entry for home- and community-based services waivers for children.

(b) The state department shall develop training safeguards to prevent actions taken by staff of medical assistance sites from affecting food and cash assistance eligibility.

(2) (a) Any married couple, at the beginning of a continuous period of institutionalization of one spouse, may request the county department to assess and document the total value of the resources of the couple, if the couple supplies to the county department the necessary information and documentation which is needed to make such an assessment.

(b) Any assessment prepared by the county department and provided to a couple shall contain a procedure for appealing any determinations which have been made.

(c) If a request for assessment and documentation is not part of an application for medical assistance, the county department may establish a fee not exceeding the reasonable expenses of the county department of providing and documenting such assessment.

(3) (a) The state department shall promulgate rules to simplify the processing of applications in order that medical benefits are furnished to recipients as soon as possible, including rules that:

(I) Provide for initial processing of applications and determination of eligibility for medical assistance only at locations other than the county departments, at locations used for processing applications for the Colorado works program, or at the location used by the

private service contractor that administers the children's basic health plan for determining eligibility of children for the plan; and

(II) May make provision for the payment of medical benefits for a period not to exceed three months prior to the date of application in cases where the applicant did not make application prior to his or her need for said medical benefits.

(b) (I) The state department shall promulgate rules that:

(A) To the extent authorized under federal law, require an applicant to state only the applicant's income and require the state department to verify the applicant's income through the most recently available records of the division of unemployment insurance in the department of labor and employment or through the income, eligibility, and verification system; except that the rules shall also allow an applicant to provide income information more recent than the records of the division of unemployment insurance or the income, eligibility, and verification system; and

(B) Require the state department at least annually to verify a recipient's income eligibility at reenrollment through the records of the division of unemployment insurance in the department of labor and employment or through the income, eligibility, and verification system and, if the recipient meets all eligibility requirements, permit the recipient to remain enrolled in the program. The rules shall also allow a recipient to supply income information more recent than the information supplied by the records of the division of unemployment insurance or the income, eligibility, and verification system.

(C) and (D) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1974, § 96, effective August 5, 2009.)

(I.5) (A) If the state department determines that a recipient was not eligible for medical benefits solely based upon the recipient's income after the recipient had been determined to be eligible based upon the records of the division of unemployment insurance or the income, eligibility, and verification system, the state department shall not pursue recovery from a county department for the cost of medical services provided to the recipient, and the county department is not responsible for any federal error rate sanctions resulting from such determination.

(B) Notwithstanding any other provision in this paragraph (b), for applications that contain self-employment income, the state department shall not implement this paragraph (b) until it can verify self-employment income through the income, eligibility, and verification system or other verification as authorized by rules of the state department and federal law.

(II) Repealed.

(c) Adequate safeguards shall be established by the state department to ensure that only eligible persons receive benefits under this article and articles 5 and 6 of this title.

(d) (I) In addition, an applicant who is eighteen years of age or older shall be required to supply a form of personal photographic identification either by providing a valid Colorado driver's license or a valid identification card issued by the department of revenue pursuant to section 42-2-302, C.R.S. The state department may adopt rules that exempt applicants from the requirement of supplying a form of personal photographic identification if the requirement causes an unreasonable hardship or if the requirement is in conflict with federal law.

(II) The state department shall also adopt rules that allow for assistance to be provided on an emergency basis until the applicant is able to obtain or qualify for a driver's license or identification card; however, a county department or an entity designated by the state department pursuant to subsection (1) of this section is not required to recover emergency assistance from an applicant who fails, upon recertification, to meet the photographic identification requirement.

(e) (I) In collaboration with and to augment the state department's efforts to simplify eligibility determinations for benefits under the state medical assistance program and the children's basic health plan, the state department shall establish a process so that a recipient, enrollee, or the parent or guardian of a recipient or enrollee may apply for reenrollment either over the telephone or through the internet.

(II) (A) Subject to receipt of federal authorization and spending authority, the state department may implement a pilot program that allows a limited number of recipients or

enrollees to apply for reenrollment either over the telephone or through the internet during a transition to a process that will serve recipients and enrollees statewide. The pilot program shall not serve as a replacement for a statewide process.

(B) Notwithstanding any other provision in this paragraph (e), the state department shall not implement this paragraph (e) until it can verify the eligibility of a recipient or enrollee over the telephone or through the internet as authorized by rules of the state department and federal law.

(C) Notwithstanding any other provision in this paragraph (e), the state department shall not implement or administer any portion of this paragraph (e) until spending authority has been received in the general appropriation act or any supplemental appropriation and shall only implement and administer this paragraph (e) to the extent of such spending authority.

(III) The state department may solicit and accept gifts, grants, and donations from public or private sources for the development or implementation of reenrollment either over the telephone or through the internet process described in this paragraph (e); except that the state department may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this paragraph (e) or any other law. Any gifts, grants, or donations received by the state department shall be transmitted to the state treasurer, who shall credit the same to the department of health care policy and financing cash fund created pursuant to section 25.5-1-109.

(4) (a) By signing an application for medical assistance, a person assigns to the state department, by operation of law, all rights the applicant may have to medical support or payments for medical expenses from any other person on the applicant's own behalf or on behalf of any other member of the applicant's family for whom application is made. For purposes of this subsection (4), an assignment takes effect upon the determination that the applicant is eligible for medical assistance and up to three months prior to the date of application if the applicant meets the requirements of subsection (3) of this section and shall remain in effect so long as an individual is eligible for and receives medical assistance benefits. The application shall contain a statement explaining this assignment.

(b) An applicant for medical benefits upon initial application and each redetermination shall disclose any third party who may be responsible for the payment of medical expenses on behalf of the applicant or any other member of the applicant's family for whom application is made. As part of its medicaid eligibility modernization, the state department shall require the county department or other entity designated to accept applications for medical benefits to enter the third-party information into the automated system developed pursuant to section 25.5-4-204.

(5) (a) The state department shall not pursue recovery from a county for the cost of medical services provided to a person who has been incorrectly determined eligible for medical assistance by that county or any other entity.

(b) (Deleted by amendment, L. 2008, p. 2024, § 1, effective June 3, 2008.)

Source: L. 2006: (1)(a.5) added, p. 1592, § 2, effective June 2; entire article added with relocations, p. 1823, § 7, effective July 1. **L. 2008:** (3) and (5)(b) amended, p. 2024, § 1, effective June 3. **L. 2009:** (3)(e) added, (HB09-1020), ch. 298, p. 1595, § 1, effective May 21; (3)(b)(I)(C) and (3)(B)(I)(D) amended and (3)(b)(I.5) added, (SB 09-292), ch. 369, p. 1974, § 96, effective August 5. **L. 2010:** (4) amended, (SB 10-002), ch. 366, p. 1727, § 3, effective June 7; (1)(a.7) added, (HB 10-1041), ch. 25, p. 100, § 1, effective August 11. **L. 2012:** (3)(b)(I)(A), (3)(b)(I)(B), and (3)(b)(I.5)(A) amended, (HB 12-1120), ch. 27, p. 108, § 25, effective June 1.

Editor's note: (1) This section is similar to former § 26-4-106 as it existed prior to 2006.

(2) Subsection (1)(a.5) was enacted as § 26-4-106 (1)(b.5) in House Bill 06-1270 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

(3) Subsection (3)(b)(II)(B) provided for the repeal of subsection (3)(b)(II), effective July 1, 2009. (See L. 2008, p. 2024.)

(4) Subsection (1)(a.5)(VIII) provided for the repeal of subsection (1)(a.5), effective July 1, 2010. (See L. 2006, p. 1592.)

(5) The effective date for amendments to subsections (3)(b)(I)(A), (3)(b)(I)(B), and (3)(b)(I.5)(A) of this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: (1) For the legislative declaration contained in the 2006 act enacting subsection (1)(a.5), see section 1 of chapter 320, Session Laws of Colorado 2006.

(2) For the definition of “federally qualified health centers” in the federal “Social Security Act”, see 42 U.S.C. sec. 1395x.

(3) For the legislative declaration in the 2010 act amending subsection (4), see section 1 of chapter 366, Session Laws of Colorado 2010.

ANNOTATION

Plaintiff's income subject to trusts is not “available” within the meaning of federal law and Colorado regulations defining eligibility for medicaid since the court had removed all vested property interests the plaintiff had in his income.

Miller v. Ibarra, 746 F. Supp. 19 (D. Colo. 1990) (decided under former § 26-4-107 as it existed prior to the 1991 repeal and reenactment of article 4 of title 26).

25.5-4-205.5. Confined persons - suspension of benefits. (1) For purposes of this section, unless the context otherwise requires, “confined person” means a person who is:

(a) An inmate confined to a correctional institution operated by or under contract with the department of corrections;

(b) Confined in a jail;

(c) Committed to a juvenile commitment facility;

(d) Committed to a department of human services facility pursuant to part 1 of article 8 of title 16, C.R.S.; or

(e) A patient placed in a department of human services facility pursuant to court order or certification.

(2) Notwithstanding any other provision of law, a person who, immediately prior to becoming a confined person, was a recipient of medical assistance pursuant to this article or article 5 or 6 of this title shall remain eligible for medical assistance while a confined person; except that no medical assistance shall be furnished pursuant to this article or article 5 or 6 of this title while the person is a confined person unless federal financial participation is available for the cost of the assistance, including but not limited to juveniles held in a facility operated by or under contract to the division of youth corrections established pursuant to section 19-2-203, C.R.S., or the department of human services. Once a person is no longer a confined person, the person shall continue to be eligible for receipt of medical benefits pursuant to this article or article 5 or 6 of this title until the person is determined to be ineligible for the receipt of the assistance. To the extent permitted by federal law, the time during which a person is a confined person shall not be included in any calculation of when the person must recertify his or her eligibility for medical assistance pursuant to this article or article 5 or 6 of this title.

Source: L. 2008: Entire section added, p. 903, § 1, effective May 20.

25.5-4-206. Reimbursement to counties - costs of administration. The state department shall reimburse the county departments for costs of administration incurred by the counties under this article and articles 5 and 6 of this title in accordance with the provisions of section 26-1-122 (5), C.R.S.

Source: L. 2006: Entire article added with relocations, p. 1825, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-411 as it existed prior to 2006.

25.5-4-207. Appeals. (1) (a) If an application for medical benefits is not acted upon by the county department within a reasonable time after filing of the same, or if an

application is denied in whole or in part, or if medical benefits are suspended, terminated, or modified, the applicant or recipient, as the case may be, may appeal to the state department in the manner and form prescribed by the rules of the state department. Every county department or service delivery agency shall adopt procedures for the resolution of disputes arising between the county department or the service delivery agency and any applicant for or recipient of medical assistance prior to appeal to the state department. Such procedures are referred to in this section as the "dispute resolution process". Two or more counties may jointly establish the dispute resolution process. The dispute resolution process shall be consistent with rules promulgated by the state board pursuant to article 4 of title 24, C.R.S. The dispute resolution process shall include an opportunity for all clients to have a county conference, upon the client's request, and such requirement may be met through a telephonic conference upon the agreement of the client and the county department. The dispute resolution process need not conform to the requirements of section 24-4-105, C.R.S., as long as the rules adopted by the state board include provisions specifically setting forth expeditious time frames, notice, and an opportunity to be heard and to present information. If the dispute is not resolved, the applicant or recipient may appeal to the state department in the manner and form prescribed by the rules of the state department. County notices to applicants or recipients shall inform them of the basis for the county's decision or action and shall inform them of their rights to a county conference under the dispute resolution process and of their rights to state level appeal and the process of making such appeal. The state board shall adopt rules setting forth what other issues, if any, may be appealed by an applicant or recipient to the state department. A hearing need not be granted when either state or federal law requires or results in a reduction or deletion of a medical benefit unless the applicant or recipient is arguing that his or her case does not fit within the parameters set forth by the change in the law. In notifying the applicant or recipient that an appeal is being denied because of a change in state or federal law, the state's notice shall inform the applicant or recipient that further appeal should be directed to the appropriate state or federal court.

(b) Upon receipt of an appeal, the state department shall give the appellant at least ten days' notice and an opportunity for a fair hearing in accordance with the rules of the state department. Any such fair hearing shall comply with section 24-4-105, C.R.S., and the state department's administrative law judge shall preside.

(c) The appellant shall have an opportunity to examine all applications and pertinent records concerning said appellant that constitute a basis for the denial, suspension, termination, or modification of medical benefits.

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

Source: L. 2006: Entire article added with relocations, p. 1825, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-402 as it existed prior to 2006.

25.5-4-208. County duties - transitional medicaid. County departments shall assist families in completing the reporting requirements for transitional medicaid. This shall include informing 1931 medicaid recipients, as defined in section 25.5-4-103 (1), of the transitional medicaid eligibility requirements and the required reporting calendar.

Source: L. 2006: Entire article added with relocations, p. 1826, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-106.5 as it existed prior to 2006.

25.5-4-209. Payments by third parties - copayments by recipients - review - appeal - children's waiting list reduction fund - repeal. (1) (a) Any recipient receiving benefits under this article or article 5 or 6 of this title who receives any supplemental income, available for medical purposes under rules of the state department, or who receives proceeds from sickness, accident, health, or casualty insurance shall apply the supplemental

income or insurance proceeds to the cost of the benefits rendered, and the rules may require reports from providers of other payments received by them from or on behalf of recipients.

(b) Subject to any limitations imposed by Title XIX, a recipient shall be required to pay at the time of service a portion of the cost of any medical benefit rendered to the recipient or to the recipient's dependents pursuant to this article or article 5 or 6 of this title, as determined by rule of the state department.

(2) (a) Notwithstanding the provisions of section 26-1-114, C.R.S., the state department is authorized to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available, including the collection of sufficient information from individuals who are eligible for medical assistance to pursue claims against the third parties. The state department shall collect the information at the time of any determination or redetermination of eligibility for medical assistance. A knowing or willful failure of an individual to provide the information may result in the termination of the individual's eligibility for medical assistance.

(b) A third party, as a condition of doing business in the state, shall:

(I) (A) Provide on a monthly basis to the state department or its business associate eligibility records identifying all persons covered by the third party in a manner prescribed by rule to allow the state department or its business associate to perform an analysis and determine which persons are eligible for medical assistance;

(B) The eligibility record data elements provided by the third party shall be the minimum necessary to achieve a satisfactory data match. The third party shall provide, upon request of the state department or its business associate, additional data elements as needed to confirm eligibility matches as determined by the initial analysis, including, but not limited to, the name, address, and identifying number of the third party's plan.

(II) Accept the state's right of recovery and the assignment to the state of any right of an individual or other entity to payment from the third party for an item or service for which payment has been made under the medical assistance plan to the extent that such service is covered by the third party;

(III) Respond to any inquiry by the state regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and

(IV) Agree not to deny a claim submitted by the state solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(A) The claim is submitted by the state within the three-year period beginning on the date that the item or service is furnished; and

(B) Any action by the state to enforce its rights with respect to the claim is commenced within six years after the state's submission of the claim.

(c) The cost to a third party of providing data, including eligibility records, shall be borne by the state department.

(d) A third party that provides data required by the state department, whether confidential or not, shall not be held liable for the provision of such data to the state department or for any use made thereof.

(e) (I) The state department's business associate shall not use, transfer, extract, copy, revise, or store any data required to be provided to the state department and its business associate, including the eligibility records, social security numbers, coverage, nature of coverage, period provided, or any other data elements, for purposes other than:

(A) The identification of persons eligible to receive medical assistance, as defined by section 25.5-1-103 (5);

(B) Cost avoidance;

(C) The remuneration of the state department for services provided or paid for;

(D) Any record retention requirements;

(E) Audit requirements; and

(F) Purposes related to litigation and testimony.

(II) The state department's business associate shall destroy all data once the functions specified in subparagraph (I) of this paragraph (e) have been accomplished.

(f) (I) A Colorado resident shall have a private right of action against the state department's business associate if the business associate negligently uses the data specified in paragraph (e) of this subsection (2) for purposes other than those stated in paragraph (e) of this subsection (2). The right of action shall be enforceable in the courts of Colorado and limited to the actual damages incurred by the individual bringing the action.

(II) A third party may bring an action on behalf of a Colorado resident for injunctive relief against the state department's business associate to prevent the business associate from intentionally using the data for purposes other than those specified in paragraph (e) of this subsection (2).

(g) As used in this section:

(I) "Business associate" shall have the same meaning as provided in 45 CFR 160.103.

(II) "Third party" means a health insurer, self-insured plan, group health plan as defined in 29 U.S.C. sec. 1167 (1), service benefit plan, managed care organization, pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(3) (a) The rights assigned by a recipient of medical assistance to the state department pursuant to section 25.5-4-205 (4) shall include the right to appeal an adverse coverage decision by a third party for which the medical assistance program may be responsible for payment, including but not limited to the internal and external reviews provided for in sections 10-16-113 and 10-16-113.5, C.R.S., and a third party's reasonable appeal procedure under state and federal law. The state department or the independent contractor retained pursuant to paragraph (b) of this subsection (3) shall review and, if necessary, may appeal at any level an adverse coverage decision, except an adverse coverage decision relating to medicare, Title XVIII of the federal "Social Security Act", as amended.

(b) The state department shall enter into one or more agreements with an independent contractor to pursue recoveries from third parties pursuant to paragraph (a) of this subsection (3). Any such agreement shall provide that the independent contractor's only compensation shall be a prudent and reasonable percentage of the amount recovered on behalf of the state department as determined by the state department.

(c) (I) An independent contractor retained pursuant to paragraph (b) of this subsection (3) shall maintain a contemporaneous record of the hours of services provided and any costs incurred. When the matter is resolved, the independent contractor shall provide to the state department a statement of the hours of services provided, the amount of costs incurred, the total amount of the contingent fee, and the hourly rate for the services provided. The hourly rate for the services provided shall be determined by dividing the amount of the contingent fee, less the amount of costs incurred, by the number of hours of services provided by the independent contractor. The statement required by this subparagraph (I) shall be available for inspection and copying at reasonable times at the state department.

(II) Compliance with this paragraph (c) does not relieve a contracting attorney of any obligation or legal responsibility imposed by the Colorado rules of professional conduct or any provision of law.

(d) Nothing in this subsection (3) shall be construed to authorize the denial of or delay of payment to a provider by the state department or the delay or interference with the provision of services to a medical assistance recipient.

(e) (I) After June 7, 2010, and prior to the state department entering into a new agreement or renewing an agreement pursuant to paragraph (b) of this subsection (3), the state department shall examine the feasibility of requiring the independent contractor to develop an additional process to identify reasons for denials for which an appeal should be considered and to prioritize appeals of denials based upon the reasons for the denial to increase and speed recoveries from third parties. If the state department determines that it is in the state's best interest, the state department is authorized to add this process to the requirements for an agreement pursuant to paragraph (b) of this subsection (3). If the state department adds this process, the limit on compensation paid to the contracting agent pursuant to section 25.5-4-301 (3) (b) (I) for agreements including this process shall be increased to twenty-five percent.

(II) (A) In 2013, the state department shall include in its annual report to the health and human services committees of the senate and house of representatives, or any successor

committees, a report on the effectiveness of the additional process developed pursuant to this paragraph (e).

(B) This subparagraph (II) is repealed, effective July 1, 2013.

(III) (A) The state treasurer shall transfer from the general fund to the children's waiting list reduction fund, which fund is hereby created and referred to in this subparagraph (III) as the "fund", an amount equal to the moneys recovered pursuant to subparagraph (I) of this paragraph (e). The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department or the department of human services to reduce the number of children on waiting lists for services under article 6 of this title.

(B) Any moneys in the fund not expended for the purposes stated in sub-subparagraph (A) of this subparagraph (III) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(IV) This paragraph (e) is repealed, effective July 1, 2013.

(4) With respect to programs administered by the state department, the state department shall access available data from the public assistance reporting information system for the purpose of identifying persons who are receiving certain public benefits from other states. The state department shall ensure that duplicate benefits are not being paid improperly to persons identified pursuant to the public assistance reporting information system.

Source: L. 2006: Entire article added with relocations, p. 1826, § 7, effective July 1. L. 2008: (1)(a), (2), and (3)(a) amended, p. 1768, § 1, effective June 2. L. 2010: (4) added, (SB 10-167), ch. 296, p. 1378, § 5, effective May 26; (3)(a) amended and (3)(e) added, (SB 10-002), ch. 366, p. 1727, § 4, effective June 7.

Editor's note: This section is similar to former § 26-4-518 as it existed prior to 2006.

Cross references: (1) For the legislative declaration in the 2010 act amending subsection (3)(a) and adding (3)(e), see section 1 of chapter 366, Session Laws of Colorado 2010.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Annotator's note. Since § 25.5-4-209 is similar to § 26-4-518 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-518 is similar to § 26-4-110 (4) as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant cases construing that provision have been included in the annotations to this section.

Suspension of optional incentive allowance under medicaid program does not violate state or federal law so long as the state meets federal requirements concerning the level of care provided to patients. *Colo. Health Care Ass'n v. State Dept. of Soc. Servs.*, 598 F. Supp. 1400 (D. Colo. 1984).

Suspensions and elimination of incentive allowance component of daily rate paid to nursing home providers did not violate federal requirement for reasonable and adequate payment. *Colo. Health Care v. State*

Dept. of Soc. Servs., 842 F.2d 1158 (10th Cir. 1988).

Emergency rulemaking suspending incentive allowance payments was within department's authority and in accordance with the Administrative Procedure Act and the Medicaid Act. *Colo. Health Care v. State Dept. of Soc. Servs.*, 842 F.2d 1158 (10th Cir. 1988).

Elimination of incentive allowance in medicaid reimbursement does not violate contracts between state and nursing home providers. *Colo. Health Care v. State Dept. of Soc. Servs.*, 842 F.2d 1158 (10th Cir. 1988).

Where the nursing home informs the county that a patient has not paid any amounts due under this section and the county fails to take remedial action, the department of social services is responsible to the nursing home for any uncollected amounts. *Colo. Dept. of Soc. Servs. v. Health Care Man-*

agement Consultants, Inc., 813 P.2d 829 (Colo. App. 1991).

Applied in Country View Care v. State Dept. of Soc. Servs., 703 P.2d 1334 (Colo. App. 1985).

25.5-4-210. Purchase of health insurance for recipients. (1) (a) The state department shall purchase group health insurance for a medical assistance recipient who is eligible to enroll for such coverage if enrollment of such recipient in the group plan would be cost-effective. In addition, the state department may purchase individual health insurance for a medical assistance recipient who is eligible to enroll in a health insurance plan if enrollment of such recipient would be cost-effective to this state. A determination of cost-effectiveness shall be in accordance with federal guidelines established by the secretary of the United States department of health and human services.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, the state department, in purchasing health insurance for medical assistance recipients who are eligible to enroll for private coverage, shall not purchase such health insurance for more than two thousand individuals.

(2) Enrollment in a group health insurance plan shall be required of recipients for whom enrollment has been determined to be cost-effective as a condition of obtaining or retaining medical assistance. A parent shall be required to enroll a dependent child recipient, but medical assistance for such child shall not be discontinued if a parent fails to enroll the child.

(3) The state department shall pay any premium, deductible, coinsurance, or other cost-sharing obligation required under the group plan for services covered under the state medical assistance plan. In addition, the state department shall pay any premium, deductible, coinsurance, or other cost-sharing obligation required under an individual plan purchased by the state department for a medical assistance recipient pursuant to subsection (1) of this section. Payment of said services shall be treated as payment for medical assistance. Coverage provided by the purchased health insurance plan shall be considered as third-party liability for the purposes of section 25.5-4-209.

(4) Services not available to a recipient under the purchased plan shall be provided to the recipient if such services would otherwise be provided as medical assistance services pursuant to this article or article 5 or 6 of this title. Nothing in this section shall be construed to require that services provided under a group health insurance plan for medical assistance recipients shall be made available to recipients not enrolled in the plan. Enrollment in a group health insurance plan pursuant to this section shall not affect the eligibility of a recipient who otherwise qualifies for medical assistance pursuant to this article or article 5 or 6 of this title.

Source: L. 2006: Entire article added with relocations, p. 1828, § 7, effective July 1.
L. 2010: (1) amended, (SB 10-167), ch. 296, p. 1378, § 6, effective May 26.

Editor's note: This section is similar to former § 26-4-518.5 as it existed prior to 2006.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

PART 3

RECOVERY

25.5-4-300.4. Last resort for payment - legislative intent. It is the intent of the general assembly that medicaid be the last resort for payment for medically necessary goods and services furnished to recipients and that all other sources of payment are primary to medical assistance provided by medicaid.

Source: L. 2008: Entire section added, p. 1771, § 2, effective June 2.

25.5-4-300.7. Prevention of coding errors - prepayment review of claims - report.

(1) The state department shall implement and maintain a system for reducing medical services coding errors in medicaid claims submitted to the state department for reimbursement. The system shall include automatic, prepayment review of medicaid claims through the use of nationally recognized correct coding methods in the medicaid management information system, in accordance with 42 U.S.C. sec. 1396b (r) and regulations thereunder, as amended by Pub.L. 111-148, and any other subsequent acts of congress. The state department shall acquire and maintain any information technology necessary to implement the automated, prepayment review of medicaid claims.

(2) On or before January 31, 2011, and on or before January 31 each year thereafter, the state department shall submit to the joint budget committee of the general assembly and to the health and human services committees of the house of representatives and senate, or any successor committees, a report concerning the system implemented and maintained by the state department pursuant to subsection (1) of this section. The report shall include, at a minimum, the number and dollar value of medical services coding errors identified during the previous year through the use of the system.

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1379, § 8, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures. (1) (a) (I) Except as provided in section 25.5-4-302 and subparagraph (III) of this paragraph (a), no recipient or estate of the recipient shall be liable for the cost or the cost remaining after payment by medicaid, medicare, or a private insurer of medical benefits authorized by Title XIX of the social security act, by this title, or by rules promulgated by the state board, which benefits are rendered to the recipient by a provider of medical services authorized to render such service in the state of Colorado, except those contributions required pursuant to section 25.5-4-209 (1). However, a recipient may enter into a documented agreement with a provider under which the recipient agrees to pay for items or services that are nonreimbursable under the medical assistance program. Under these circumstances, a recipient is liable for the cost of such services and items.

(II) The provisions of subparagraph (I) of this paragraph (a) shall apply regardless of whether medicaid has actually reimbursed the provider and regardless of whether the provider is enrolled in the Colorado medical assistance program.

(II.5) (A) A provider of medical services shall be liable to a recipient or the estate of a recipient if the provider knowingly receives or seeks collection through a third party of an amount in violation of subparagraph (I) of this paragraph (a). The provider shall be liable for the amount unlawfully received, statutory interest on the amount received from the date of receipt until the date of repayment, plus a civil monetary penalty equal to one-half of the amount unlawfully received. When determining income or resources for purposes of determining eligibility or benefit amounts for any state-funded program under this title, the state department shall exclude from consideration any moneys received by a recipient pursuant to this subparagraph (II.5).

(B) In order to establish a claim for the penalty established by sub-subparagraph (A) of this subparagraph (II.5), a recipient or the estate of a recipient shall forward a notice of claim to the state department and to the provider. The executive director of the state department shall promulgate rules for an informal hearing process for determination of the issue that shall allow a provider an opportunity to be heard.

(C) The provisions of this subparagraph (II.5) shall not apply to a long-term care facility licensed pursuant to section 25-3-101, C.R.S.

(III) (A) When a third party is primarily liable for the payment of the costs of a recipient's medical benefits, prior to receiving nonemergency medical care, the recipient

shall comply with the protocols of the third party, including using providers within the third party's network or receiving a referral from the recipient's primary care physician. Any recipient failing to follow the third party's protocols is liable for the payment or cost of any care or services that the third party would have been liable to pay; except that, if the third party or the service provider substantively fails to communicate the protocols to the recipient, the items or services are nonreimbursable under this article and articles 5 and 6 of this title and the recipient is not liable to the provider.

(B) A recipient may enter into a written agreement with a third party or provider under which the recipient agrees to pay for items provided or services rendered that are outside of the network or plan protocols. The recipient's agreement to be personally liable for such nonemergency, nonreimbursable items shall be recorded on forms approved by the state board and signed and dated by both the recipient and the provider in advance of the services being rendered.

(b) Recipient income applied pursuant to section 25.5-4-209 (1) shall not disqualify any recipient, as defined in section 26-2-103 (8), C.R.S., from receiving benefits under this article, article 5 or 6 of this title, or public assistance under article 2 of title 26, C.R.S. If, at any time during the continuance of medical benefits, the recipient becomes possessed of property having a value in excess of that amount set by law or by the rules of the state department or receives any increase in income, it is the duty of the recipient to notify the county department thereof, and the county department may, after investigation, either revoke such medical benefits or alter the amount thereof, as the circumstances may require.

(c) Any medical assistance paid to which a recipient was not lawfully entitled shall be recoverable from the recipient or the estate of the recipient by the county as a debt due the state pursuant to section 25.5-1-115, but no lien may be imposed against the property of a recipient on account of medical assistance paid or to be paid on the recipient's behalf under this article or article 5 or 6 of this title, except pursuant to the judgment of a court of competent jurisdiction or as provided by section 25.5-4-302.

(d) If any such medical assistance was obtained fraudulently, interest shall be charged and paid to the county department on the amount of such medical assistance calculated at the legal rate and calculated from the date that payment for medical services rendered on behalf of the recipient is made to the date such amount is recovered.

(2) Any overpayment to a provider, including those of personal needs funds made pursuant to section 25.5-6-206, shall be recoverable regardless of whether the overpayment is the result of an error by the state department, a county department of social services, an entity acting on behalf of either department, or by the provider or any agent of the provider as follows:

(a) (I) If the state department makes a determination that such overpayment has been made as a result of the provider's false representation, the state department may collect the overpayment, plus a civil monetary penalty equal to one-half the amount of the overpayment, and interest on the sum of the two amounts accruing at the statutory rate from the date the overpayment is identified, by the means specified in this subsection (2). Such sum may be collected for up to the amount of time prescribed in section 13-80-103.5, C.R.S., after the overpayment is identified. Amounts remaining uncollected for more than the time period prescribed in section 13-80-103.5, C.R.S., after the last repayment was made may be considered uncollectible. For the purposes of this subparagraph (I), "false representation" means an inaccurate statement that is relevant to a claim for reimbursement and is made by a provider who has actual knowledge of the truth of false nature of the statement or by a provider acting in deliberate ignorance of or with reckless disregard for the truth of the statement. A provider acts with reckless disregard for truth if the provider fails to maintain records required by the department or if the provider fails to become familiar with rules, manuals, and bulletins issued by the department, board, or the department's fiscal agent.

(II) If the state department makes a determination that such overpayment has been made for some other reason than a false representation by the provider specified in subparagraph (I) of this paragraph (a), the state department may collect the amount of overpayment, plus interest accruing at the statutory rate from the date the provider is notified of such overpayment, by the means specified in this subsection (2). Pursuant to the criteria established in rules promulgated by the state board, the state department may waive

the recovery or adjustment of all or part of the overpayment and accrued interest specified in this subparagraph (II) if it would be inequitable, uncollectible or administratively impracticable; except that no action shall be taken against a recipient of medical services initially determined to be eligible pursuant to section 25.5-4-205 if the overpayment occurred through no fault of the recipient. Amounts remaining uncollected for more than five years after the last repayment was made may be considered uncollectible.

(b) In order to collect the amounts specified in paragraph (a) of this subsection (2), the state department may withhold subsequent payments to which the provider is or becomes entitled and apply the amount withheld as an offset. The state board shall establish in rules the rate at which an overpayment may be offset, with provision for a reduction of such rate upon a good cause shown by the provider that the rate at which payment will be withheld will result in an undue hardship for the provider. In determining whether to grant a good cause reduction, the state department shall consider the impact of collecting the amount provided by state board rules on the quality of patient care and the financial viability of the provider. The state department may also take such other steps administratively as are available for the collection of the amounts specified in paragraph (a) of this subsection (2).

(c) If a provider defaults on repayment of the amounts specified in paragraph (a) of this subsection (2), the state department may bring a suit against the provider in the appropriate court. Court costs shall not be assessed against the state department but shall be assessed against the provider if the court finds in favor of the state department. Any costs collected by the state department shall be paid into the registry of the court. Once the amount has been reduced to judgment, the state department may proceed with all available postjudgment remedies.

(d) Notwithstanding the provisions of section 24-30-202.4, C.R.S., an amount specified in paragraph (a) of this subsection (2) that the state department has determined to be uncollectible may be referred to the controller for collection. Net proceeds of debts collected by the controller pursuant to this paragraph (d) shall be paid into the fund from which the overpayment was made.

(e) Any provider adversely affected by actions taken pursuant to this subsection (2), except when a suit is filed against the provider pursuant to paragraph (c) of this subsection (2), may appeal the determination of the state department pursuant to the provisions in section 24-4-105, C.R.S.

(f) If the state department, either directly or through a contracting agent, undertakes a review or an audit of a provider to determine whether an overpayment has been made to that provider, the review or audit shall be subject to the procedures required in subsection (3) of this section.

(3) (a) A review or audit of a provider shall be subject to the following procedures:

(I) The reviewer or auditor shall conduct a review or audit in accordance with applicable state and federal law.

(II) The reviewer or auditor shall apply uniform standards and procedures to each class of providers subject to a review or an audit to determine an overpayment.

(III) The reviewer or auditor shall prepare findings for the entire period under review or audit, and a provider shall be subject to only one demand for repayment in connection with the review or audit.

(IV) The reviewer or auditor shall initiate each review or audit requiring an inspection of the provider's records by delivering to the provider not less than ten business days prior to the commencement of the audit a written request describing in detail such records and offering the provider the option of providing either a reproduction of such records or inspection by the reviewer or auditor at the provider's site. The request shall also clearly define milestone dates pertaining to records' requested due dates, permissible extensions of dates, the timelines for informal reconsideration, and deadlines for requesting a formal appeal. The records subject to the request shall be limited to records directly related to claims for reimbursement submitted by the provider. In the event such records are available from a county department of social services or another agency, subdivision, or contractor of the state, the reviewer or auditor shall request such records from such other agencies as may be appropriate prior to making a request to the provider. The reviewer or auditor shall conduct on-site inspections at reasonable times during regular business hours, and the

reviewer or auditor shall make arrangements necessary for the reproduction of such records on site. If the provider chooses to provide a reproduction of the records requested by the reviewer or auditor instead of on-site inspection, the reviewer or auditor shall give the provider a reasonable period of time, that shall be not less than forty-five days, to provide such records taking into account the scope of the request, the time frame covered, and the reproduction arrangements available to the provider.

(IV.5) At the request of the provider, the reviewer or auditor shall conduct an in-person or telephonic interview with the provider prior to the preparation of a preliminary draft of the report of the reviewer or auditor at which the reviewer or auditor and the provider shall discuss:

(A) The findings of the reviewer or auditor;

(B) Any documentation useful for the provider to refute the findings of the reviewer or auditor; and

(C) The next steps in the review or audit process.

(V) A physician's record or other order for health care services, drugs, or medicinal supplies in a form transmitted electronically shall be sufficient to validate the provider's records regarding the ordering of the health care services, drugs, or medicinal supplies.

(VI) Whenever possible, the reviewer or auditor shall base a determination of an overpayment to a provider upon a review of actual records of the department, its agents, or the provider. In the event sufficient records are not available to the reviewer or auditor, an overpayment determination may be based upon a sampling of records so long as the sampling and any extrapolation therefrom is reasonably valid from a statistical standpoint and is in accordance with generally accepted auditing standards.

(VII) If a reviewer or auditor determines that there has been an overpayment to the provider, then, at the time demand for repayment is made, the state department shall offer the provider an informal reconsideration of the review or audit findings. The state department shall notify the provider in writing of the right to an informal reconsideration prior to implementing any recovery of an overpayment and give the provider an opportunity to request an informal reconsideration. In the event informal reconsideration is requested or a formal appeal is filed pursuant to subparagraph (VIII) of this paragraph (a), the state department shall not implement recovery of the overpayment until such informal reconsideration or formal appeal has been completed. Within forty-five days after the request for an informal reconsideration, the state department shall render a decision on the request and notify the provider of the decision. The notification shall include information concerning requesting a formal appeal, including informing the provider that the request must be filed within thirty days after the date of the state department's decision on the request for an informal reconsideration. If the state department is unable to render a decision on the request for informal reconsideration within forty-five days after the request, within forty-five days after the request, the state department shall notify the provider of its inability to complete the decision and shall include information concerning requesting a formal appeal, including informing the provider that the request must be filed within thirty days after the receipt of the notification that the state department is unable to render a decision. For purposes of this subparagraph (VII), an informal reconsideration shall be considered final thirty days after the earlier of the date on which the provider withdraws its request or the date on which the state department issues a written decision on the request.

(VIII) In accordance with paragraph (e) of subsection (2) of this section, any provider adversely affected by the actions of the state department or its contracting agent in connection with a review or an audit, including whether the state department or its contracting agent adhered to the provisions of this subsection (3) in making an overpayment determination, may appeal such actions pursuant to the provisions of section 24-4-105, C.R.S.

(a.5) Any additional review or audit procedures shall be adopted by rule of the state board and shall be specifically referenced in any contract with a provider.

(b) The state department is authorized to engage the services of a qualified agent through a competitive contract issued pursuant to the state's procurement code for the purpose of conducting a review or audit of a provider to assist in determining whether there has been an overpayment to a provider and the amount of that overpayment. In addition to

such terms and conditions as the state department may deem necessary, any contract shall be subject to the requirements for conducting a review or an audit in accordance with paragraph (a) of this subsection (3). The state department is further authorized to enter into a contract with a qualified agent for the purpose of conducting a review or an audit of a provider that provides that the compensation of the contracting agent shall be contingent and based upon a percentage of the amount of the recovery collected from the provider. A contract issued by the state department for the purpose of conducting a review or an audit of a provider to determine whether the provider has received an overpayment shall also be subject to the following conditions:

(I) The compensation paid to the contracting agent under a contingency-based contract shall not exceed eighteen percent of the amount finally collected from the provider overpayment, and the state department may establish a limit on the amount of annual compensation that may be paid to a contracting agent under a contingency-based contract and may further establish a limit on the amount that may be paid to a contracting agent under a contingency-based contract for recovery from any one provider.

(II) Reimbursement of the contracting agent's costs in performing the review or audit under a contingency-based contract shall be deemed included in the percentage compensation due the agent under the contract.

(III) No employee or agent of the contracting agent involved in the performance of a contingency-based contract shall be compensated by the contracting agent based upon the amount recovered under the contract.

(IV) The state department shall retain all authority for providing notice and otherwise making demand upon a provider for recovery of an overpayment, and the state department shall review and approve any written demand, request, or determination by the contracting agent regarding a review or an audit of a provider under this subsection (3).

(V) In any contingency-based contract authorized pursuant to this paragraph (b), the state of Colorado shall not be obligated to pay the contracting agent for amounts not actually collected from the provider.

(3.5) (a) Prior to the start of a contract to review or audit providers, the state department is encouraged to meet with organizations or associations of providers to educate providers on the review or audit process and the responsibilities of both the providers and the state department throughout the review or audit process. The state department is also encouraged to prepare an annual report on common findings following a contract to review or audit providers and distribute the report to organizations or associations of providers. The annual report should include information to prevent similar findings in future reviews or audits and should direct providers to resource information.

(b) Repealed.

(4) If medical assistance is furnished to or on behalf of a recipient pursuant to the provisions of this article and articles 5 and 6 of this title for which a third party is liable, the state department has an enforceable right against such third party for the amount of such medical assistance, including the lien right specified in subsection (5) of this section. Whenever the recipient has brought or may bring an action in court to determine the liability of the third party, the state department, without any other name, title, or authority to enforce the state department's right, may enter into appropriate agreements and assignments of rights with the recipient and the recipient's attorney, if any. Any such agreement shall be filed with the court in which such an action is pending. The attorney named in such an agreement upon designation as a special assistant attorney general by the attorney general shall have the right to prove both the recipient's claim and the state department's claim. The state department, without any other name, title, or authority, may take any necessary action to determine the existence and amount of the state department's claims under this section, whether such claims are founded on judgment, contract, lien, or otherwise, and take any other action that is appropriate to recover from such third parties. To enforce such right, the attorney general, pursuant to section 24-31-101, C.R.S., on behalf of the state department may institute and prosecute, or intervene of right in legal proceedings against the third party having legal liability, either in the name of the state department or in the name of the recipient or his or her assignee, guardian, personal representative, estate, or survivors. When

the state department intervenes in legal proceedings against the third party, it shall not be liable for any portion of the attorney fees or costs of the recipient.

(5) (a) When the state department has furnished medical assistance to or on behalf of a recipient pursuant to the provisions of this article, and articles 5 and 6 of this title, for which a third party is liable, the state department shall have an automatic statutory lien for all such medical assistance. The state department's lien shall be against any judgment, award, or settlement in a suit or claim against such third party and shall be in an amount that shall be the fullest extent allowed by federal law as applicable in this state, but not to exceed the amount of the medical assistance provided.

(b) No judgment, award, or settlement in any action or claim by a recipient to recover damages for injuries, where the state department has a lien, shall be satisfied without first satisfying the state department's lien. Failure by any party to the judgment, award, or settlement to comply with this section shall make each such party liable for the full amount of medical assistance furnished to or on behalf of the recipient for the injuries that are the subject of the judgment, award, or settlement.

(c) Except as otherwise provided in this article, the entire amount of any judgment, award, or settlement of the recipient's action or claim, with or without suit, regardless of how characterized by the parties, shall be subject to the state department's lien.

(d) Where the action or claim is brought by the recipient alone and the recipient incurs a personal liability to pay attorney fees, the state department will pay its reasonable share of attorney fees not to exceed twenty-five percent of the state department's lien. The state department shall not be liable for costs.

(e) The state department's right to recover under this section is independent of the recipient's right.

(6) When the applicant or recipient, or his or her guardian, executor, administrator, or other appropriate representative, brings an action or asserts a claim against any third party, such person shall give to the state department written notice of the action or claim by personal service or certified mail within fifteen days after filing the action or asserting the claim. Failure to comply with this subsection (6) shall make the recipient, legal guardian, executor, administrator, attorney, or other representative liable for the entire amount of medical assistance furnished to or on behalf of the recipient for the injuries that gave rise to the action or claim. The state department may, after thirty days' written notice to such person, enforce its rights under subsection (5) of this section and this subsection (6) in the district court of the city and county of Denver; except that liability of a person other than the recipient shall exist only if such person had knowledge that the recipient had received medical assistance or if excusable neglect is found by the court. The court shall award the state department its costs and attorney fees incurred in the prosecution of any such action.

(7) When a legally responsible relative of the recipient agrees or is ordered to provide medical support or health insurance coverage for his or her dependents or other persons, and such dependents are applicants for, recipients of, or otherwise entitled to receive medical assistance pursuant to this article and articles 5 and 6 of this title, the state department shall be subrogated to any rights that the responsible persons may have to obtain reimbursement from a third party or insurance carrier for the cost of medical assistance provided for such dependents or persons. Where the state department gives written notice of subrogation, any third party or insurance carrier liable for reimbursement for the cost of medical care shall accord to the state department all rights and benefits available to the responsible relative that pertain to the provision of medical care to any persons entitled to medical assistance pursuant to this article and articles 5 and 6 of this title for whom the relative is legally responsible.

(8) All recipients of medical assistance under the medicaid program shall be deemed to have authorized their attorneys, all third parties, including but not limited to insurance companies, and providers of medical care to release to the state department all information needed by the state department to secure and enforce its rights under subsections (4) and (5) of this section.

(9) Nothing in part 6 of article 4 of title 10, C.R.S., shall be construed to limit the right of the state department to recover the medical assistance furnished to or on behalf of a recipient as the result of the negligence of a third party.

(10) No action taken by the state department pursuant to subsection (4) of this section or any judgment rendered in such action shall be a bar to any action upon the claim or cause of action of the applicant or recipient or his or her guardian, personal representative, estate, dependent, or survivors against the third party having legal liability, nor shall any such action or judgment operate to deny the applicant or recipient the recovery for that portion of his or her medical costs or other damages not provided as medical assistance under this article or article 5 or 6 of this title.

(11) (a) The state department shall have a right to recover any amount of medical assistance paid on behalf of a recipient because:

(I) The trustee of a trust for the benefit of the recipient has used the trust property in a manner contrary to the terms of the trust;

(II) A person holding the recipient's power of attorney has used the power for purposes other than the benefit of the recipient.

(b) To enforce the right under this subsection (11), the county or state department may institute or intervene in legal proceedings against the trustee or person holding the power of attorney. Any amount of medical assistance recovered pursuant to this subsection (11) shall be distributed between the state and county in proportion to the amount of medical assistance paid by each respectively, if any.

(c) No action taken by the county or state department pursuant to this subsection (11) or any judgment rendered in such action or proceeding shall be a bar to any action upon the claim or cause of action of the recipient or his or her guardian, personal representative, estate, dependent, or survivors against the trustee or person holding the power of attorney.

(12) (a) An entity that provides managed care, as defined in section 25.5-5-403, that has entered into a risk contract with the state department shall have the same rights of the department set forth in this section except with respect to the rights described in subsections (5) and (6) of this section. In addition, the attorney general may not enforce the rights set forth in this subsection (12). Venue for an action brought by or on behalf of an entity pursuant to this subsection (12) shall be governed by the Colorado rules of civil procedure.

(b) Within fifteen days after filing an action or asserting a claim against a third party, a recipient under a managed care plan or a guardian, executor, administrator, or other appropriate representative of the recipient shall provide to the entity that administers the managed care plan written notice of the action or claim. Notice shall be by personal service or certified mail.

(c) In cases where the state department has recovery rights against a third party pursuant to subsections (4) and (5) of this section and an entity that provides managed care has subrogation rights against the same party pursuant to paragraph (a) of this subsection (12), the recovery rights of the state department shall take precedence over the rights of the managed care plan.

(13) To the extent allowable under federal law, the state department shall recover from a legal immigrant's sponsor all medical assistance paid on behalf of a sponsored legal immigrant who is enrolled in the medical assistance program.

Source: **L. 2006:** Entire article added with relocations, p. 1829, § 7, effective July 1; (1)(a)(II.5) added, p. 107, § 1, effective January 1, 2007. **L. 2007:** (3)(a)(IV) and (3)(a)(VII) amended and (3)(a)(IV.5), (3)(a.5), and (3.5) added, pp. 1467, 1469, 1468, §§ 1, 3, 2, effective May 30. **L. 2009:** (5)(a) and (5)(c) amended, (HB 09-1191), ch. 100, p. 372, § 1, effective August 5. **L. 2010:** (2)(a)(II) amended, (SB 10-167), ch. 296, p. 1378, § 7, effective May 26.

Editor's note: (1) This section is similar to former § 26-4-403 as it existed prior to 2006.

(2) Subsection (1)(a)(II.5) was enacted as § 26-4-403 (1)(a)(II.5) in House Bill 06-1079 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

(3) Subsection (3.5)(b)(II) provided for the repeal of subsection (3.5)(b), effective July 1, 2011. (See L. 2007, p. 1468.)

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Trust Protection of Personal Injury Recoveries from Public Creditors", see 19 Colo. Law. 2187 (1990). For article, "Health Care Bankruptcy Issues: Provider Agreements as Executory Contracts", see 24 Colo. Law. 765 (1995). For article, "Medicaid Estate Recovery: The Role of the Advocate", see 28 Colo. Law. 51 (April 1999).

Annotator's note. Since § 25.5-4-301 is similar to § 26-4-403 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-403 is similar to § 26-4-112 as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant cases construing those provisions have been included in the annotations to this section.

Colorado's medicaid lien statute is not inconsistent with the anti-lien provisions of the federal Medicaid Act. It is consistent with the federal medicaid statute's anti-lien provisions as interpreted by the U.S. supreme court in *Arkansas Dept. of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006). I.P. ex rel. Cardenas v. Henneberry, 795 F. Supp. 2d 1189 (D. Colo. 2011).

Department of health care policy and financing's lien on settlement proceeds from medicaid recipient's malpractice suit is tantamount to a forced assignment of the right to recover that portion of the settlement that represents payments for medical care, which, under *Ahlborn*, is consistent with both the third-party liability provisions and the anti-lien provisions in the federal medicaid statute. I.P. ex rel. Cardenas v. Henneberry, 795 F. Supp. 2d 1189 (D. Colo. 2011).

The department can seek reimbursement from that portion of medicaid recipient's settlement proceeds that represents medical expenses — past and future — up to the total amount it spent on medicaid recipient's behalf as of the date of the settlement. I.P. ex rel. Cardenas v.

Henneberry, 795 F. Supp. 2d 1189 (D. Colo. 2011).

Actions necessary for recovery of expenses by department of social services. The Colorado department of social services has a right and duty to recover expenses its beneficiaries incur by reason of personal injuries they sustain in accidents, but to do so, it must either join in the action against the wrongdoer, assign its right to the recipient, or file its own action. *Gomez v. Black*, 32 Colo. App. 332, 511 P.2d 531 (1973).

A county department is not precluded from recovering medicaid benefits to which a medicaid recipient is not entitled and which were paid erroneously before adequate notice of termination. *Nededog v. Colo. Dept. of Health Care Policy & Fin.*, 98 P.3d 960 (Colo. App. 2004).

Department of social services may set off from payments to providers of services the amounts of past overpayments. *Smith, Harst & Assoc. v. D.S.S.*, 780 P.2d 20 (Colo. App. 1989).

This section allows the state to assign its rights to a claim for medical expenses paid by the state's medicaid program only to the recipient of medicaid or the recipient's attorney. Therefore a deceased recipient's family members were not proper assignees. *Kildahl v. Tagge*, 942 P.2d 1283 (Colo. App. 1996).

The state has an independent right of action that cannot be denied because of any negligence of a recipient. *Tucker v. Gorman*, 944 P.2d 653 (Colo. App. 1997), *aff'd*, 961 P.2d 1126 (Colo. 1998).

However, so long as the recipient's negligence is not imputed to the state so as to deny the state's claim, the recipient's negligence may be considered in determining the extent of a party's liability for the state's expenditures. *Tucker v. Gorman*, 944 P.2d 653 (Colo. App. 1997), *aff'd* on other grounds, 961 P.2d 1126 (Colo. 1998).

This section does not provide for waiver of claims to recover medicaid benefits paid erroneously to a recipient, nor does it cross-reference any waiver regulation of the department of human services. *Nededog v. Colo. Dept. of Health Care Policy & Fin.*, 98 P.3d 960 (Colo. App. 2004).

25.5-4-302. Recovery of assets. (1) The general assembly hereby finds, determines, and declares that the cost of providing medical assistance to qualified recipients throughout the state has increased significantly in recent years; that such increasing costs have created an increased burden on state revenues while reducing the amount of such revenues available for other state programs; that recovering some of the medical assistance from the estates of medical assistance recipients would be a viable mechanism for such recipients to share in the cost of such assistance; and that such an estate recovery program would be a cost-efficient method of offsetting medical assistance costs in an equitable manner. The general assembly also declares that in order to ensure that medicaid is available for low-income individuals reasonable restrictions consistent with federal law should be placed

on the ability of persons to become eligible for medicaid by means of making transfers of property without fair and valuable consideration.

(2) (a) Medical assistance paid on behalf of any individual who was fifty-five years of age or older when the individual received such assistance may be recovered by the state department from the estate of such individual in accordance with paragraph (c) of this subsection (2).

(b) Medical assistance paid on behalf of any individual who is institutionalized may be recovered by the state department from the estate of such individual in accordance with paragraph (c) of this subsection (2).

(c) The state department shall establish an estate recovery program only insofar as such program is in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, and shall not take any action to recover medical assistance when the amount of assistance to be recovered is economically inappropriate in relation to expenses of recovery.

(3) The state department is authorized to file liens against any property of an individual who is institutionalized and from whom the state department may recover medical assistance pursuant to paragraph (b) of subsection (2) of this section.

(4) The state department may compromise, settle, or waive any recovery of medical assistance authorized pursuant to subsection (2) of this section upon good cause shown.

(5) Subject to any limitation concerning estate recovery in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, the amount of any medical assistance paid pursuant to the provisions of this article and articles 5 and 6 of this title is a claim against the estate pursuant to the provisions of section 15-12-805 (1), C.R.S.

(6) The state board shall promulgate rules to implement the provisions of this section, including rules limiting the eligibility for medical assistance if the person made a voluntary assignment or transfer of property without fair and valuable consideration prior to applying for medical assistance. A contract for an exempt burial fund for an individual shall include a provision restricting the full amount to the cost of the burial and stating that any portion not expended for the burial costs shall be refunded to the state department by the mortuary as reimbursement for the cost of medical assistance provided to the individual. Said rules shall be in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended.

(7) Effective upon the implementation of a private-public partnership program for financing long-term care pursuant to section 25.5-6-110, this section shall apply to participants of such program only after excluding from the amount that may otherwise be recovered from such person's estate an amount allowed by rules adopted by the state board in accordance with section 25.5-6-110.

Source: L. 2006: Entire article added with relocations, p. 1836, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-403.3 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-4-302 is similar to § 26-4-403.3 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5, relevant cases construing that provision have been included in the annotations to this section.

Where section requires the department to establish an estate recovery program consistent with federal law and federal standards require the state to adopt procedures under which individuals who will be affected by recovery will have the right to apply for an undue hardship waiver, the department's rule allowing for service of notice on the personal representa-

tive of the decedent's estate is reasonably calculated to give notice to the affected individuals. However, department's notice was fatally defective since it did not instruct the personal representative to forward the notice to affected individuals nor did it identify who should receive the notice. *Estate of Schiola v. Colo. Dept. of Health Care Policy & Fin.*, 51 P.3d 1080 (Colo. App. 2002).

The corrected notice of estate claim sent to the estate remedied the deficiencies in the original notice and provided the information required under *Estate of Schiola v. Colo. Dept. of Health Care Policy & Fin.*, annotated above,

and the department rules. In re Estate of Kochevar, 94 P.3d 1253 (Colo. App. 2004).

Waiver of recovery of medicaid expenses should only benefit those individuals who qualify for and are granted a waiver to pre-

vent financial burdens upon the state. Cobeneficiaries of a beneficiary granted a waiver may not benefit from the waiver. In re Estate of Ligon, 160 P.3d 361 (Colo. App. 2007).

25.5-4-303. State income tax refund intercept - garnishment of earning - failure to provide medical support for child. (1) (a) At any time prescribed by the department of revenue, but not less frequently than annually, the state department may certify to the department of revenue information regarding any person who:

(I) Is obligated to the state agency responsible for administering medical assistance in this state for medical support based on medical assistance provided to the obligor's dependent child; and

(II) Has received payment from a third party to cover the health care costs of the child but has neither applied such payment to cover the child's health care costs nor to reimburse the state department, the custodial parent of the child, or the provider of medical care.

(b) The information provided to the department of revenue shall include the name and the social security number of the person described in paragraph (a) of this subsection (1), the amount of medical assistance provided to the child during the period for which medical support was ordered but not provided as described in subparagraph (II) of paragraph (a) of this subsection (1), and any other identifying information required by the department of revenue.

(2) Prior to a final certification of the information described in subsection (1) of this section to the department of revenue, the state department shall notify the obligated person, in writing, that the state intends to refer the person's name to the department of revenue in an attempt to offset the person's medical support obligation against the person's state income tax refund. Such notification shall include information on the parent's right to object to the offset.

(3) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 39-21-108 (3), C.R.S., the state department may recover the amount of the medical assistance described in paragraph (b) of subsection (1) of this section.

(4) The state department may garnish the wages and other earnings of a person described in paragraph (a) of subsection (1) of this section. The garnishment of wages and earning shall be in accordance with articles 54 and 54.5 of title 13, C.R.S.

(5) The state board shall adopt rules as are necessary for the implementation of this section.

Source: L. 2006: Entire article added with relocations, p. 1838, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-403.4 as it existed prior to 2006.

25.5-4-303.3. Provider fraud - attorney general report. (1) On or before January 15, 2013, and on or before January 15 each year thereafter, the attorney general shall submit a written report to the judiciary committee and the health and environment committee of the house of representatives, or their successor committees, and to the judiciary committee and the health and human services committee of the senate, or their successor committees, relating to medicaid provider fraud including, at a minimum:

(a) Investigations of provider fraud during the year;

(b) Criminal complaints requested, cases dismissed, cases acquitted, convictions, and confessions of judgment;

(c) Recoveries, including fines and penalties, restitution ordered, and restitution collected;

(d) Civil claims; and

(e) Trends in methods used to commit provider fraud, excluding law enforcement-sensitive information.

Source: L. 2012: Entire section added, (SB 12-060), ch. 166, p. 578, § 2, effective August 8.

25.5-4-303.5. Short title. This section and sections 25.5-4-304 to 25.5-4-310 shall be known and may be cited as the “Colorado Medicaid False Claims Act”.

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1379, § 10, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

ANNOTATION

Law reviews. For article, “Overview of the New Colorado Medicaid False Claims Act”, see 39 Colo. Law. 27 (October 2010).

25.5-4-304. Definitions. As used in sections 25.5-4-303.5 to 25.5-4-309, unless the context otherwise requires:

(1) (a) “Claim” means a request or demand for money or property, whether under a contract or otherwise, and regardless of whether the state has title to the money or property, under the “Colorado Medical Assistance Act” that is:

(I) Presented to an officer, employee, or agent of the state; or

(II) Made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the state’s behalf or to advance a program or interest of the state and if the state:

(A) Provides or has provided any portion of the money or property requested or demanded; or

(B) Will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

(b) “Claim” does not include a request or demand for money or property that the state has paid to an individual as compensation for employment by the state or as an income subsidy with no restriction on that individual’s use of the money or property.

(2) “Colorado Medical Assistance Act” means this article and articles 5 and 6 of this title.

(3) (a) “Knowing” or “knowingly” means that a person, with respect to information:

(I) Has actual knowledge of the information;

(II) Acts in deliberate ignorance of the truth or falsity of the information; or

(III) Acts in reckless disregard of the truth or falsity of the information.

(b) “Knowing” or “knowingly” does not require proof of specific intent to defraud.

(4) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(5) “Obligation” means a fixed or contingent duty arising from an express or implied contractual, quasi-contractual, grantor-grantee, licensor-licensee, statutory, fee-based, or similar relationship, and the retention of overpayment.

Source: L. 2006: Entire article added with relocations, p. 1838, § 7, effective July 1.
L. 2010: Entire section R&RE, (SB 10-167), ch. 296, p. 1379, § 11, effective May 26.

Editor’s note: This section is similar to former §§ 26-4-1102 and 26-4-1103 (3) as they existed prior to 2006.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-4-305. False medicaid claims - liability for certain acts. (1) Except as otherwise provided in subsection (2) of this section, a person is liable to the state for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars, plus three times the amount of damages that the state sustains because of the act of that person, if the person:

(a) Knowingly presents, or causes to be presented, to an officer or employee of the state a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(c) Has possession, custody, or control of property or money used, or to be used, by the state in connection with the "Colorado Medical Assistance Act" and knowingly delivers, or causes to be delivered, less than all of the money or property;

(d) Authorizes the making or delivery of a document certifying receipt of property used, or to be used, by the state in connection with the "Colorado Medical Assistance Act" and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(e) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state in connection with the "Colorado Medical Assistance Act" who lawfully may not sell or pledge the property;

(f) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state in connection with the "Colorado Medical Assistance Act", or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state in connection with the "Colorado Medical Assistance Act";

(g) Conspires to commit a violation of paragraphs (a) to (f) of this subsection (1).

(2) Notwithstanding the amount of damages authorized in subsection (1) of this section, for a person who violates subsection (1) of this section, the court may assess not less than twice the amount of damages that the state sustains because of the act of the person if the court finds that:

(a) The person who committed the violation of subsection (1) of this section furnished to the officials of the state responsible for investigating false claims violations all information about the violation known to the person and furnished said information within thirty days after the date on which the person first obtained the information;

(b) At the time the person furnished the information about the violation to the state, a criminal prosecution, civil action, or administrative action had not commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation; and

(c) The person fully cooperated with any investigation of the violation by the state.

(3) A person violating this section shall also be liable to the state for the costs of a civil action brought to recover any penalty or damages.

(4) Any information furnished pursuant to subsection (2) of this section shall be exempt from disclosure under part 2 of article 72 of this title.

Source: L. 2006: Entire article added with relocations, p. 1839, § 7, effective July 1.
L. 2010: Entire section R&RE, (SB 10-167), ch. 296, p. 1380, § 12, effective May 26.
L. 2011: IP(1) amended, (HB 11-1303), ch. 264, p. 1168, § 66, effective August 10.

Editor's note: This section is similar to former § 26-4-1103 (1) and (2) as they existed prior to 2006.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Law reviews. For article, “Colorado’s Medicaid Compliance Statutes: False Statements and

Claims, Kickbacks, and Physician Referrals”, see 36 Colo. Law. 31 (March 2007).

25.5-4-306. Civil actions for false medicaid claims. (1) Responsibility of attorney general. The attorney general shall diligently investigate a violation under section 25.5-4-305. If the attorney general finds that a person has violated or is violating section 25.5-4-305, the attorney general may bring a civil action under this section against the person.

(2) **Actions by private persons.** (a) A relator may bring a civil action for a violation of section 25.5-4-305 on behalf of the relator and the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state pursuant to rule 4 of the Colorado rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (b) of this subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to a complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Colorado rules of civil procedure.

(d) Before the expiration of the sixty-day period pursuant to paragraph (b) of this subsection (2) or any extensions obtained under paragraph (c) of this subsection (2), the state shall:

(I) Proceed with the action, in which case the state shall conduct the action; or

(II) Notify the court that it declines to take over the action, in which case the relator shall have the right to conduct the action.

(e) When a relator brings an action under this subsection (2), the federal false claims act, or any similar provision of the laws of any other state, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(3) **Rights of parties to private actions.** (a) If the state proceeds with an action brought under subsection (2) of this section, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subsection (3).

(b) (I) The state may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the state of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion.

(II) The state may settle the action with the defendant notwithstanding the objections of the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(III) Upon a showing by the state that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the state’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the relator’s participation, including but not limited to:

(A) Limiting the number of witnesses the relator may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the relator’s cross-examination of witnesses; or

(D) Otherwise limiting the participation by the relator in the litigation.

(IV) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the

defendant undue burden or unnecessary expense, the court may limit the participation by the relator in the litigation.

(c) If the state elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and, at the state's expense, shall be supplied with copies of all deposition transcripts. When a relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(d) Regardless of whether the state proceeds with the action, upon a showing by the state that certain actions of discovery by the relator would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding the provisions of subsection (2) of this section, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the relator shall have the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in another proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this paragraph (e), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(4) **Award to private persons.** (a) (I) If the state proceeds with an action brought by a relator under subsection (2) of this section, the relator shall, subject to subparagraph (II) of this paragraph (a), receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(II) If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or from the news media, the court may award to the relator such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(III) Any payment to a relator under subparagraph (I) or (II) of this paragraph (a) shall be made from the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(b) If the state does not proceed with an action brought under subsection (2) of this section, the relator bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Regardless of whether the state proceeds with an action brought under subsection (2) of this section, if the court finds that the action was brought by a relator who planned and initiated the violation of section 25.5-4-305 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the relator would otherwise receive under paragraph (a) or (b) of this subsection (4), taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator is convicted of

criminal conduct arising from his or her role in the violation of section 25.5-4-305, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(d) If the state does not proceed with an action brought under subsection (2) of this section and the relator bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) **Certain actions barred.** (a) A court shall not have jurisdiction over an action brought under this section against a member of the general assembly, a member of the state judiciary, or an elected official in the executive branch of the state of Colorado.

(b) A relator shall not bring an action under subsection (2) of this section that is based upon allegations or transactions that are the subject of a civil suit in a court of this state or an administrative civil money penalty proceeding in which the state is already a party.

(c) (I) A court shall not have jurisdiction over an action brought under subsection (2) of this section if the action is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the state or the relator is an original source of the information that is the basis for the action.

(II) For purposes of this paragraph (c), "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under subsection (2) of this section that is based on the information.

(6) **State not liable for certain expenses.** The state is not liable for expenses that a relator incurs in bringing an action under this section.

(7) **Private action for retaliation.** (a) A relator shall be entitled to all relief necessary to make the relator whole, if the relator is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of the relator's employment by the defendant or by any other person because of lawful acts done by the relator in furtherance of an action under this section or in furtherance of an effort to stop any violations of section 25.5-4-305.

(b) (I) A relator who seeks relief pursuant to this subsection (7) shall be entitled to all relief necessary to make the relator whole. Such relief shall include:

(A) If the relator is an employee, reinstatement with the same seniority status the relator would have had but for the discrimination, twice the amount of back pay, and interest on the back pay; and

(B) Compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorney fees.

(II) A relator may bring an action in the appropriate court of the state for the relief provided in this subsection (7).

Source: L. 2006: Entire article added with relocations, p. 1840, § 7, effective July 1. L. 2009: IP(1)(b), IP(1)(c), and (4) amended, (SB 09-292), ch. 369, p. 1974, § 97, effective August 5. L. 2010: Entire section R&RE, (SB 10-167), ch. 296, p. 1382, § 13, effective May 26.

Editor's note: This section is similar to former § 26-4-1104 as it existed prior to 2006.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Law reviews. For article, “Colorado’s Medicaid Compliance Statutes: False Statements and

Claims, Kickbacks, and Physician Referrals”, see 36 Colo. Law. 31 (March 2007).

25.5-4-307. False medicaid claims procedures. (1) A civil action under section 25.5-4-306 (1) or (2) may not be brought after the later of:

(a) More than six years after the date on which the violation of section 25.5-4-305 is committed; or

(b) More than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation of section 25.5-4-305 is committed.

(2) If the state elects to intervene and proceed with an action brought under section 25.5-4-306, the state may file its own complaint or amend the relator’s complaint to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitations purposes, any such pleadings by the state shall relate back to the filing date of the relator’s complaint, to the extent that the state’s claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the relator.

(3) In an action brought under section 25.5-4-306, the state or relator must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(4) Notwithstanding any other provision of law, the Colorado rules of criminal procedure, or the Colorado rules of evidence, a final judgment rendered in favor of the state in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under section 25.5-4-306.

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1386, § 14, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

25.5-4-308. False medicaid claims jurisdiction. An action under section 25.5-4-306 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, or transacts business or in which an act proscribed by section 25.5-4-305 occurred. A summons as required by the Colorado rules of civil procedure shall be issued by the appropriate district court and served at any place.

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1387, § 14, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

25.5-4-309. False medicaid claims civil investigation demands. (1) **General.** (a) (I) Whenever the attorney general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to a false medicaid claims law investigation, the attorney general may, before commencing a civil

proceeding under section 25.5-4-306 or other false medicaid claims law or making an election under section 25.5-4-306 (2) (d), issue in writing and cause to be served upon the person a civil investigative demand requiring the person to:

- (A) Produce the documentary material for inspection and copying;
- (B) Answer in writing written interrogatories with respect to the documentary material or information;

- (C) Give oral testimony concerning the documentary material or information; or

- (D) Furnish any combination of such material, answers, or testimony.

(II) The attorney general may not delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general shall cause to be served, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served.

(b) (I) Each civil investigative demand issued under this subsection (1) shall state the nature of the conduct constituting the alleged violation of a false medicaid claims law that is under investigation and the applicable provision of law alleged to be violated.

(II) If the demand is for the production of documentary material, the demand shall:

- (A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified;

- (B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

- (C) Identify the false medicaid claims law investigator to whom the material shall be made available.

(III) If the demand is for answers to written interrogatories, the demand shall:

- (A) Specify the written interrogatories to be answered;

- (B) Prescribe dates on which answers to written interrogatories shall be submitted; and

- (C) Identify the false medicaid claims law investigator to whom the answers shall be submitted.

(IV) If the demand is for the giving of oral testimony, the demand shall:

- (A) Prescribe a date, time, and place at which oral testimony shall be commenced and notify the deponent if the oral testimony is to be video or audio recorded;

- (B) Identify a false medicaid claims law investigator who shall conduct the examination and the custodian to whom the transcript of the examination shall be submitted;

- (C) Specify that such attendance and testimony are necessary to the conduct of the investigation;

- (D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

- (E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, that will be taken pursuant to the demand.

(V) A civil investigative demand issued under this section that is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(VI) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date that is not less than seven days after the date on which the demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present that warrant the commencement of the testimony within a lesser period of time.

(VII) The attorney general shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. Notwithstanding section 24-31-103, C.R.S., the attorney general shall not authorize the performance, by any other

officer, employee, or agency, of any function vested in the attorney general under this subparagraph (VII).

(2) **Protected material or information.** (a) A civil investigative demand issued under subsection (1) of this section shall not require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony if the material, answers, or testimony would be protected from disclosure under:

(I) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(II) The standards applicable to discovery requests under the Colorado rules of civil procedure, to the extent that the application of the standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(b) A demand that is an express demand for a product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to a person. Disclosure of a product of discovery pursuant to an express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(3) **Service and jurisdiction.** (a) A civil investigative demand issued under subsection (1) of this section or a petition brought pursuant to subsection (10) of this section may be served by a false medicaid claims law investigator, a sheriff, or a deputy sheriff at any place within the state.

(b) A civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section may be served upon a person who is not found within the state in the manner prescribed by the Colorado rules of civil procedure for service in another state or a foreign country. To the extent that the courts of this state can assert jurisdiction over any such person consistent with due process, the district court for the city and county of Denver shall have the same jurisdiction to take an action respecting compliance with this section by any such person that the court would have if the person were personally within the jurisdiction of the court.

(4) **Service on legal entities and natural persons.** (a) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a partnership, corporation, association, or other legal entity by:

(I) Delivering an executed copy of the demand or petition to a partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to an agent authorized by appointment or by law to receive service of process on behalf of the partnership, corporation, association, or entity;

(II) Delivering an executed copy of the demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(III) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the partnership, corporation, association, or entity at its principal office or place of business.

(b) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a natural person by:

(I) Delivering an executed copy of the demand or petition to the person; or

(II) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence, principal office, or place of business.

(5) **Proof of service.** A verified return by the individual serving a civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section setting forth the manner of the service shall be proof of the service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

(6) **Documentary material.** (a) (I) The production of documentary material in response to a civil investigative demand issued under subsection (1) of this section shall be made under a sworn certificate, in the form as the demand designates, by:

(A) In the case of a natural person, the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person.

(II) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false medicaid claims law investigator identified in the demand.

(b) A person upon whom a civil investigative demand for the production of documentary material has been served under this section shall make the material available for inspection and copying to the false medicaid claims law investigator identified in the demand at the principal place of business of the person, or at such other place as the false medicaid claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (10) of this section. The material shall be made so available on the return date specified in the demand, or on such later date as the false medicaid claims law investigator may prescribe in writing. The person may, upon written agreement between the person and the false medicaid claims law investigator, substitute copies for originals of all or any part of the material.

(7) **Interrogatories.** (a) Each interrogatory in a civil investigative demand issued under subsection (1) of this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in the form the demand designates, by:

(I) In the case of a natural person, the person to whom the demand is directed; or

(II) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(b) If an interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(8) **Oral examinations.** (a) The examination of a person pursuant to a civil investigative demand for oral testimony issued under subsection (1) of this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States, the state of Colorado, or the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or with the assistance of someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection (8) shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Colorado rules of civil procedure.

(b) The false medicaid claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and the stenographer who is recording the testimony.

(c) The oral testimony of a person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the state within which the person resides, is found, or transacts business, or in another place as may be agreed upon by the false medicaid claims law investigator conducting the examination and the person.

(d) When the testimony is fully transcribed, the false medicaid claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the witness waives the examination and reading. Any changes in form or substance

that the witness desires to make shall be entered and identified upon the transcript by the officer or the false medicaid claims law investigator, with a statement of the reasons given by the witness for making the changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the witness does not sign the transcript within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false medicaid claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or refusal to sign, together with the reasons, if any, given therefor.

(e) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false medicaid claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(f) Upon payment of reasonable charges therefor, the false medicaid claims law investigator shall furnish a copy of the transcript to the witness only; except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit the witness to inspection of the official transcript of the testimony of the witness.

(g) (I) A person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer a question, the false medicaid claims law investigator may file a petition in a district court under paragraph (a) of subsection (10) of this section for an order compelling the person to answer the question.

(II) If the person refuses to answer a question on the grounds of the privilege against self-incrimination, the false medicaid claims law investigator may compel the testimony of the person in accordance with the provisions of section 13-90-118, C.R.S.

(III) A person appearing for oral testimony under a civil investigative demand issued under subsection (1) of this section shall be entitled to the same fees and allowances that are paid to witnesses in the district courts of this state.

(9) **Custodian of documents, answers, and transcripts.** (a) The attorney general shall designate a false medicaid claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section and shall designate such additional false medicaid claims law investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(b) (I) A false medicaid claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (d) of this subsection (9).

(II) The custodian may cause the preparation of copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by a false medicaid claims law investigator or other officer or employee of the department of law who is authorized for such use under regulations that the attorney general shall issue. The material, answers, and transcripts may be used by any such authorized false medicaid claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(III) (A) Except as otherwise provided in this subsection (9), documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the

possession of the custodian, shall not be available for examination by an individual other than a false medicaid claims law investigator or other officer or employee of the department of law authorized under subparagraph (II) of this paragraph (b).

(B) Sub-subparagraph (A) of this subparagraph (III) shall not apply if consent is given by the person who produced the material, answers, or transcripts or, in the case of any product of discovery produced pursuant to an express demand for the material, if consent is given by the person from whom the discovery was obtained.

(C) Nothing in this subparagraph (III) is intended to prevent disclosure to the general assembly, including any committee of the general assembly, or to any other agency of the state for use by the agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the attorney general to a district court, showing substantial need for the use of the information by the agency in furtherance of its statutory responsibilities.

(IV) While in the possession of the custodian and under such reasonable terms and conditions as the attorney general shall prescribe:

(A) Documentary material and answers to interrogatories shall be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(B) Transcripts of oral testimony shall be available for examination by the person who produced the testimony or by a representative of that person authorized by that person to examine the transcripts.

(c) Whenever an attorney of the department of law has been designated to appear before a court, grand jury, or state agency in a case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the attorney such material, answers, or transcripts for official use in connection with the case or proceeding as the attorney determines to be required. Upon the completion of the case or proceeding, the attorney shall return to the custodian the material, answers, or transcripts so delivered that are not in the control of the court, grand jury, or agency through introduction into the record of the case or proceeding.

(d) The custodian shall, upon written request of a person who produced any documentary material in the course of any false medicaid claims law investigation pursuant to a civil investigative demand under this section, return to the person any such material, other than copies furnished to the false medicaid claims law investigator under paragraph (b) of subsection (6) of this section or made for the department of law under subparagraph (II) of paragraph (b) of this subsection (9), that is not in the control of a court, grand jury, or agency through introduction into the record of the case or proceeding, if:

(I) A case or proceeding before a court or grand jury arising out of the investigation or any proceeding before a state agency involving the material has been completed; or

(II) A case or proceeding in which the material may be used has not been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation.

(e) (I) In the event of the death, disability, or separation from service in the department of law of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general shall promptly:

(A) Designate another false medicaid claims law investigator to serve as custodian of the material, answers, or transcripts; and

(B) Transmit in writing to the person who produced the material, answers, or testimony notice of the identity and address of the successor so designated.

(II) A person who is designated to be a successor under this paragraph (e) shall have, with regard to the material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office; except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(10) **Judicial proceedings.** (a) Whenever a person fails to comply with a civil investigative demand issued under subsection (1) of this section, or whenever satisfactory copying or reproduction of the material requested in a demand cannot be done and the person refuses to surrender the material, the attorney general may file, in a district court for the judicial district in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(b) (I) A person who has received a civil investigative demand issued under subsection (1) of this section may file a petition for an order of the court to modify or set aside the demand. The person shall file the petition in a district court for the judicial district within which the person resides, is found, or transacts business and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand. In the case of a petition addressed to an express demand for a product of discovery, the person may file a petition to modify or set aside the demand only in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. The person shall file a petition under this subparagraph (I):

(A) Within twenty days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(B) Within such longer period as may be prescribed in writing by a false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (b) and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part; except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(c) (I) In the case of a civil investigative demand issued under subsection (1) of this section that is an express demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order of the court to modify or set aside those portions of the demand requiring production of any product of discovery. The person shall file the petition in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand and upon the recipient of the demand. The person shall file a petition under this subparagraph (I):

(A) Within twenty days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(B) Within such longer period as may be prescribed in writing by the false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (c), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(d) At any time during which a custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by a person in compliance with a civil investigative demand issued under subsection (1) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section. The person shall file the petition in the district court for the judicial district within which the office of the custodian is situated and shall serve a copy of the petition upon the custodian.

(e) Whenever a petition is filed in a district court under this subsection (10), the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry out the provisions of this section. A final order so

entered shall be subject to appeal under section 13-4-102, C.R.S. Any disobedience of a final order entered by a court under this section shall be punished as a contempt of the court.

(f) The Colorado rules of civil procedure shall apply to a petition under this subsection (10) to the extent that the rules are consistent with the provisions of this section.

(11) **Disclosure exemption.** Any documentary material, answers to written interrogatories, or oral testimony provided under a civil investigative demand issued under subsection (1) of this section shall be exempt from disclosure under section 24-72-203, C.R.S.

(12) **Definitions.** As used in this section, unless the context otherwise requires:

(a) “Custodian” means the custodian, or any deputy custodian, designated by the attorney general under paragraph (a) of subsection (9) of this section.

(b) “Documentary material” means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery.

(c) “False medicaid claims law” means:

(I) This section and sections 25.5-4-303.5 to 25.5-4-308; and

(II) Any law enacted before, on, or after May 26, 2010, that prohibits or makes available to the state in a court of the state a civil remedy with respect to a false medicaid claim against, bribery of, or corruption of an officer or employee of the state.

(d) “False medicaid claims law investigation” means an inquiry conducted by a false medicaid claims law investigator for the purpose of ascertaining whether a person is or has been engaged in a violation of a false medicaid claims law.

(e) “False medicaid claims law investigator” means an attorney or investigator employed by the department of law who is charged with the duty of enforcing or carrying into effect a false medicaid claims law or an officer or employee of the state acting under the direction and supervision of the attorney or investigator in connection with a false medicaid claims law investigation.

(f) “Person” means a natural person, partnership, corporation, association, or other legal entity.

(g) “Product of discovery” means:

(I) The original or duplicate of a deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, any one of which is obtained by a method of discovery in a judicial or administrative proceeding of an adversarial nature;

(II) A digest, analysis, selection, compilation, or derivation of an item listed in subparagraph (I) of this paragraph (g); and

(III) An index or other manner of access to an item listed in subparagraph (I) of this paragraph (g).

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1387, § 14, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

25.5-4-310. Medicaid false claims report. (1) On or before January 15, 2012, and on or before each January 15 thereafter, the attorney general shall submit a written report to the health and human services committees of the senate and the house of representatives, or any successor committees, and to the joint budget committee of the general assembly concerning claims brought under the “Colorado Medicaid False Claims Act” during the previous fiscal year. The report shall include, but not be limited to:

(a) The number of actions filed by the attorney general;

(b) The number of actions filed by the attorney general that were completed;

(c) The amount that was recovered in actions filed by the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs;

(d) The number of actions filed by a person other than the attorney general;

(e) The number of actions filed by a person other than the attorney general that were completed;

(f) The amount that was recovered in actions filed by a person other than the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs, and the amount recovered by the state and the person; and

(g) The amount expended by the state for investigation, litigation, and all other costs for claims related to the "Colorado Medicaid False Claims Act".

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1399, § 14, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

PART 4

PROVIDERS - REIMBURSEMENT

25.5-4-401. Providers - payments - rules. (1) (a) The state department shall establish rules for the payment of providers under this article and articles 5 and 6 of this title. Within the limits of available funds, such rules shall provide reasonable compensation to such providers, but no provider shall, by this section or any other provision of this article or article 5 or 6 of this title, be deemed to have any vested right to act as a provider under this article and articles 5 and 6 of this title or to receive any payment in addition to or different from that which is currently payable on behalf of a recipient at the time the medical benefits are provided by said provider.

(b) (I) On and after July 1, 1992, the state department rules established for the payment of providers under this article and articles 5 and 6 of this title shall provide that services that are compensable under both Title XIX and Title XVIII of the social security act shall be paid at either the rate established under Title XIX or the rate established under Title XVIII, whichever is lower.

(II) If any provision of this paragraph (b) is found to be in conflict with any federal law or regulation, such conflicting portion of this paragraph (b) is declared to be inoperative to the extent of the conflict.

(c) The state department shall exercise its overexpenditure authority under section 24-75-109, C.R.S., and shall not intentionally interrupt the normal provider payment schedule unless notified jointly by the director of the office of state planning and budgeting and the state controller that there is the possibility that adequate cash will not be available to make payments to providers and for other state expenses. If it is determined that adequate cash is not available and the state department does interrupt the normal payment cycle, the state department shall notify the joint budget committee of the general assembly and any affected providers in writing of its decision to interrupt the normal payment schedule. Nothing in this paragraph (c) shall be interpreted to establish a right for any provider to be paid during any specific billing cycle.

(d) Repealed.

(2) As to all payments made pursuant to this article and articles 5 and 6 of this title, the state department rules for the payment of providers may include provisions that encourage the highest quality of medical benefits and the provision thereof at the least expense possible.

(3) (a) As used in this subsection (3), “capitated” means a method of payment by which a provider directly delivers or arranges for delivery of medical care benefits for a term established by contract with the state department based on a fixed rate of reimbursement per recipient.

(b) (I) In order to provide medical benefits under this article and articles 5 and 6 of this title on a capitated basis and subject to the condition imposed in subparagraph (II) of this paragraph (b), the state department is authorized to solicit negotiated contracts with providers based upon the requirements of this subsection (3). The state department may contract with one or more providers concerning the same medical services in a single geographic area.

(II) The state department may award a contract to one or more providers pursuant to subparagraph (I) of this paragraph (b) when the executive director determines that such contract will reduce the costs of providing medical benefits under this article and articles 5 and 6 of this title.

(III) The state department may define groups of recipients by geographic area or other categories and may require that all members of the defined group obtain medical services through one or more provider contracts entered into pursuant to this subsection (3).

(4) (a) The general assembly hereby finds, determines, and declares that access to health care services would be improved and costs of health care would be restrained if the recipients of the medicaid program would choose a primary care physician through a managed care provider. For purposes of this subsection (4), “managed care provider” means either a primary care physician program, a health maintenance organization, or a prepaid health plan.

(b) Subject to the provisions of paragraph (c) of this subsection (4), the executive director of the state department has the authority to require a recipient of the medicaid program to select a managed care provider and to assign a recipient to a managed care provider if the recipient has failed to make a selection within a reasonable time. To the extent possible, this requirement shall be implemented on a statewide basis.

(c) The state department shall ensure the following:

(I) A managed care provider shall establish and implement consumer friendly procedures and instructions for disenrollment and shall have adequate staff to explain issues concerning service delivery and disenrollment procedures to recipients, including staff to address the communications needs and requirements of recipients with disabilities.

(II) All recipients shall be adequately informed about service delivery options available to them consistent with the provisions of this subparagraph (II). If a recipient does not respond to a state department request for selection of a delivery option within forty-five calendar days, the state department shall send a second notification to the recipient. If the recipient does not respond within twenty days of the date of the second notification, the state department shall ensure that the recipient remains with the recipient’s primary care physician, regardless of whether said primary care physician is enrolled in a health maintenance organization.

(5) The state board may promulgate rules to provide for the implementation and administration of subsections (3) and (4) of this section.

(6) The state department shall make good faith efforts to obtain a waiver or waivers from any requirements of Title XIX of the social security act which would prohibit the implementation of subsections (3) and (4) of this section. Such waiver or waivers shall be obtained from the federal department of health and human services, or any successor agency. If such waivers are not granted, the state department shall not act to implement or administer subsections (3) and (4) of this section to the extent that Title XIX prohibits it.

Source: L. 2006: Entire article added with relocations, p. 1841, § 7, effective July 1. L. 2009: (1)(d) added, (SB 09-265), ch. 205, p. 935, § 2, effective May 1. L. 2010: (1)(d) repealed, (HB 10-1382), ch. 217, p. 939, § 1, effective May 6.

Editor’s note: This section is similar to former § 26-4-404 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-4-401 is similar to § 26-4-404 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-404 is similar to § 26-4-110 (1) as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant cases construing those provisions have been included in the annotations to this section.

Where a recipient's chosen provider would no longer exist as an independent primary care physician program and, therefore, the recipient's selection could no longer be honored, Colorado acted reasonably and did not

violate subsection (4) when it automatically enrolled thousands of recipients into a health maintenance organization. *RX Pharmacies Plus, Inc. v. Weil*, 883 F. Supp. 549 (D. Colo. 1995).

The medical provider's right to payment is limited to that amount payable by the department of social services when the medical benefit is provided, and the medical provider has no vested right under the Colorado Medical Assistance Act to any greater amount. *Colo. Dept. of Soc. Servs. v. Health Care Management Consultants, Inc.*, 813 P.2d 829 (Colo. App. 1991).

25.5-4-402. Providers - hospital reimbursement - rules. (1) For all licensed or certified hospitals contracting for services under this article and articles 5 and 6 of this title, except those hospitals operated by the department of human services or those hospitals deemed exempt by the state board, the state department shall pay for inpatient hospital services pursuant to a system of prospective payment, generally based on the elements of a diagnosis-related group system. The state department shall develop and administer a system for ensuring appropriate utilization and quality of care provided by those providers who are reimbursed under this section. Subject to available appropriations, the state department may also make supplemental medicaid payments to certain hospitals. The state board shall promulgate rules to provide for the implementation of this section.

(2) (a) A hospital that receives payment under this article and articles 5 and 6 of this title for telemedicine services shall employ its existing quality-of-care protocols and patient confidentiality guidelines to ensure that such services meet the requirements of this article and articles 5 and 6 of this title.

(b) The executive director of the state department shall adopt rules in furtherance of this subsection (2), including, without limitation, rules to:

- (I) Ensure the provision of appropriate care to patients;
- (II) Prevent fraud and abuse; and
- (III) Establish methods and procedures to avoid overuse of telemedicine services.

(3) (a) In addition to the reimbursement rate process described in subsection (1) of this section and subject to adequate funding made available pursuant to section 25.5-4-402.3, the state department shall pay an additional amount based upon performance to those hospitals that provide services that improve health care outcomes for their patients. This amount shall be determined by the state department based upon nationally recognized performance measures established in rules adopted by the state board. The state quality standards shall be consistent with federal quality standards published by an organization with expertise in health care quality, including but not limited to, the centers for medicare and medicaid services, the agency for healthcare research and quality, or the national quality forum.

(b) The amount of the payments made pursuant to this subsection (3) shall be computed annually. For the first two fiscal years that payments are made pursuant to this subsection (3), the total amount of the payments shall be up to five percent of the total reimbursements made to hospitals in the previous year. For each fiscal year after the first two fiscal years, the total amount of the payments shall be up to seven percent of the total reimbursements made to hospitals in the previous year.

Source: L. 2006: Entire article added with relocations, p. 1844, § 7, effective July 1; entire section amended, p. 1546, § 3, effective July 1. **L. 2009:** (1) amended and (3) added, (HB 09-1293), ch. 152, p. 645, § 4, effective July 1.

Editor's note: (1) This section is similar to former § 26-4-405 as it existed prior to 2006.

(2) Amendments to section 26-4-405 by Senate Bill 06-165 were harmonized with this section as it appeared in Senate Bill 06-219.

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 312, Session Laws of Colorado 2006.

25.5-4-402.3. Providers - hospital - provider fees - legislative declaration - federal waiver - fund created - rules - advisory board - repeal. (1) **Short title.** This section shall be known and may be cited as the “Health Care Affordability Act of 2009”.

(2) **Legislative declaration.** The general assembly hereby finds and declares that:

(a) The state and the providers of publicly funded medical services, and hospital providers in particular, share a common commitment to comprehensive health care reform;

(b) Hospital providers within the state incur significant costs by providing uncompensated emergency department care and other uncompensated medical services to low-income and uninsured populations; and

(c) This section is enacted as part of a comprehensive health care reform and is intended to provide the following state services and benefits:

(I) Providing a payer source for some low-income and uninsured populations who may otherwise be cared for in emergency departments and other settings in which uncompensated care is provided;

(II) Reducing the underpayment to Colorado hospitals participating in publicly funded health insurance programs;

(III) Reducing the number of persons in Colorado who are without health care benefits;

(IV) Reducing the need of health care providers to shift the cost of providing uncompensated care to other payers; and

(V) Expanding access to high-quality, affordable health care for low-income and uninsured populations.

(3) **Hospital provider fee.** (a) Beginning with the fiscal year commencing July 1, 2009, and each fiscal year thereafter, the state department is authorized to charge and collect hospital provider fees, as described in 42 CFR 433.68 (b), on outpatient and inpatient services provided by all licensed or certified hospitals, referred to in this section as “hospitals”, for the purpose of obtaining federal financial participation under the state medical assistance program as described in this article and articles 5 and 6 of this title, referred to in this section as the “state medical assistance program”, and the Colorado indigent care program described in part 1 of article 3 of this title, referred to in this section as the “Colorado indigent care program”. The hospital provider fees shall be used to:

(I) Increase reimbursement to hospitals for providing medical care under:

(A) The state medical assistance program; and

(B) The Colorado indigent care program;

(II) Increase the number of persons covered by public medical assistance;

(III) Pay the administrative costs to the state department in implementing and administering this section; and

(IV) Offset general fund expenditures for the state medicaid program for state fiscal years 2011-12 and 2012-13 only.

(b) The provider fees shall be assessed pursuant to rules adopted by the state board, pursuant to section 24-4-103, C.R.S. The amount of the fee shall be established by rule of the state board but shall not exceed the federal limit for such fees. In establishing the amount of the fee and in promulgating the rules governing the fee, the state board shall:

(I) Consider recommendations of the hospital provider fee oversight and advisory board established pursuant to subsection (6) of this section;

(II) Establish the amount of the provider fee so that the amount collected from the fee and federal matching funds associated with the fee are sufficient to pay for the items described in paragraph (a) of this subsection (3), but nothing in this subparagraph (II) shall require the state board to increase the provider fee above the amount recommended by the advisory board; and

(III) Establish the amount of the provider fee so that the amount collected from the fee is approximately equal to or less than the amount of the appropriation specified for the fee in the general appropriation act or any supplemental appropriation act.

(c) (I) In accordance with the redistributive method set forth in 42 CFR 433.68 (e) (1) and (e) (2), the state department may seek a waiver from the broad-based provider fees requirement or the uniform provider fees requirement, or both. Subject to federal approval and to minimize the financial impact on certain hospitals, the state department, in consultation with the advisory board, may exempt from payment of the provider fee certain types of hospitals, including but not limited to:

(A) Psychiatric hospitals, as licensed by the department of public health and environment;

(B) Hospitals that are licensed as general hospitals and certified as long-term care hospitals by the department of public health and environment;

(C) Critical access hospitals that are licensed as general hospitals and are certified by the department of public health and environment under 42 CFR part 485, subpart F;

(D) Inpatient rehabilitation facilities; or

(E) Hospitals specified for exemption under 42 CFR 433.68 (e).

(II) In determining whether a hospital may be excluded, the state department shall use one or more of the following criteria:

(A) A hospital that is located in a rural area;

(B) A hospital with which the state department does not contract to provide services under the state medical assistance program;

(C) A hospital whose inclusion or exclusion would not significantly affect the net benefit to hospitals paying the provider fee; or

(D) A hospital that must be included to receive federal approval.

(III) The state department may reduce the amount of the provider fee for certain hospitals to obtain federal approval and to minimize the financial impact on certain hospitals. In determining for which hospitals the state department may reduce the amount of the provider fee, the state department shall use one or more of the following criteria:

(A) The hospital is a type of hospital described in subparagraph (I) of this paragraph (c);

(B) The hospital is located in a rural area;

(C) The hospital serves a higher percentage than the average hospital of persons covered by the state medical assistance program, medicare, or commercial insurance or persons enrolled in a managed care organization;

(D) The hospital does not contract with the state department to provide services under the state medical assistance program;

(E) If the hospital paid a reduced provider fee, the reduced provider fee would not significantly affect the net benefit to hospitals paying the provider fee; or

(F) The hospital is required not to pay a reduced provider fee as a condition of federal approval.

(d) The state department may, with the approval of the advisory board, alter the process prescribed in this subsection (3) to the extent necessary to meet the federal requirements and to obtain federal approval.

(e) (I) The state board, in consultation with the advisory board, shall promulgate rules on the calculation, assessment, and timing of the provider fee. The state department shall assess the provider fee on a schedule to be set by the state board through rule. The state board rules shall require that the periodic provider fee payments from a hospital and the state department's reimbursement to the hospital under subparagraphs (I) and (II) of paragraph (b) of subsection (4) of this section are due as nearly simultaneously as feasible; except that the state department's reimbursement to the hospital shall be due no more than two days after the periodic provider fee payment is received from the hospital. The provider fee shall be imposed on each hospital even if more than one hospital is owned by the same entity. The fee shall be prorated and adjusted for the expected volume of service for any year in which a hospital opens or closes.

(II) The state department is authorized to refund any unused portion of the provider fee. For any portion of the provider fee that has been collected by the state department but for which the state department has not received federal matching funds, the state department shall refund back to the hospital that paid the fee the amount of such portion of the fee within five business days after the fee is collected.

(III) The state board, in consultation with the advisory board, shall promulgate rules on the reports that hospitals shall be required to submit for the state department to calculate the amount of the provider fee. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., information provided to the state department pursuant to this section shall be considered confidential and shall not be deemed a public record. Nonetheless, the state department, in consultation with the advisory board, may prepare and release summaries of the reports to the public.

(f) A hospital shall not include any amount of the provider fee as a separate line item in its billing statements.

(g) The state board shall promulgate any rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., necessary for the administration and implementation of this section. Prior to submitting any proposed rules concerning the administration or implementation of the provider fee to the state board, the state department shall consult with the advisory board on the proposed rules as specified in paragraph (e) of subsection (6) of this section.

(4) **Hospital provider fee cash fund.** (a) All provider fees collected pursuant to this section by the state department shall be transmitted to the state treasurer, who shall credit the same to the hospital provider fee cash fund, which fund is hereby created and referred to in this section as the "fund".

(b) All moneys in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the following purposes:

(I) To maximize the inpatient and outpatient hospital reimbursements to up to the upper payment limits as defined in 42 CFR 447.272 and 42 CFR 447.321;

(II) To increase hospital reimbursements under the Colorado indigent care program to up to one hundred percent of the hospital's costs of providing medical care under the program;

(III) To pay the quality incentive payments provided in section 25.5-4-402 (3);

(IV) Subject to available revenue from the provider fee and federal matching funds, to expand eligibility for public medical assistance by:

(A) Increasing the eligibility level for parents of children who are eligible for medical assistance or the children's basic health plan to up to one hundred percent of the federal poverty line;

(B) Increasing the eligibility level for children and pregnant women under the children's basic health plan to up to two hundred fifty percent of the federal poverty line;

(C) Providing eligibility under the state medical assistance program for a childless adult or an adult without a dependent child in the home who earns up to one hundred percent of the federal poverty line;

(D) Providing a buy-in program in the state medical assistance program for disabled adults and children whose families have income of up to four hundred fifty percent of the federal poverty line;

(V) To provide continuous eligibility for twelve months for children enrolled in the state medical assistance program;

(VI) To pay the state department's actual administrative costs of implementing and administering this section, including but not limited to the following costs:

(A) Expenses of the advisory board, including but not limited to the state department's personal services and operating costs related to the administration of the advisory board;

(B) The state department's actual costs related to implementing and maintaining the provider fee, including personal services, operating, and consulting expenses;

(C) The state department's actual costs for the changes and updates to the medicaid management information system for the implementation of subparagraphs (I) to (III) of this paragraph (b);

(D) The state department's personal services and operating costs related to personnel, consulting services, and for review of hospital costs necessary to implement and administer the increases in inpatient and outpatient hospital payments made pursuant to subparagraph (I) of this paragraph (b), increases in the Colorado indigent care program payments made

pursuant to subparagraph (II) of this paragraph (b), and quality incentive payments made pursuant to subparagraph (III) of this paragraph (b);

(E) The state department's actual costs for the changes and updates to the Colorado benefits management system and medicaid management information system to implement and maintain the expanded eligibility provided for in subparagraphs (IV) and (V) of this paragraph (b);

(F) The state department's personal services and operating costs related to personnel necessary to implement and administer the expanded eligibility for public medical assistance provided for in subparagraphs (IV) and (V) of this paragraph (b), including but not limited to administrative costs associated with the determination of eligibility for public medical assistance by county departments;

(G) The state department's personal services, operating, and systems costs related to expanding the opportunity for individuals to apply for public medical assistance directly at hospitals or through another entity outside the county departments, in connection with section 25.5-4-205, that would increase access to public medical assistance and reduce the number of uninsured served by hospitals; and

(VII) To offset the loss of any federal matching funds due to a decrease in the certification of the public expenditure process for outpatient hospital services for medical services premiums that were in effect as of July 1, 2008.

(VIII) Repealed.

(IX) (A) For state medicaid expenditures for state fiscal year 2011-12 only, fifty million dollars shall be appropriated to offset general fund expenditures.

(B) For state medicaid expenditures for state fiscal year 2012-13 only, twenty-five million dollars shall be appropriated to offset general fund expenditures.

(C) This subparagraph (IX) is repealed, effective December 31, 2013.

(c) Any moneys in the fund not expended for the purposes described in paragraph (b) of this subsection (4) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund but shall be appropriated by the general assembly for the purposes described in paragraph (b) of this subsection (4) in future fiscal years.

(5) **Appropriations.** (a) (I) The provider fee is to supplement, not supplant, general fund appropriations to support hospital reimbursements as of July 1, 2009. General fund appropriations for hospital reimbursements shall be maintained at the level of appropriations in the medical services premium line item made for the fiscal year commencing July 1, 2008; except that general fund appropriations for hospital reimbursements may be reduced if an index of appropriations to other providers shows that general fund appropriations are reduced for other providers. If the index shows that general fund appropriations are reduced for other providers, the general fund appropriations for hospital reimbursements shall not be reduced by a greater percentage than the reductions of appropriations for the other providers as shown by the index.

(II) If general fund appropriations for hospital reimbursements are reduced below the level of appropriations in the medical services premium line item made for the fiscal year commencing July 1, 2008, the general fund appropriations will be increased back to the level of appropriations in the medical services premium line item made for the fiscal year commencing July 1, 2008, at the same percentage as the appropriations for other providers as shown by the index. The general assembly is not obligated to increase the general fund appropriations back to the level of appropriations in the medical services premium line item in a single fiscal year and such increases may occur over nonconsecutive fiscal years.

(III) For purposes of this paragraph (a), the "index of appropriations to other providers" or "index" shall mean the average percent change in reimbursement rates through appropriations or legislation enacted by the general assembly to home health providers, physician services, and outpatient pharmacies, excluding dispensing fees. The state board, after consultation with the advisory board, is authorized to clarify this definition as necessary by rule.

(b) If the revenue from the provider fee is insufficient to fully fund all of the purposes described in paragraph (b) of subsection (4) of this section:

(I) The general assembly is not obligated to appropriate general fund revenues to fund such purposes;

(II) The hospital provider reimbursement and quality incentive payment increases described in subparagraphs (I) to (III) of paragraph (b) of subsection (4) of this section and the costs described in subparagraphs (VI) and (VII) of paragraph (b) of subsection (4) of this section shall be fully funded using revenue from the provider fee and federal matching funds before any eligibility expansion is funded; and

(III) (A) If the state board promulgates rules that expand eligibility for medical assistance to be paid for pursuant to subparagraph (IV) of paragraph (b) of subsection (4) of this section, and the state department thereafter notifies the advisory board that the revenue available from the provider fee and the federal matching funds will not be sufficient to pay for all or part of the expanded eligibility, the advisory board shall recommend to the state board reductions in medical benefits or eligibility so that the revenue will be sufficient to pay for all of the reduced benefits or eligibility. After receiving the recommendations of the advisory board, the state board shall adopt rules providing for reduced benefits or reduced eligibility for which the revenue shall be sufficient and shall forward any adopted rules to the joint budget committee. Notwithstanding the provisions of section 24-4-103 (8) and (12), C.R.S., following the adoption of rules pursuant to this sub-subparagraph (A), the state board shall not submit the rules to the attorney general and shall not file the rules with the secretary of state until the joint budget committee approves the rules pursuant to sub-subparagraph (B) of this subparagraph (III).

(B) The joint budget committee shall promptly consider any rules adopted by the state board pursuant to sub-subparagraph (A) of this subparagraph (III). The joint budget committee shall promptly notify the state department, the state board, and the advisory board of any action on such rules. If the joint budget committee does not approve the rules, the joint budget committee shall recommend a reduction in benefits or eligibility so that the revenue from the provider fee and the matching federal funds will be sufficient to pay for the reduced benefits or eligibility. After approving the rules pursuant to this sub-subparagraph (B), the joint budget committee shall request that the committee on legal services, created pursuant to section 2-3-501, C.R.S., extend the rules as provided for in section 24-4-103 (8), C.R.S., unless the committee on legal services finds after review that the rules do not conform with section 24-4-103 (8) (a), C.R.S.

(C) After the state board has received notification of the approval of rules adopted pursuant to sub-subparagraph (A) of this subparagraph (III), the state board shall submit the rules to the attorney general pursuant to section 24-4-103 (8) (b), C.R.S., and shall file the rules and the opinion of the attorney general with the secretary of state pursuant to section 24-4-103 (12), C.R.S., and with the office of legislative legal services. Pursuant to section 24-4-103 (5), C.R.S., the rules shall be effective twenty days after publication of the rules and shall only be effective until the following May 15 unless the rules are extended pursuant to a bill enacted pursuant to section 24-4-103 (8), C.R.S.

(b.5) (I) Notwithstanding any provisions of paragraph (b) of this subsection (5) to the contrary, if revenue from the provider fee is insufficient to fully fund all of the purposes described in paragraph (b) of subsection (4) of this section, revenue from the provider fee shall be used first to offset general fund expenditures for the state medicaid program for state fiscal years 2011-12 and 2012-13 in the amounts set forth in subparagraph (IX) of paragraph (b) of subsection (4) of this section.

(II) This paragraph (b.5) is repealed, effective December 31, 2013.

(c) Notwithstanding any other provision of this section, if, after receipt of authorization to receive federal matching funds for moneys in the fund, the authorization is withdrawn or changed so that federal matching funds are no longer available, the state department shall cease collecting the provider fee and shall repay to the hospitals any moneys received by the fund that are not subject to federal matching funds.

(6) **Hospital provider fee oversight and advisory board.** (a) There is hereby created in the state department the hospital provider fee oversight and advisory board, referred to in this section as the “advisory board”.

(b) (I) The advisory board shall consist of thirteen members appointed by the governor, with the advice and consent of the senate, as follows:

(A) Five members who are employed by hospitals in Colorado, including at least one person who is employed by a hospital in a rural area, one person who is employed by a safety-net hospital for which the percent of medicaid-eligible inpatient days relative to its total inpatient days shall be equal to or greater than one standard deviation above the mean, and one person who is employed by a hospital in an urban area;

(B) One member who is a representative of a statewide organization of hospitals;

(C) One member who represents a statewide organization of health insurance carriers or a health insurance carrier licensed pursuant to title 10, C.R.S., and who is not a representative of a hospital;

(D) One member of the health care industry who does not represent a hospital or a health insurance carrier;

(E) One member who is a consumer of health care and who is not a representative or an employee of a hospital, health insurance carrier, or other health care industry entity;

(F) One member who is a representative of persons with disabilities, who is living with a disability, and who is not a representative or an employee of a hospital, health insurance carrier, or other health care industry entity;

(G) One member who is a representative of a business that purchases or otherwise provides health insurance for its employees; and

(H) Two employees of the state department.

(II) The governor shall consult with representatives of a statewide organization of hospitals in making the appointments pursuant to sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b). No more than six members of the advisory board may be members of the same political party.

(III) Members of the advisory board shall serve at the pleasure of the governor. In making the appointments, the governor shall specify that four members shall serve initial terms of two years and three members shall serve initial terms of three years. All other terms including terms after the initial terms shall be four years. A member who is appointed to fill a vacancy shall serve the remainder of the unexpired term of the former member.

(IV) The governor shall designate a chair from among the members of the advisory board appointed pursuant to sub-subparagraphs (A) to (G) of subparagraph (I) of this paragraph (b). The advisory board shall elect a vice-chair from among its members.

(c) Members of the advisory board shall serve without compensation but shall be reimbursed from moneys in the fund for actual and necessary expenses incurred in the performance of their duties pursuant to this section.

(d) The advisory board may direct the state department to contract for a group facilitator to assist the members of the advisory board in performing their required duties.

(e) The advisory board shall have, at a minimum, the following duties:

(I) To recommend to the state department the timing and method by which the state department shall assess the provider fee and the amount of the fee;

(II) If requested by the health and human services committees of the senate or house of representatives, or any successor committees, to consult with the committees on any legislation that may impact the provider fee or hospital reimbursements established pursuant to this section;

(III) To recommend to the state department changes in the provider fee that increase the number of hospitals benefitting from the uses of the provider fee described in subparagraphs (I) to (V) of paragraph (b) of subsection (4) of this section or that minimize the number of hospitals that suffer losses as a result of paying the provider fee;

(IV) To recommend to the state department reforms or changes to the inpatient hospital and outpatient hospital reimbursements and quality incentive payments made under the state medical assistance program to increase provider accountability, performance, and reporting;

(V) To recommend to the state department the schedule and approach to the implementation of subparagraphs (IV) and (V) of paragraph (b) of subsection (4) of this section;

(VI) If moneys in the fund are insufficient to fully fund all of the purposes specified in paragraph (b) of subsection (4) of this section, to recommend to the state board changes to

the expanded eligibility provisions described in subparagraph (IV) of paragraph (b) of subsection (4) of this section;

(VII) To prepare the reports specified in paragraph (f) of this subsection (6);

(VIII) To monitor the impact of the hospital provider fee on the broader health care marketplace; and

(IX) To perform any other duties required to fulfill the advisory board's charge or those assigned to it by the state board or the executive director.

(f) On or before January 15, 2010, and on or before January 15 each year thereafter, the advisory board shall submit a written report to the health and human services committees of the senate and the house of representatives, or any successor committees, the joint budget committee of the general assembly, the governor, and the state board. The report shall include, but need not be limited to:

(I) The recommendations made to the state board pursuant to this section;

(II) A description of the formula for how the provider fee is calculated and the process by which the provider fee is assessed and collected;

(III) An itemization of the total amount of the provider fee paid by each hospital and any projected revenue that each hospital is expected to receive due to:

(A) The increased reimbursements made pursuant to subparagraphs (I) and (II) of paragraph (b) of subsection (4) of this section and the quality incentive payments made pursuant to subparagraph (III) of paragraph (b) of subsection (4) of this section; and

(B) The increased eligibility described in subparagraphs (IV) and (V) of paragraph (b) of subsection (4) of this section;

(IV) An itemization of the costs incurred by the state department in implementing and administering the hospital provider fee; and

(V) Estimates of the differences between the cost of care provided and the payment received by hospitals on a per-patient basis, aggregated for all hospitals, for patients covered by each of the following:

(A) Medicaid;

(B) Medicare; and

(C) All other payers.

(g) (I) This subsection (6) is repealed, effective July 1, 2019.

(II) Prior to said repeal, the advisory board shall be reviewed as provided in section 2-3-1203, C.R.S.

(7) Repealed.

Source: L. 2009: Entire section added, (HB 09-1293), ch. 152, p. 633, § 1, effective July 1. **L. 2010:** (4)(b)(VIII) added, (SB 10-169), ch. 307, p. 1445, § 1, effective May 27; (4)(b)(IV) amended, (HB 10-1422), ch. 419, p. 2110, § 141, effective August 11. **L. 2011:** (3)(a)(II) and (3)(a)(III) amended and (3)(a)(IV), (4)(b)(IX), and (5)(b.5) added, (SB 11-212), ch. 146, pp. 508, 509, §§ 1, 2, 3, effective May 5.

Editor's note: (1) Subsection (7)(d) provided for the repeal of subsection (7), effective July 1, 2010, provided that the revisor of statutes received written notice from the executive director of the state department authorizing the receipt of federal matching funds for the moneys in the fund established in this section. The revisor of statutes received said written notice on March 31, 2010. (See L. 2009, p. 633.)

(2) Subsection (4)(b)(VIII)(C) provided for the repeal of subsection (4)(b)(VIII), effective December 31, 2011. (See L. 2009, p. 633.)

25.5-4-402.5. Providers - state university teaching hospitals. Subject to appropriations by the general assembly, the state department shall make payments to state university teaching hospitals for providing care under the state's medical assistance program established pursuant to this article and articles 5 and 6 of this title.

Source: L. 2008: Entire section added, p. 1185, § 3, effective May 22.

25.5-4-403. Providers - community mental health center and clinics - reimbursement. For the purpose of reimbursing community mental health center and clinic providers, the state department shall establish a price schedule annually with the department of human services in order to reimburse each provider for its actual or reasonable cost of services.

Source: L. 2006: Entire article added with relocations, p. 1844, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-409 as it existed prior to 2006.

25.5-4-404. Payments for clinic services - restrictions on use. All payments received by county or district public health agencies or boards of health for clinic services, as defined in section 25.5-5-301 (3), furnished to patients shall be used only to offset costs incurred for provision of services by such county or district public health agencies or boards of health or to cash fund health care services in the county where the services were provided.

Source: L. 2006: Entire article added with relocations, p. 1844, § 7, effective July 1.
L. 2010: Entire section amended, (HB 10-1422), ch. 419, p. 2110, § 142, effective August 11.

Editor's note: This section is similar to former § 26-4-515 as it existed prior to 2006.

25.5-4-405. Mental health managed care service providers - requirements.
(1) Each contract between the state department and a managed care organization providing mental health services to a recipient under the medical assistance program shall comply with all federal requirements, including but not limited to:

(a) Ensuring that a recipient with complex or multiple needs who requires mental health services shall have access to mental health professionals with appropriate training and credentials and shall provide the recipient with such services in collaboration with the recipient's other providers;

(b) Informing each recipient of his or her right to and the process for appeal upon notification of denial, termination, or reduction of a requested service; and

(c) Administering initial stabilization treatment for a recipient and transferring the recipient for appropriate continued services.

(1.5) Each contract between the state department and a managed care organization providing mental health services to a recipient under the medical assistance program shall allow for the use of telemedicine pursuant to the provisions of section 25.5-5-320.

(2) For mental health managed care recipients, the state department shall have a patient representative program for recipient grievances that complies with all federal requirements and that shall:

(a) Be posted in a conspicuous place at each location at which mental health services are provided;

(b) Allow for a patient representative to serve as a liaison between the recipient and the provider;

(c) Describe the qualifications for a patient representative;

(d) Outline the responsibilities of a patient representative;

(e) Describe the authority of a patient representative; and

(f) Establish a method by which each recipient is informed of the patient representative program and how a patient representative may be contacted.

Source: L. 2006: Entire article added with relocations, p. 1844, § 7, effective July 1.
L. 2008: (1.5) added, p. 111, § 1, effective August 5.

Editor's note: This section is similar to former § 26-4-409.5 as it existed prior to 2006.

25.5-4-406. Rate setting - medicaid residential treatment service providers - monitoring and auditing - report. (1) The state department shall approve a rate-setting process consistent with medicaid requirements for providers of medicaid residential treatment services in the state of Colorado as developed by the department of human services. The rate-setting process developed pursuant to this section may include, but shall not be limited to:

(a) A range for reimbursement that represents a base-treatment rate for serving a child who is subject to out-of-home placement due to dependency and neglect, a child placed in a residential child care facility pursuant to the “Child Mental Health Treatment Act”, article 67 of title 27, C.R.S., or a child who has been adjudicated a delinquent, which includes a defined service package to meet the needs of the child;

(b) A request for proposal to contract for specialized service needs of a child, including but not limited to: Substance-abuse treatment services; sex offender services; and services for the developmentally disabled; and

(c) Negotiated incentives for achieving outcomes for the child as defined by the state department, counties, and providers.

(2) The medicaid rate-setting process approved by the state department shall include a two- or three-year implementation timeline with implementation beginning in state fiscal year 2008-09.

(3) The state department and the department of human services, in consultation with the representatives of the counties and the provider community, shall review the rate-setting process every two years and shall submit any changes to the joint budget committee of the general assembly.

Source: L. 2006: Entire article added with relocations, p. 1845, § 7, effective July 1. L. 2007: (1)(a), (2), and (3) amended, p. 618, § 2, effective August 3. L. 2010: (1)(a) amended, (SB 10-175), ch. 188, p. 800, § 66, effective April 29.

25.5-4-407. Services by licensed psychologists without a doctor’s referral. The executive director of the state department may authorize the providing of services of licensed psychologists without the requirement that the services be referred by a doctor of medicine or a doctor of osteopathy, but such services shall be subject to the cost containment program specified under section 25.5-4-408. The executive director may except from the authorization those services the director determines to be necessary for the purpose of promoting the primary care physician program.

Source: L. 2006: Entire article added with relocations, p. 1846, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-412 as it existed prior to 2006.

25.5-4-408. Services provided by licensed psychologists - cost containment program. (1) Working in conjunction with licensed psychologists in the state, the state board shall promulgate rules to establish and implement mechanisms for containing the costs of services provided by licensed psychologists under the medical assistance programs established pursuant to this article and articles 5 and 6 of this title. The cost containment mechanism shall ensure that the costs to the medical assistance program will result in no increase in the total cost of the program solely as a result of the reimbursement for services of licensed psychologists pursuant to section 25.5-4-407. The cost containment mechanisms may include the following:

(a) Limiting the number of days a licensed psychologist may be reimbursed per patient for inpatient hospitalization, partial hospitalization, and outpatient visits without an order for continued treatment from a doctor of medicine or osteopathy;

(b) Limiting the number of hours a licensed psychologist may be reimbursed for diagnostic testing and evaluation per patient per year;

(c) Provision of group therapy when needed or appropriate;

(d) Provision of licensed psychologists' services from a pool of those licensed psychologists requesting to be included in such pool;

(e) Provision of a licensed psychologist's services through the use of telemedicine pursuant to the provisions of section 25.5-5-320.

Source: L. 2006: Entire article added with relocations, p. 1846, § 7, effective July 1.
L. 2008: (1)(e) added, p. 111, § 2, effective August 5.

Editor's note: This section is similar to former § 26-4-516 as it existed prior to 2006.

25.5-4-409. Authorization of services - nurse anesthetists - advanced practice nurses. (1) When services by a certified registered nurse anesthetist are provided pursuant to an order by a physician in accordance with this article, articles 5 and 6 of this title, and section 12-38-103 (10), C.R.S., the executive director of the state department shall authorize reimbursement for said services. Payment for such services shall be made directly to the nurse anesthetist, if requested by the nurse anesthetist; except that this section shall not apply to nurse anesthetists when acting within the scope of their employment as salaried employees of public or private institutions or physicians.

(2) When services by an advanced practice nurse registered pursuant to section 12-38-111.5, C.R.S., are provided in accordance with this article and articles 5 and 6 of this title, the executive director of the state department shall authorize reimbursement for said services. Payment for the services shall be made directly to the advanced practice nurse, if requested by the advanced practice nurse; except that this section shall not apply to advanced practice nurses when acting within the scope of their employment as salaried employees of public or private institutions or physicians.

Source: L. 2006: Entire article added with relocations, p. 1846, § 7, effective July 1.
L. 2008: (2) amended, p. 138, § 1, effective July 1.

Editor's note: This section is similar to former § 26-4-413 as it existed prior to 2006.

25.5-4-410. Services of audiologists and speech pathologists without supervision. (1) When medical or diagnostic services by an audiologist or speech pathologist are provided pursuant to an order by a physician in accordance with this article and articles 5 and 6 of this title, the executive director of the state department shall authorize reimbursement for said services. For the purposes of this section, "audiologist" or "speech pathologist" means an individual who meets the requirements set forth in the federal "Social Security Act", as amended, or any federal regulations adopted pursuant thereto, for participating providers of audiology or speech pathology services.

(2) Nothing in this section shall be construed as expanding the provision of services available as a part of the medical assistance program established pursuant to this article and articles 5 and 6 of this title. For the purposes of making payments to audiologists or speech pathologists pursuant to this section, the state board shall establish rules implementing this section. The rules promulgated pursuant to this subsection (2) shall ensure that the costs to the medical assistance program will result in no increase in the total cost of the program solely as a result of the reimbursement for services of an audiologist or speech pathologist pursuant to this section.

(3) Payments for services included in this section shall be made directly to the audiologist or speech pathologist, if requested by the audiologist or speech pathologist; except that this section shall not apply to audiologists or speech pathologists when acting within the scope of their employment as salaried employees of public or private institutions or physicians.

Source: L. 2006: Entire article added with relocations, p. 1847, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-414 as it existed prior to 2006.

25.5-4-411. Authorization of services provided by dental hygienists. (1) When dental hygiene services are provided to children by a licensed dental hygienist who is providing dental hygiene services pursuant to section 12-35-124, C.R.S., without the supervision of a licensed dentist, the executive director of the state department shall authorize reimbursement for said services, subject to the requirements of this section. Payment for such services shall be made directly to the licensed dental hygienist, if requested by the licensed dental hygienist; except that this section shall not apply to licensed dental hygienists when acting within the scope of their employment as salaried employees of public or private institutions, physicians, or dentists.

(2) For each child provided dental hygiene services pursuant to this section, the dental hygienist shall attempt to identify a dentist participating in medicaid for the child.

Source: L. 2006: Entire article added with relocations, p. 1847, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-414.3 as it existed prior to 2006.

25.5-4-412. Medical services provided by certified family planning clinics. (1) When medical or diagnostic services are provided in accordance with this article and articles 5 and 6 of this title by a certified family planning clinic, the executive director of the state department shall authorize reimbursement for the services. The reimbursement shall be made directly to the certified family planning clinic.

(2) For purposes of this section, "certified family planning clinic" means a family planning clinic certified by the Colorado department of public health and environment, accredited by a national family planning organization, and staffed by medical professionals licensed to practice in the state of Colorado, including, but not limited to, doctors of medicine, doctors of osteopathy, physicians' assistants, and advanced practice nurses.

(3) For purposes of this section, all medical care services or goods rendered by a certified family planning clinic that are benefits of the Colorado medical assistance program shall be ordered by a physician who need not be physically present on the premises of the certified family planning clinic at the time services are rendered.

(4) Nothing in this section shall be construed as expanding the provision of services available as a part of the medical assistance program established pursuant to this article and articles 5 and 6 of this title. For purposes of making payments to certified family planning clinics pursuant to this section, the state board shall establish rules implementing this section. The rules promulgated pursuant to this subsection (4) shall ensure that the reimbursement for services rendered by a certified family planning clinic pursuant to this section shall not be the sole result of an increase in the costs to the state medical assistance program.

Source: L. 2006: Entire article added with relocations, p. 1848, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-414.5 as it existed prior to 2006.

25.5-4-413. Certain providers to inform patients of rights concerning advance medical directives. (1) On and after November 5, 1991, with regard to any service rendered on and after said date, each hospital, nursing care facility, home health agency, hospice program, and health maintenance organization participating in the state medical assistance program or providing medical assistance pursuant to parts 3 to 12 of article 6 of this title shall provide written information to all adult patients of such providers concerning patients' rights under state law to make medical treatment decisions, including the right to accept or refuse any medical or surgical treatment and the right to formulate advance directives regarding said decisions. As used in this section, "advance directives" includes any written or oral instructions recognized under state law concerning the making of medical treatment decisions on behalf of or the provision of medical care for the person who provided the instructions in the event such person becomes incapacitated. Advance direc-

tives include, but are not limited to, medical durable powers of attorney, durable powers of attorney, or living wills.

(2) Providers listed in subsection (1) of this section shall provide educational programs for staff and the community concerning advance directives and shall maintain written policies detailing methods for safeguarding patients' rights concerning medical treatment decisions, including documenting in the patient's medical or patient record whether the patient has executed, amended, or revoked an advance directive. No provider shall condition the provision of services or otherwise discriminate against a patient on the basis of whether the patient has executed an advance directive.

Source: L. 2006: Entire article added with relocations, p. 1848, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-403.5 as it existed prior to 2006.

25.5-4-414. Providers - physicians - prohibition of certain referrals - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Designated health services" means any of the following services:

(I) Clinical laboratory services;

(II) Physical therapy services;

(III) Occupational therapy services;

(IV) Radiology and other diagnostic services;

(V) Radiation therapy services;

(VI) Durable medical equipment;

(VII) Parenteral or enteral nutrients, equipment, and supplies;

(VIII) Prosthetics, orthotics, and prosthetic devices;

(IX) Home health services;

(X) Outpatient prescription drugs; and

(XI) Inpatient and outpatient hospital services.

(b) "Financial relationship" means an ownership or investment interest in an entity furnishing designated health services or a compensation arrangement between a provider or an immediate family member of the provider and the entity. An ownership or investment interest may be reflected in equity, debt, or other instruments.

(c) "Immediate family member of the provider" means any spouse, natural or adoptive parent, natural or adoptive child, stepparent, stepchild, stepbrother, stepsister, in-law, grandparent, or grandchild of the provider.

(d) "Provider" means:

(I) A doctor of medicine or osteopathy who is licensed to practice medicine pursuant to article 36 of title 12, C.R.S.;

(II) A doctor of dental surgery or of dental medicine who is licensed to practice dentistry pursuant to article 35 of title 12, C.R.S.;

(III) A doctor of podiatric medicine who is licensed to practice podiatry pursuant to article 32 of title 12, C.R.S.;

(IV) A doctor of optometry who is licensed to practice optometry pursuant to article 40 of title 12, C.R.S.; or

(V) A chiropractor who is licensed to practice chiropractic pursuant to article 33 of title 12, C.R.S.

(2) (a) Except as otherwise provided in this subsection (2), a provider participating in the medical assistance program under this article and articles 5 and 6 of this title is prohibited from making a referral to an entity for designated health services for which payment may be made under the state's medical assistance program if the provider or an immediate family member of the provider has a financial relationship with the entity.

(b) Paragraph (a) of this subsection (2) shall not apply to any financial relationship that meets the requirements of an exception to the prohibitions established by 42 U.S.C. sec. 1395nn, as amended, or any regulations promulgated thereunder, as amended.

(c) Paragraph (a) of this subsection (2) shall not apply to a financial relationship or referral for designated health services if the financial relationship or referral for designated health services would not violate 42 U.S.C. sec. 1395nn, as amended, and any regulations

promulgated thereunder, as amended, if the designated health services were eligible for payment under medicare rather than the "Colorado Medical Assistance Act".

(3) An entity that provides designated health services as a result of a prohibited referral shall not present a claim or bill to any individual, any third-party payor, the state department, or any other entity for the designated health services.

(4) An entity that provides designated health services shall provide to the state department, upon its request and in the form specified by the state department, information concerning the entity's ownership arrangements including:

(a) The items and services provided by the entity;

(b) The names and provider identification numbers of all providers with a financial interest in the entity or whose immediate family members have a financial interest in the entity.

(5) If a provider refers a patient for designated health services in violation of paragraph (a) of subsection (2) of this section or the entity refuses to provide the information required in subsection (4) of this section, the state department may:

(a) Deny any claims for payment from the provider or entity;

(b) Require the provider or entity to refund payments for services;

(c) Refer the matter to the appropriate agency for medical assistance fraud investigation; or

(d) Terminate the provider's or entity's participation in the medical assistance program.

Source: L. 2006: Entire article added with relocations, p. 1849, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-410.5 as it existed prior to 2006.

ANNOTATION

Law reviews. For article, "Interpreting and Applying the 'Stark' Statute: Colorado's Compliance Conundrum", see 30 Colo. Law. 65 (November 2001). For article, "Colorado's

Medicaid Compliance Statutes: False Statements and Claims, Kickbacks, and Physician Referrals", see 36 Colo. Law. 31 (March 2007).

25.5-4-415. No public funds for abortion - exception - repeal. (1) It is the purpose of this section to implement the provisions of section 50 of article V of the Colorado constitution, adopted by the registered electors of the state of Colorado at the general election November 6, 1984, which prohibits the use of public funds by the state of Colorado or its agencies or political subdivisions to pay or otherwise reimburse, directly or indirectly, any person, agency, or facility for any induced abortion.

(2) If every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services, not otherwise provided for by law.

(3) (a) Except as provided in paragraph (b) of this subsection (3), any necessary medical services performed pursuant to this section shall be performed only in a licensed health care facility by a provider who is a licensed physician.

(b) However, such services may be performed in other than a licensed health care facility if, in the medical judgment of the attending physician, the life of the pregnant woman or her unborn child is substantially threatened and a transfer to a licensed health care facility would further endanger the life of the pregnant woman or her unborn child. Such medical services may be performed in other than a licensed health care facility if the medical services are necessitated by a life-endangering circumstance described in subparagraph (II) of paragraph (b) of subsection (6) of this section and if there is no licensed health care facility within a thirty-mile radius of the place where such medical services are performed.

(4) (a) Any physician who renders necessary medical services pursuant to subsection (2) of this section shall report the following information to the state department:

(I) The age of the pregnant woman and the gestational age of the unborn child at the time the necessary medical services were performed;

- (II) The necessary medical services which were performed;
- (III) The medical condition which necessitated the performance of necessary medical services;
- (IV) The date such necessary medical services were performed and the name of the facility in which such services were performed.
- (b) The information required to be reported pursuant to paragraph (a) of this subsection (4) shall be compiled by the state department and such compilation shall be an ongoing public record; except that the privacy of the pregnant woman and the attending physician shall be preserved.
- (5) For purposes of this section, pregnancy is a medically diagnosable condition.
- (6) For the purposes of this section:
 - (a) (I) "Death" means:
 - (A) The irreversible cessation of circulatory and respiratory functions; or
 - (B) The irreversible cessation of all functions of the entire brain, including the brain stem.
 - (II) A determination of death under this section shall be in accordance with accepted medical standards.
 - (b) "Life-endangering circumstance" means:
 - (I) The presence of a medical condition, other than a psychiatric condition, as determined by the attending physician, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term;
 - (II) The presence of a lethal medical condition in the unborn child, as determined by the attending physician and one other physician, which would result in the impending death of the unborn child during the term of pregnancy or at birth; or
 - (III) The presence of a psychiatric condition which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. In such case, unless the pregnant woman has been receiving prolonged psychiatric care, the attending licensed physician shall obtain consultation from a licensed physician specializing in psychiatry confirming the presence of such a psychiatric condition. The attending physician shall report the findings of such consultation to the state department.
 - (c) "Necessary medical services" means any medical procedures deemed necessary to prevent the death of a pregnant woman or her unborn child due to life-endangering circumstances.
 - (7) If any provision of this section or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.
 - (8) Use of the term "unborn child" in this section is solely for the purposes of facilitating the implementation of section 50 of article V of the state constitution, and its use shall not affect any other law or statute nor shall it create any presumptions relating to the legal status of an unborn child or create or affect any distinction between the legal status of an unborn child and the legal status of a fetus.
 - (9) This section shall be repealed if section 50 of article V of the Colorado constitution is repealed.

Source: L. 2006: Entire article added with relocations, p. 1851, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-512 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-4-415 is similar to § 26-4-512 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-512 is similar to § 26-4-105.5 as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant

cases construing those provisions have been included in the annotations to this section.

This section does not violate article V of section 50 of the constitution. Under this statutory section, reimbursement may not be provided for an abortion that is not necessary to

prevent the death of the pregnant woman. Therefore this section is consistent with section 50 of article V which expresses the intention of the people that no induced abortion shall be paid for by public funds unless necessary to prevent the death of the pregnant woman and unless every reasonable effort also has been made to preserve the life of the unborn child. *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Statutory authority for rules interpreting the exception to the expenditure of public funds for abortions exists where legislation found in this section specifically states that "if every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services, not otherwise provided by law." *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Rule promulgated by department of social services which provided that when a pregnant woman's life is endangered, public funds may be used for an abortion of a viable unborn child before term only in circumstances where every reasonable effort has been made to preserve the lives of both the mother and the unborn child is within the scope of the exception to the prohibition on the use of public funds to pay for abortions. In contrast, a rule which allowed the public funding of abortions of unborn children who would die of natural causes at or before birth even if the mother's life was not threatened by carrying the unborn child for a longer period was beyond the scope of the exception. *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Colorado's restriction on medicaid abortion funding to those instances when the expectant mother's life is at stake violates the requirements of federal law - requirements that Colorado is compelled to follow as a condition of its participation in medicaid. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's abortion funding restriction impermissibly discriminates in its coverage of abortions on the basis of a patient's diagnosis and condition. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's abortion funding restriction violates Title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396a(a)(17), because it is inconsistent with the basic objective of Title XIX, that is, to provide qualified individuals with medically necessary care. A state law that categorically denies coverage for a specific, medically necessary procedure except in those rare instances when the patient's life is at stake is not a "reasonable standard[] . . . consistent with the objectives of [the Act]", 42 U.S.C. § 1396a(a)(17), but instead contravenes the purposes of Title XIX. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's abortion funding restriction violates federal medicaid law insofar as it denies funding to medicaid-eligible women seeking abortions to end pregnancies that are the result of rape or incest. So long as Colorado continues to participate in medicaid, the state is enjoined from denying medicaid funding for abortions to qualified women whose pregnancies are the result of rape or incest. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

25.5-4-416. Providers - medical equipment and supplies - requirements. (1) As used in this section, unless the context otherwise requires, "provider" means a person or entity that delivers disposable medical supplies or durable medical equipment products or services directly to a recipient.

(2) On and after January 1, 2007, the state board rules for the payment for disposable medical supplies and durable medical equipment, including but not limited to prosthetic and orthotic devices, shall prohibit a provider from being reimbursed unless the provider:

(a) (I) Has one or more physical locations within the state of Colorado or within fifty miles of a border of Colorado with a street address, a local business telephone number, an inventory, and a sufficient staff to service or repair products; except that the requirements of this paragraph (a) shall not apply to durable medical equipment or disposable medical supplies that are medically necessary and cannot be purchased from a provider meeting the requirements of this paragraph (a);

(II) Complies with all state and local licensing, insurance, and regulatory requirements for operating the provider's business;

(III) Is responsible for the delivery of and instructing the recipient on the proper use of the equipment; and

(IV) Provides repairs, replacements, or adjustments to the provider's products pursuant to rules of the state board; or

(b) Contracts with a provider who meets the criteria established in paragraph (a) of this subsection (2).

(3) The provisions of this section shall apply to fee-for-service and primary care physician program recipients.

Source: L. 2006: Entire section added, p. 525, § 1, effective August 7.

Editor's note: This section was originally numbered as § 26-4-410.7 in House Bill 06-1299. Section 2 of the act provided for the renumbering and relocation of § 26-4-410.7 to this section. (See L. 2006, p. 526.)

25.5-4-417. Provider fee - medicaid providers - state plan amendment - rules - definitions. (1) For purposes of this section, unless the context otherwise requires:

(a) "Local government" means a county, home rule county, home rule or statutory city, town, territorial charter city, or city and county.

(b) "Provider fee" means a licensing fee, assessment, or other mandatory payment that is related to health care items or services as specified under 42 CFR 433.55.

(c) "Qualified provider" means a hospital licensed pursuant to section 25-3-101, C.R.S., or a certified home health care agency within the territorial boundaries of the local government.

(2) For the purpose of sustaining or increasing reimbursement for providing medical care under the state's medical assistance program and to low-income populations, the state department shall amend the state plan effective July 1, 2006. Implementation of the state plan amendment shall be subject to the approval of the federal government. The imposition and collection of a provider fee by a local government pursuant to article 28 of title 29, C.R.S., shall be prohibited without the federal government's approval of a state plan amendment authorizing federal financial participation for the provider fees.

(3) In accordance with the redistributive method set forth in 42 CFR 433.68 (e) (1) and (e) (2), the state department may seek a waiver from the broad-based provider fee requirement or the uniform provider fee requirement, or both, to exclude qualified providers from the provider fee.

(4) To the extent authorized by federal law, the state department may exclude a governmental qualified provider from payment of the provider fee, benefits from the provider fee, or any federal financial participation due to the fee.

(5) To the extent authorized by federal law, the state department shall distribute the provider fee and any associated federal financial participation either to a local government that has certified payment to qualified providers within the local government or directly to the qualified providers. The state department shall establish reimbursement methods to distribute the provider fee and associated federal financial participation to qualified providers. The state department may alter reimbursement methods to qualified providers participating under the state's medical assistance program and Colorado indigent care program to the extent necessary to meet the federal requirements and to obtain federal approval of the provider fee. The state department shall work with a statewide association of hospitals on changes to reimbursement methods or provider fees that impact hospital providers. The state department shall work with a statewide association of home health care agencies on changes to reimbursement methods or provider fees that impact home health care agencies.

(6) The state board shall adopt any rules necessary for the administration and implementation of this section.

Source: L. 2006: Entire section added, p. 887, § 2, effective May 5. L. 2008: Entire section amended, p. 927, § 1, effective May 20.

Editor's note: This section was enacted as § 26-4-427 in Senate Bill 06-145 but was relocated due to its harmonization with this article as it appeared in Senate Bill 06-219.

25.5-4-418. Integration of physical and behavioral health services - department review - report - repeal. (Repealed)

Source: L. 2011: Entire section added, (HB 11-1242), ch. 271, p. 1230, § 1, effective July 1.

Editor’s note: Subsection (4) provided for the repeal of this section, effective July 1, 2012. (See L. 2011, p. 1230.)

PART 5

STATE PLAN AMENDMENTS -
WAIVER AUTHORITY

25.5-4-501. State plan amendment - federal authorization - repeal. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1853, § 7, effective July 1.

Editor’s note: (1) This section was similar to former § 26-4-105.8 as it existed prior to 2006.
(2) Subsection (3) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, p. 1853.)

25.5-4-502. Federal authorization - repeal. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1853, § 7, effective July 1.

Editor’s note: (1) This section was similar to former § 25.5-1-113 as it existed prior to 2006.
(2) Subsection (3) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, p. 1853.)

25.5-4-503. Waiver applications - authorization. The state department is authorized to apply for health insurance flexibility and accountability waivers that will enable the state to add more flexibility to Colorado’s medicaid program and that will result in a cost-effective method of providing health care services to Coloradans.

Source: L. 2006: Entire article added with relocations, p. 1853, § 7, effective July 1.

Editor’s note: This section is similar to former § 25.5-1-111 as it existed prior to 2006.

ARTICLE 5

Colorado Medical Assistance Act -
Services and Programs

Editor’s note: This article was added with relocations in 2006 containing provisions of some sections formerly located in article 4 of title 26. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For definitions applicable to this article, see § 25.5-4-103.

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PART 5

PRESCRIPTION DRUGS

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PART 7

TELEMEDICINE PILOT PROGRAMS FOR CHRONIC MEDICAL CONDITIONS

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PART 1

MANDATORY PROVISIONS

25.5-5-101. Mandatory provisions - eligible groups. (1) In order to participate in the medicaid program, the federal government requires the state to provide medical assistance to certain eligible groups. Pursuant to federal law and except as provided in subsection (2) of this section, any person who is eligible for medical assistance under the mandated groups specified in this section shall receive both the mandatory services that are specified in sections 25.5-5-102 and 25.5-5-103 and the optional services that are specified in sections 25.5-5-202 and 25.5-5-203. Subject to the availability of federal financial participation, the following are the individuals or groups that are mandated under federal law to receive benefits under this article and articles 4 and 6 of this title:

(a) Individuals who meet the eligibility criteria for the aid to families with dependent children program pursuant to rules that were in effect on July 16, 1996;

(b) Families who meet the eligibility criteria for the aid to families with dependent children program established in rules that were in effect on July 16, 1996, and who subsequently would have become ineligible under such eligibility criteria because of increased earnings or increased hours of employment whose eligibility is specified for a period of time by the federal government;

(c) Qualified pregnant women, and children under the age of seven, who meet the income requirements of the state's aid to families with dependent children program pursuant to rules that were in effect on July 16, 1996;

(d) A newborn child born of a woman who is categorically needy. Such child is deemed medicaid-eligible on the date of birth and remains eligible for one year so long as the woman remains categorically needy and the child is a member of her household.

(e) Children for whom adoption assistance or foster care maintenance payments are made under Title IV-E of the "Social Security Act", as amended;

- (f) Individuals receiving supplemental security income;
 - (g) Individuals receiving mandatory state supplement, including but not limited to individuals receiving old age pensions;
 - (h) Institutionalized individuals who were eligible for medical assistance in December 1973;
 - (i) Individuals who would be eligible except for the increase in old-age, survivors, and disability insurance under Pub.L. 92-336;
 - (j) Individuals who become ineligible for cash assistance as a result of old-age, survivors, and disability insurance cost-of-living increases after April 1977;
 - (k) Disabled widows or widowers fifty through sixty years of age who have become ineligible for federal supplemental security income or state supplementation as a result of becoming eligible for federal social security survivor's benefits, in accordance with the social security act, 42 U.S.C. sec. 1383c;
 - (l) Individuals with income and resources at a level which qualifies them as medicare-eligible under section 301 of Title III of the federal "Medicare Catastrophic Coverage Act";
 - (m) Low-income pregnant women, and children through the age of six, whose income is at or below a certain percentage of the federal poverty line as determined by the federal government.
- (2) (a) A qualified alien who entered the United States before August 22, 1996, who meets the exceptions described in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, as amended, shall receive benefits under this article and articles 4 and 6 of this title.
- (b) (I) A qualified alien who entered the United States on or after August 22, 1996, shall not be eligible for benefits under this article or article 4 or 6 of this title, except as provided in section 25.5-5-103 (3), for five years after the date of entry into the United States unless he or she meets the exceptions described in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, as amended.
- (II) Notwithstanding the five-year waiting period established in subparagraph (I) of this paragraph (b), but subject to the availability of sufficient appropriations and the receipt of federal financial participation, the state department may provide benefits under this article and articles 4 and 6 of this title to a pregnant woman who is a qualified alien and a child under nineteen years of age who is a qualified alien so long as such woman or child meets eligibility criteria other than citizenship.
- (3) Notwithstanding any other provision of this article and articles 4 and 6 of this title, as a condition of eligibility for medical assistance under this article and articles 4 and 6 of this title, a legal immigrant shall agree to refrain from executing an affidavit of support for the purpose of sponsoring an alien on or after July 1, 1997, under rules promulgated by the immigration and naturalization service, or any successor agency, during the pendency of such legal immigrant's receipt of medical assistance. Nothing in this subsection (3) shall be construed to affect a legal immigrant's eligibility for medical assistance under this article and articles 4 and 6 of this title based upon such legal immigrant's responsibilities under an affidavit of support entered into before July 1, 1997.
- (4) (a) An asset test shall not be applied as a condition of eligibility for individuals or families described in paragraphs (a), (b), and (c) of subsection (1) of this section.
- (b) Repealed.
- (c) Subject to the receipt of any necessary federal approval and pursuant to 42 U.S.C. sec. 1396a (r) (2) and 42 U.S.C. sec. 1396u-1 (b) (2) (C), for the groups described in paragraphs (a) to (c) of subsection (1) of this section, the state board shall develop an income- and resource-counting method to replace the method used under the aid to families with dependent children program pursuant to rules that were in effect on July 16, 1996. The income- and resource-counting method shall be:
- (I) No more restrictive than the method used under the aid to families with dependent children program pursuant to the rules that were in effect on July 16, 1996; and
- (II) No less restrictive than the method used to determine eligibility for other covered groups under subsection (1) of this section and sections 25.5-5-201, 25.5-5-204, 25.5-5-204.5, and 25.5-5-205.

Source: **L. 2006:** Entire article added with relocations, p. 1854, § 7, effective July 1. **L. 2009:** (2)(b) amended, (HB 09-1353), ch. 360, p. 1869, § 1, effective July 1, 2010. **L. 2010:** (4)(c) added, (HB 10-1043), ch. 92, p. 312, § 1, effective April 15; (1)(m) amended, (HB 10-1422), ch. 419, p. 2110, § 143, effective August 11. **L. 2011:** (3) amended, (HB 11-1303), ch. 264, p. 1168, § 67, effective August 10.

Editor's note: (1) This section is similar to former § 26-4-201 as it existed prior to 2006. (2) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective July 1, 2007. (See L. 2006, p. 1854.)

Cross references: For provisions of the federal "Medicare Catastrophic Coverage Act of 1988" referenced in this section, see section 301 of Pub.L. 100-360, codified at 42 U.S.C. sec. 1396a et seq.

25.5-5-102. Basic services for the categorically needy - mandated services. (1) Subject to the provisions of subsection (2) of this section and section 25.5-4-104, the program for the categorically needy shall include the following services as mandated and defined by federal law:

- (a) Inpatient hospital services;
- (b) Outpatient hospital services;
- (c) Other laboratory and X-ray services;
- (d) Physicians' services, wherever furnished;
- (e) Nursing facility services;
- (f) Home health services;
- (g) Early and periodic screening, diagnosis, and treatment, as required by federal law;
- (h) Family planning;
- (i) Rural health services;
- (j) Advanced practice nurse services;
- (k) and (l) (Deleted by amendment, L. 2008, p. 138, § 2, effective July 1, 2008.)
- (m) Federally qualified health centers.

(2) In order to keep expenditures within approved appropriations, the state board may, by rule, establish limits on a service provided pursuant to this section so long as the service provided is sufficient in the amount, duration, and scope to reasonably achieve the purpose of the service as required by federal law or regulation. When a rule is promulgated pursuant to this subsection (2), the state board shall provide a summary report of the limitations established by the rule and any fiscal impact of the rule to members of the health and human services committees of the senate and house of representatives, or any successor committees, and any other members of the general assembly who request the reports.

Source: **L. 2006:** Entire article added with relocations, p. 1856, § 7, effective July 1. **L. 2008:** (1)(j), (1)(k), and (1)(l) amended, p. 138, § 2, effective July 1.

Editor's note: This section is similar to former § 26-4-202 as it existed prior to 2006.

Cross references: For the definition of "federally qualified health centers" in the federal "Social Security Act", see 42 U.S.C. sec. 1395x.

ANNOTATION

Annotator's note. Since § 25.5-5-102 is similar to § 26-4-202 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-202 is similar to § 26-4-105 as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant cases construing those provisions have been included in the annotations to this section.

Reimbursement for outpatient services. The state board of social services did not exceed

its authority in providing reimbursement under this section for outpatient services rendered by hospital-based physicians. *City of Colo. Springs v. State*, 640 P.2d 870 (Colo. App. 1982).

Abortion is available for cost reimbursement. Abortion is a medical procedure which falls well within the umbrella of "basic services" listed in subsection (1), and therefore is available for cost reimbursement to the categorically needy. *Dodge v. State Dept. of Soc. Servs.*,

657 P.2d 969 (Colo. App. 1982) (decided prior to enactment of former § 26-4-512 (now § 25.5-4-415)).

25.5-5-103. Mandated programs with special state provisions. (1) This section specifies programs developed by Colorado to meet federal mandates. These programs include but are not limited to:

(a) The program known as the baby and kid care program which provides medical assistance for pregnant women and children, as specified in section 25.5-5-205;

(b) Special provisions relating to nursing facilities, as specified in sections 25.5-6-201 to 25.5-6-203, 25.5-6-205, and 25.5-6-206;

(c) The program for qualified medicare beneficiaries, as specified in section 25.5-5-104;

(d) The program for qualified disabled and working individuals, as specified in section 25.5-5-105;

(e) Special provisions for the purchase of group health insurance for recipients, as specified in section 25.5-4-210;

(f) The program to provide health services to students by school districts as specified in section 25.5-5-318.

(2) The medical assistance program also is subject to special provisions relating to the use of public funds for abortion which are required by section 50 of article V of the Colorado constitution. Those special provisions are specified in section 25.5-4-415.

(3) (a) Emergency medical assistance shall be provided to any person who is not a citizen of the United States, including undocumented aliens, aliens who are not qualified aliens, and qualified aliens who entered the United States on or after August 22, 1996, who has an emergency medical condition and meets one of the categorical requirements set forth in section 25.5-5-101; except that such persons shall not be required to meet any residency requirement other than that required by federal law.

(b) The state board shall adopt rules necessary for the implementation of this subsection (3), including in such rules definitions of “emergency services”, “emergency medical condition”, “geographic area”, and “prenatal care”.

Source: L. 2006: Entire article added with relocations, p. 1856, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-203 as it existed prior to 2006.

25.5-5-104. Qualified medicare beneficiaries. Qualified medicare beneficiaries are medicare-eligible individuals with income and resources at a level which qualifies them as eligible under section 301 of Title III of the federal “Medicare Catastrophic Coverage Act of 1988”, as amended, or subsequent amending federal legislation. For purposes of this article and articles 4 and 6 of this title, such individuals shall be referred to as “qualified medicare beneficiaries”. The state department is hereby designated as the single state agency to administer benefits available to qualified medicare beneficiaries in accordance with Title XIX and this article and articles 4 and 6 of this title. Such benefits are limited to medicare cost-sharing expenses as determined by the federal government. Accordingly, the state department shall not be required to provide qualified medicare beneficiaries the entire range of services set forth in section 25.5-5-102.

Source: L. 2006: Entire article added with relocations, p. 1857, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-510 as it existed prior to 2006.

Cross references: For provisions of the federal “Medicare Catastrophic Coverage Act of 1988” referenced in this section, see section 301 of Pub.L. 100-360, codified at 42 U.S.C. sec. 1396a et seq.

25.5-5-105. Qualified disabled and working individuals. Qualified disabled and working individuals are persons with income and resources and disability status, as determined by the social security administration, which qualify them as “qualified disabled

and working individuals” under sections 6012 and 6408 of the federal “Omnibus Budget Reconciliation Act of 1989”, or subsequent amending federal legislation. The state department is hereby designated as the single state agency to administer benefits available to qualified disabled and working individuals. Such benefits are limited to medicare cost-sharing expenses as determined by the federal government. Accordingly, the state department shall not be required to provide qualified disabled and working individuals the entire range of services set forth in section 25.5-5-102.

Source: L. 2006: Entire article added with relocations, p. 1858, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-511 as it existed prior to 2006.

Cross references: For provisions of the federal “Omnibus Budget Reconciliation Act of 1989” referenced in this section, see sections 6012 and 6408 of Pub.L. 101-239, codified at 42 U.S.C. secs. 1395i and 1396a.

PART 2

OPTIONAL PROVISIONS

25.5-5-201. Optional provisions - optional groups - repeal. (1) The federal government allows the state to select optional groups to receive medical assistance. Pursuant to federal law, any person who is eligible for medical assistance under the optional groups specified in this section shall receive both the mandatory services specified in sections 25.5-5-102 and 25.5-5-103 and the optional services specified in sections 25.5-5-202 and 25.5-5-203. Subject to the availability of federal financial aid funds, the following are the individuals or groups that Colorado has selected as optional groups to receive medical assistance pursuant to this article and articles 4 and 6 of this title:

- (a) Individuals who would be eligible for but are not receiving cash assistance;
- (b) Individuals who would be eligible for cash assistance except for their institutionalized status;
- (c) Individuals receiving home- and community-based services as specified in article 6 of this title;
- (d) Individuals who would be eligible for aid to families with dependent children if child care were paid from earnings;
- (e) Individuals under the age of twenty-one who would be eligible for aid to families with dependent children but do not qualify as dependent children;
- (f) Individuals receiving only optional state supplement;
- (g) Individuals in institutions who are eligible under a special income level. Colorado’s program for citizens sixty-five years of age or older or physically disabled or blind, whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, qualifies for federal funding under this provision.
- (h) Persons who are eligible for cash assistance under the works program pursuant to section 26-2-706, C.R.S.;
- (i) Persons who are eligible for the breast and cervical cancer prevention and treatment program pursuant to section 25.5-5-308;
- (j) Individuals who are qualified aliens and were or would have been eligible for supplemental security income as a result of a disability but are not eligible for such supplemental security income as a result of the passage of the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”, Public Law 104-193;
- (k) Other qualified aliens who entered or were present in the United States before August 22, 1996;
- (l) Children for whom subsidized adoption assistance payments are made by the state pursuant to article 7 of title 26, C.R.S., or foster care maintenance payments are made by the state pursuant to article 5 of title 26, C.R.S., but who do not meet the requirements of Title IV-E of the “Social Security Act”, as amended;
- (m) (I) (A) Parents of children who are eligible for the medical assistance program or the children’s basic health plan, article 8 of this title, whose family income does not exceed

a specified percent of the federal poverty line, adjusted for family size, as set by the state board by rule, which percentage shall be not less than one hundred percent.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for parents of children eligible for the medical assistance program or the children's basic health plan, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the medical benefits offered to such parent whose family income exceeds sixty percent of the federal poverty line or reduce the percentage of the federal poverty line to below one hundred percent, but the percentage shall not be reduced to below sixty percent.

(C) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), until the state department receives federal authorization to increase the percentage of the federal poverty line for parents of children eligible for the medical assistance program or the children's basic health plan, the percentage of the federal poverty line shall be not less than sixty percent. Within sixty days after the state department receives authorization to increase the percentage of the federal poverty line, the executive director shall send written notice to the revisor of statutes informing him or her of the authorization. This sub-subparagraph (C) is repealed, effective the July 1 following the receipt of the notice to the revisor of statutes.

(II) Repealed.

(n) Individuals under the age of twenty-one years eligible for medical assistance pursuant to paragraph (I) of this subsection (1) or section 25.5-5-101 (1) (e) immediately prior to attaining the age of eighteen years or otherwise becoming emancipated.

(o) (I) Individuals with disabilities who are participating in the medicaid buy-in program established in part 14 of article 6 of this title.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (o), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for individuals with disabilities who are participating in the medicaid buy-in program established in part 14 of article 6 of this title, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the medical benefits offered or the percentage of the federal poverty line to below four hundred fifty percent or may eliminate this eligibility group.

(III) Repealed.

(p) (I) Subject to federal approval, persons over eighteen years of age who are childless or without a dependent child in the home whose family income does not exceed a specified percentage of the federal poverty line, adjusted for family size and as set by the state board by rule, which percentage shall be not less than one hundred percent.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (p), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for childless persons or for persons without a dependent child in the home, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the medical benefits offered or the percentage of the federal poverty line to below one hundred percent or may eliminate this eligibility group.

(III) Repealed.

(q) Children who are continuously eligible for twelve months pursuant to section 25.5-5-204.5.

(r) (I) Persons eligible for a medicaid buy-in program established pursuant to section 25.5-5-206 whose family income does not exceed a specified percentage of the federal

poverty line, adjusted for family size and as set by the state board by rule, which percentage shall be not more than four hundred fifty percent.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (r), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for persons eligible for a medicaid buy-in program established pursuant to section 25.5-5-206, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the medical benefits offered, or the percentage of the federal poverty line, or may eliminate this eligibility group.

(III) (A) Notwithstanding the provision of subparagraph (I) of this paragraph (r), persons eligible for a medicaid buy-in program established pursuant to section 25.5-5-206 shall only be eligible for benefits under the medical assistance program if the state department receives federal authorization for such eligibility.

(B) Within sixty days after the state department receives authorization to provide medical benefits to persons eligible for a medicaid buy-in program established pursuant to section 25.5-5-206, the executive director shall send written notice to the revisor of statutes informing him or her of the authorization.

(C) This subparagraph (III) is repealed, effective the July 1 following the receipt of the notice to the revisor of statutes.

(2) (a) A qualified alien, who entered the United States on or after August 22, 1996, shall not be eligible for benefits under this article and articles 4 and 6 of this title, except as provided in section 25.5-5-103 (3), for five years after the date of entry into the United States unless he or she meets the exceptions described in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, as amended. After five years, such qualified alien shall be eligible for benefits under this article and articles 4 and 6 of this title but shall have sponsor income and resources deemed to the individual or family under rules established by the state board of human services pursuant to section 26-2-137, C.R.S.

(b) Notwithstanding the five-year waiting period established in paragraph (a) of this subsection (2), but subject to the availability of sufficient appropriations and the receipt of federal financial participation, the state department may provide benefits under this article and articles 4 and 6 of this title to a pregnant woman who is a qualified alien and a child under nineteen years of age who is a qualified alien so long as such woman or child meets eligibility criteria other than citizenship.

(3) A legal immigrant who is receiving medicaid nursing facility care or home- and community-based services on July 1, 1997, shall continue to receive such services as long as he or she meets the eligibility requirements other than citizen status. State general funds may be used to reimburse such care in the event that federal financial participation is not available.

(4) A pregnant legal immigrant shall be eligible to receive prenatal and medical services for labor and delivery as long as she meets eligibility requirements other than citizen status. State general funds may be used to reimburse such care in the event that federal financial participation is not available.

(5) (a) An asset test shall not be applied as a condition of eligibility for individuals or families described in paragraphs (a), (h), and (m) of subsection (1) of this section.

(b) Repealed.

(c) Subject to the receipt of any necessary federal approval and pursuant to 42 U.S.C. sec. 1396a (r) (2) and 42 U.S.C. sec. 1396u-1 (b) (2) (C), for the groups described in paragraphs (d) and (e) of subsection (1) of this section, the state board shall develop an income- and resource-counting method to replace the method used under the aid to families with dependent children program pursuant to rules that were in effect on July 16, 1996. The income- and resource-counting method shall be:

(I) No more restrictive than the method used under the aid to families with dependent children program pursuant to the rules that were in effect on July 16, 1996; and

(II) No less restrictive than the method used to determine eligibility for other covered groups under subsection (1) of this section and sections 25.5-5-101, 25.5-5-204, 25.5-5-204.5, and 25.5-5-205.

Source: L. 2006: Entire article added with relocations, p. 1858, § 7, effective July 1. **L. 2007:** (1)(n) added, p. 897, § 1, effective May 15. **L. 2008:** (1)(l) and (1)(n) amended and (1)(o) added, pp. 1532, 2200, §§ 1, 2, effective July 1. **L. 2009:** (1)(m)(I) and (1)(o) amended and (1)(p), (1)(q), and (1)(r) added, (HB 09-1293, ch. 152, p. 645, § 5, effective July 1; (2) amended, (HB 09-1353), ch. 390, p. 1869, § 2, effective July 1, 2010. **L. 2010:** (5)(c) added, (HB 10-1043), ch. 92, p. 312, § 2, effective April 15; (1)(m)(I), (1)(o)(II), (1)(p)(I), (1)(p)(II), (1)(r)(I), and (1)(r)(II) amended, (HB 10-1422), ch. 419, p. 2111, § 144, effective August 11.

Editor's note: (1) This section is similar to former § 26-4-301 as it existed prior to 2006.

(2) Subsection (1)(m)(II)(B) provided for the repeal of subsection (1)(m)(II), effective January 1, 2007. (See L. 2006, p. 1858.)

(3) Subsection (5)(b)(II) provided for the repeal of subsection (5)(b), effective July 1, 2007. (See L. 2006, p. 1858.)

(4) Subsection (1)(o)(III)(C) provided for the repeal of subsection (1)(o)(III), effective the July 1 following the revisor of statutes' receipt of the notice required pursuant to subsection (1)(o)(III)(B). (See L. 2009, p. 645.) The revisor of statutes received said notice dated March 23, 2012.

(5) Subsection (1)(p)(III)(C) provided for the repeal of subsection (1)(p)(III), effective the July 1 following the revisor of statutes' receipt of the notice required pursuant to subsection (1)(p)(III)(B). (See L. 2009, p. 645.) The revisor of statutes received said notice dated April 2, 2012.

25.5-5-202. Basic services for the categorically needy - optional services. (1) Subject to the provisions of subsection (2) of this section, the following are services for which federal financial participation is available and which Colorado has selected to provide as optional services under the medical assistance program:

(a) (I) Prescribed drugs.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), pursuant to the provisions of section 25.5-5-503, prescribed drugs shall not be a covered benefit under the medical assistance program for a recipient who is enrolled in a prescription drug benefit program under medicare; except that, if a prescribed drug is not a covered Part D drug as defined in the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Pub.L. 108-173, the prescribed drug may be a covered benefit if it is otherwise covered under the medical assistance program and federal financial participation is available.

(a.5) Over-the-counter medications, as specified in section 25.5-5-322;

(b) Clinic services, as defined in sections 25.5-5-301 and 25.5-5-302;

(c) Home- and community-based services, as specified in article 6 of this title, which include:

(I) Home- and community-based services for elderly, blind, and disabled persons, as specified in part 3 of article 6 of this title;

(II) Home- and community-based services for developmentally disabled persons, as specified in part 4 of article 6 of this title;

(III) Home- and community-based services for persons living with AIDS, as specified in part 5 of article 6 of this title;

(IV) Home- and community-based services for persons with major mental illnesses, as specified in part 6 of article 6 of this title;

(V) Home- and community-based services for persons with brain injury, as specified in part 7 of article 6 of this title;

(d) Optometrist services;

(e) Eyeglasses when necessary after surgery;

(f) Prosthetic devices, including medically necessary augmentative communication devices; except that nonsurgically implanted prosthetic devices shall be included only after July 1, 1998, and only if the general assembly approves appropriations for these devices as a new benefit;

- (g) Rehabilitation services as appropriate to community mental health centers;
- (h) Intermediate care facilities for the mentally retarded;
- (i) Inpatient psychiatric services for persons under twenty-one years of age;
- (j) Inpatient psychiatric services for persons over the age of sixty-five;
- (k) Case management;
- (l) Therapies under home health services, including:
 - (I) Speech and audiology;
 - (II) Physical;
 - (III) Occupational;
- (m) Services of a licensed psychologist;
- (n) Private duty nursing services;
- (o) Podiatry services;
- (p) Hospice care;
- (q) The program of all-inclusive care for the elderly;
- (r) For any pregnant woman who is enrolled or eligible for services pursuant to section 25.5-5-101 (1) (c) or 25.5-5-205, alcohol and drug and addiction counseling and treatment, including outpatient and residential care but not including room and board while receiving residential care;

(s) (I) Outpatient substance abuse treatment.

(II) On or before March 31, 2011, pursuant to section 25.5-5-313 (2), if the legislative audit committee adopts a resolution finding that providing outpatient substance abuse treatment has resulted in an overall increase in costs to the medical assistance program, this paragraph (s) is repealed, effective July 1, 2011.

(t) Cervical cancer immunization for all females under twenty years of age;

(u) (I) Screening, brief intervention, and referral to treatment for individuals at risk of substance abuse, including referral to the appropriate level of intervention and treatment.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (u), services relating to screening, brief intervention, and referral to treatment shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation for the costs of such services.

(2) In addition to the services described in subsection (1) of this section and subject to continued federal financial participation, Colorado has selected to provide transportation services as an administrative cost.

(3) In order to keep expenditures within approved appropriations, the state board may, by rule, establish limits on a service provided pursuant to this section so long as the service provided is sufficient in the amount, duration, and scope to reasonably achieve the purpose of the service as required by federal law or regulation. When a rule is promulgated pursuant to this subsection (3), the state board shall provide a summary report of the limitations established by the rule and any fiscal impact of the rule to members of the health and human services committees of the senate and house of representatives, or any successor committees, and any other members of the general assembly who request the reports.

Source: L. 2006: Entire article added with relocations, p. 1860, § 7, effective July 1. L. 2007: (1)(t) added, p. 1348, § 2, effective May 29. L. 2010: (1)(r) amended, (HB 10-1043), ch. 92, p. 313, § 3, effective April 15; (1)(a.5) added, (SB 10-117), ch. 227, p. 985, § 1, effective July 1; (1)(u) added, (HB 10-1033), ch. 346, p. 1601, § 1, effective August 11.

Editor's note: (1) This section is similar to former § 26-4-302 as it existed prior to 2006.

(2) The legislative audit committee did not adopt a resolution by March 31, 2011, as provided for in subsection (1)(s)(II).

25.5-5-203. Optional programs with special state provisions. (1) Subject to the provisions of subsection (2) of this section, this section specifies programs developed by Colorado to increase federal financial participation through selecting optional services or optional eligible groups. These programs include but are not limited to:

- (a) Pharmaceutical services, as specified in section 25.5-5-504;
- (b) The home- and community-based services program for the elderly, blind, and disabled, as specified in part 3 of article 6 of this title;
- (c) The home- and community-based services program for the developmentally disabled, as specified in part 4 of article 6 of this title;

- (d) The home- and community-based services program for persons living with AIDS, as specified in part 5 of article 6 of this title;
- (e) The home- and community-based services program for persons with major mental illnesses, as specified in part 6 of article 6 of this title;
- (f) The home- and community-based services program for persons with brain injury, as specified in part 7 of article 6 of this title;
- (g) Clinic services, as defined in sections 25.5-5-301 and 25.5-5-302;
- (h) The program for private duty nursing, as specified in section 25.5-5-303;
- (i) The disabled children care program, as specified in section 25.5-6-901;
- (j) The program of all-inclusive care for the elderly, as specified in section 25.5-5-412;
- (k) Hospice care, as specified in section 25.5-5-304;
- (l) The treatment program for high-risk pregnant women, as specified in section 27-80-112, C.R.S., and sections 25.5-5-309, 25.5-5-310, and 25.5-5-311;
- (m) The program for residential child health care, as specified in section 25.5-5-306;
- (n) The children's personal assistance services and family support waiver program, as specified in section 25.5-6-902;
- (o) Home- and community-based services for children with autism, as specified in part 8 of article 6 of this title.

(2) In order to keep expenditures within approved appropriations, the state board may, by rule, establish limits on a service provided pursuant to this section so long as the service provided is sufficient in the amount, duration, and scope to reasonably achieve the purpose of the service as required by federal law or regulation. When a rule is promulgated pursuant to this subsection (2), the state board shall provide a summary report of the limitations established by the rule and any fiscal impact of the rule to members of the health and human services committees of the senate and house of representatives, or any successor committees, and any other members of the general assembly who request the reports.

Source: L. 2006: Entire article added with relocations, p. 1862, § 7, effective July 1.
L. 2010: (1)(l) amended, (SB 10-175), ch. 188, p. 801, § 67, effective April 29.

Editor's note: This section is similar to former § 26-4-303 as it existed prior to 2006.

25.5-5-204. Presumptive eligibility - pregnant women - children - long-term care - state plan. (1) For purposes of this section, "presumptive eligibility" means the self-declaration of income, assets, and status in order to promptly receive medical assistance services prior to the verification of income, assets, and status.

(2) (a) A pregnant woman shall be presumptively eligible for the medical assistance program and shall receive services specified by federal law only if the woman declares all pertinent information relating to the criteria of income, assets, and status.

(b) A woman shall declare her immigration status unless the general assembly provides funding for prenatal care services for undocumented residents.

(2.5) A child under the age of eighteen years shall be presumptively eligible for the medical assistance program and shall receive services specified by federal law only if a parent or legal guardian of the child declares all pertinent information relating to the criteria of income, assets, and status of the child's family.

(2.7) (a) The state department is authorized to seek federal authorization to allow a person who is in need of long-term care, as defined in section 25.5-6-104, to be presumptively eligible for the medical assistance program pursuant to this article and articles 4 and 6 of this title.

(b) If the state department receives federal authorization pursuant to paragraph (a) of this subsection (2.7) and sufficient spending authority, a person in need of long-term care shall be presumptively eligible for the medical assistance program if the person or the person's legal representative declares all pertinent information relating to the criteria of income, assets, and immigration status. Such person shall be assessed for the appropriate level of care pursuant to section 25.5-6-104. If required due to limitations of federal authorization or spending authority, the state department may implement this paragraph (b) as a pilot program rather than statewide.

(c) The state department shall make any necessary changes to the state plan and waivers for home- and community-based service programs authorized pursuant to this article and articles 4 and 6 of this title to comply with this subsection (2.7).

(d) If it is determined that a recipient was not eligible for medical benefits after the recipient had been determined to be eligible based upon presumptive eligibility, the state department shall not pursue recovery from a county department for the cost of medical services provided to the recipient, and the county department shall not be responsible for any federal error rate sanctions resulting from such determination.

(3) The state department shall make any necessary changes to the state plan to comply with this section.

Source: **L. 2006:** Entire article added with relocations, p. 1864, § 7, effective July 1. **L. 2007:** (2.5) added, p. 1493, § 4, effective January 1, 2008. **L. 2009:** (2.7) added, (HB 09-1103), ch. 160, p. 694, § 1, effective April 22.

Editor's note: This section is similar to former § 26-4-304 as it existed prior to 2006.

Cross references: For the legislative declaration contained in the 2007 act enacting subsection (2.5), see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-5-204.5. Continuous eligibility - children - repeal. (1) A child who is determined to be eligible for benefits under this article or under article 4 or 6 of this title shall remain eligible for twelve months subsequent to the last day of the month in which the child was enrolled; except that a child shall no longer be eligible and shall be disenrolled from the state medical assistance program if the state department becomes aware of or is notified that the child has moved out of the state or has reached nineteen years of age.

(2) Notwithstanding the provisions of subsection (1) of this section, if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may eliminate the continuous enrollment requirement pursuant to this section.

(3) (a) Notwithstanding the provisions of subsection (1) of this section, continuous eligibility for children shall only be effective if the state department receives federal authorization for such eligibility.

(b) Within sixty days after the state department receives authorization to provide continuous eligibility for children, the executive director shall send written notice to the revisor of statutes informing him or her of the authorization.

(c) This subsection (3) is repealed, effective the July 1 following the receipt of the notice to the revisor of statutes.

Source: **L. 2009:** Entire section added, (HB 09-1293), ch. 152, p. 648, § 6, effective July 1.

25.5-5-205. Baby and kid care program - creation - eligibility. (1) The general assembly hereby finds and declares that the health and well-being of the children of Colorado are at risk; that access to prenatal care by pregnant women in Colorado is inadequate; that lack of access to prenatal care results in a high rate of low-weight births; that children born with low weight are more likely to develop health problems during their lifetimes; that providing such essential care during pregnancy and early childhood would reduce the number of children with such health problems; that providing such care would not only benefit such children but would also benefit the citizens of Colorado by ensuring the present and future health of society and reducing the amount of state resources needed for such purposes; and that a significant need exists in Colorado for a program which utilizes medicaid funds to promote and provide such prenatal care and well child care.

(2) There is hereby created the baby and kid care program to promote and provide prenatal care and well child care to individuals who need such care but are currently unable to obtain it.

(3) (a) On and after April 1, 1990, children under the age of six years and pregnant women shall be eligible for benefits under the baby and kid care program; except that, for the purpose of eligibility under this subsection (3) only:

(I) Such individual's family income shall exceed the eligibility threshold used in determining eligibility for aid to families with dependent children assistance pursuant to rules in effect on July 16, 1996, and the method adopted by the state board pursuant to sections 25.5-5-101 (4) (c) and 25.5-5-201 (5) (c), but shall not exceed the equivalent of the percentage level of the federal poverty line that is specified pursuant to paragraph (b) of this subsection (3);

(II) (A) (Deleted by amendment, L. 2010, (HB 10-1043), ch. 92, p. 313, § 4, effective April 15, 2010.)

(B) No resource standard shall be applied to pregnant women as a condition of eligibility. Once initial eligibility has been established for a pregnant woman under this subsection (3), she shall be considered to be continuously eligible throughout the pregnancy and for the sixty days following the pregnancy, even if the woman's eligibility would otherwise terminate during such period due to an increase in income. A child born to a woman eligible for assistance pursuant to this subsection (3) shall be eligible for medical assistance until the child attains one year of age so long as the infant remains in the eligible woman's household and the woman would be eligible for assistance if she were pregnant.

(b) (I) For children under six years of age, the percentage level of the federal poverty line, as defined pursuant to 42 U.S.C. sec. 9902 (2), used to determine eligibility under this subsection (3) shall be one hundred thirty-three percent. If the federal government establishes a new federal minimum percentage level of the federal poverty line used to determine eligibility under this subsection (3) that is different from the level set in this subparagraph (I), the state department is authorized to meet such federal minimum level without requiring additional legislation; however, such minimum federal level shall be established by rule of the state board.

(II) For pregnant women, the percentage level of the federal poverty line, as defined pursuant to 42 U.S.C. sec. 9902 (2), used to determine eligibility under this subsection (3) shall be one hundred eighty-five percent. If the federal government establishes a new federal minimum percentage level of the federal poverty line used to determine eligibility under this subsection (3) that is different from the level set in this subparagraph (II), the state department is authorized to meet such federal minimum level without requiring additional legislation; however, such minimum federal level shall be established by rule of the state board.

(c) (I) On and after September 1, 2011, children born after September 30, 1983, who have attained six years of age but have not attained nineteen years of age shall be eligible for benefits under the baby and kid care program. For the purpose of eligibility under this paragraph (c) only, such individual's family income shall exceed the eligibility threshold used in determining eligibility for aid to families with dependent children assistance pursuant to rules in effect on July 16, 1996, and the method adopted by the state board pursuant to sections 25.5-5-101 (4) (c) and 25.5-5-201 (5) (c), but shall not exceed the equivalent of the percentage level of the federal poverty line that is specified pursuant to subparagraph (II) of this paragraph (c).

(II) The percentage level of the federal poverty line, as defined pursuant to 42 U.S.C. sec. 9902 (2), used to determine eligibility under this paragraph (c) shall be equivalent to the family income eligibility threshold applied to children under six years of age pursuant to paragraph (b) of this subsection (3).

(d) An asset test shall not be applied as a condition of eligibility for a child under this subsection (3). A child under this subsection (3) whose family income does not exceed the applicable level pursuant to paragraph (b) or (c) of this subsection (3) shall be presumptively eligible under this section.

Source: L. 2006: Entire article added with relocations, p. 1864, § 7, effective July 1.
L. 2007: (3)(d) amended, p. 1493, § 5, effective January 1, 2008. L. 2010: (3)(a) and

(3)(c)(I) amended, (HB 10-1043), ch. 92, p. 313, § 4, effective April 15. **L. 2011:** (3)(b) amended, (SB 11-250), ch. 219, p. 950, § 1, effective May 27; (3)(c) amended, (SB 11-008), ch. 100, p. 293, § 2, effective September 1.

Editor's note: This section is similar to former § 26-4-508 as it existed prior to 2006.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (3)(d), see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-5-206. Medicaid buy-in program - disabled children - disabled adults - federal authorization - rules. (1) (a) Subject to available appropriations, the state department is authorized to seek federal authorization to and to establish a medicaid buy-in program or programs for:

(I) Disabled children; or
(II) Disabled adults who do not qualify for the medicaid buy-in program established pursuant to part 14 of article 6 of this title.

(b) The medicaid buy-in program or programs established pursuant to paragraph (a) of this subsection (1) may provide for premium and cost-sharing charges on a sliding fee scale based upon a family's income.

(2) The state board shall promulgate rules consistent with any federal authorization to implement and administer the medicaid buy-in program or programs established pursuant to paragraph (a) of subsection (1) of this section.

Source: L. 2009: Entire section added, (HB 09-1293), ch. 152, p. 698, § 6, effective July 1.

PART 3

SERVICES WITH SPECIAL STATE PROVISIONS

25.5-5-301. Clinic services. (1) As used in this article and articles 4 and 6 of this title, unless the context otherwise requires, "clinic services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished to outpatients.

(2) Under the federal option for clinic services, Colorado has selected clinic services provided by the following:

- (a) Community mental health centers or clinics;
- (b) Community centered boards;
- (c) Birthing centers;
- (d) Ambulatory surgery facilities;
- (e) Freestanding dialysis clinics.

(3) "Clinic services" also means preventive, therapeutic, or palliative items or services that are furnished to patients by county or district public health agencies or county or district boards of health established pursuant to part 5 of article 1 of title 25, C.R.S., that are recommended for certification by the department of public health and environment as qualified to receive payments pursuant to this article and articles 4 and 6 of this title.

(4) "Clinic services" also means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that are furnished to a pregnant woman who is enrolled or eligible for services pursuant to section 25.5-5-101 (1) (c) or 25.5-5-205 in a facility that is not a part of a hospital but is organized and operated as a freestanding alcohol or drug treatment program approved and licensed by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 27-80-108 (1) (c), C.R.S.

(5) "Clinic services" also means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that are furnished to children up to age twenty-one or to high-risk pregnant women in a facility which is not a part of a hospital but is organized and operated as a school-based clinic.

(6) “Clinic services” also means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that are furnished to students by a school district, board of cooperative services, or state educational institution within the scope of the “Colorado Medical Assistance Act” pursuant to the provisions of section 25.5-5-318.

Source: L. 2006: Entire article added with relocations, p. 1866, § 7, effective July 1.
L. 2010: (4) amended, (HB 10-1043), ch. 92, p. 314, § 5, effective April 15; (4) amended, (SB 10-175), ch. 188, p. 801, § 68, effective April 29; (3) amended, (HB 10-1422), ch. 419, p. 2113, § 145, effective August 11.

Editor’s note: (1) This section is similar to former § 26-4-513 as it existed prior to 2006.

(2) Amendments to subsection (4) by House Bill 10-1043 and Senate Bill 10-175 were harmonized.

25.5-5-302. Clinic services - children and pregnant women - utilization of certain providers. (1) The state department shall utilize, to the extent possible and appropriate, county or district public health agencies or boards of health established pursuant to part 5 of article 1 of title 25, C.R.S., that are certified by the department of public health and environment as qualified to receive payments pursuant to this article and articles 4 and 6 of this title and that meet the requirements and standards set forth in rules promulgated by the state board in the state department pursuant to section 25.5-4-104 to provide clinic services to patients who are children under age seven or patients who are pregnant women.

(2) In complying with the provisions of subsection (1) of this section, the state department shall utilize, to the extent possible and appropriate, the county or district public health agencies and boards of health specified in subsection (1) of this section to provide outreach to eligible pregnant women and children and to provide clinic services:

- (a) Upon the referral of any physician; or
- (b) When there exists no primary care physician who agrees to provide clinic services to such patients.

Source: L. 2006: Entire article added with relocations, p. 1867, § 7, effective July 1.
L. 2010: (1) and IP(2) amended, (HB 10-1422), ch. 419, p. 2113, § 146, effective August 11.

Editor’s note: This section is similar to former § 26-4-514 as it existed prior to 2006.

25.5-5-303. Private-duty nursing. (1) The medical assistance program in this state shall include private-duty nursing to persons who are technology dependent and otherwise eligible as provided under this section.

- (2) A recipient is eligible for private-duty nursing services if he or she:
 - (a) Is dependent on technology at least part of each day;
 - (b) Requires private-duty nursing care as determined in accordance with state department rules;
 - (c) Is able to be served safely under the limitations of the private-duty nursing benefit and within the availability of services; and
 - (d) Is not residing in a nursing facility or hospital at the time of the delivery of the private-duty nursing services.
- (3) (a) The state board shall establish rules in accordance with this section that identify medical criteria for determining the circumstances under which private-duty nursing services will be delivered to assure that only persons who need the services receive them and only to the extent medically necessary.
- (b) Private-duty nursing services shall not be provided as twenty-four-hour care except in special circumstances and for limited time periods as established by the state department pursuant to this section.
- (c) The home health agency, in conjunction with the family or in-home caregiver and the attending physician, shall include in a care plan that includes private-duty nursing

services a process by which the eligible person may receive necessary care, which may include respite care, if the family or in-home caregiver is unavailable due to an emergency situation or to unforeseen circumstances. The family or in-home caregiver shall be duly informed by the home health agency of these alternative care provisions at the time the care plan is initiated.

(4) As used in this section, unless the context otherwise requires, “private-duty nursing” means nursing care that is more individualized and continuous than both the nursing care available under the home health benefit and the nursing care routinely provided in a hospital or nursing facility.

Source: L. 2006: Entire article added with relocations, p. 1867, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-517 as it existed prior to 2006.

25.5-5-304. Hospice care. (1) The medical assistance program in this state shall include hospice care. Except as otherwise provided in subsection (2) of this section, hospice care shall be provided for a period of up to two hundred ten days in accordance with rules adopted by the state board, which rules shall comply with 42 U.S.C. sec. 1396d, and shall include at least the following requirements:

(a) That a person shall obtain a certified medical prognosis indicating a life expectancy of nine months or less, which certification shall comply with rules adopted by the state board;

(b) That a person shall execute a waiver of other medical benefits available under this article and articles 4 and 6 of this title, which election shall be executed in accordance with rules adopted by the state board;

(c) That the service shall be reasonable and necessary for the palliation or management of the terminal illness and related conditions.

(2) Hospice care may be provided to a person beyond two hundred ten days if such person is recertified by a physician or hospice medical director as terminally ill in accordance with subsection (1) of this section.

(3) (a) Subject to the receipt of any necessary federal authorization, for a person who has executed the waiver described in paragraph (b) of subsection (1) of this section and who is a resident in a class I facility, as defined in section 25.5-6-201 (13), the class I facility shall bill the state department and the state department shall pay the class I facility for the room and board costs of the person.

(b) Subject to the receipt of any necessary federal authorization, the hospice care provided pursuant to this section may include room and board in a hospice inpatient facility licensed pursuant to section 25-3-101, C.R.S. The state department is authorized to establish the reimbursement rate for the costs for room and board at a licensed hospice inpatient facility for patients eligible for the routine level of hospice care.

(c) (I) If required, the state department shall seek the appropriate federal authorization, conditioned on the receipt of gifts, grants, or donations sufficient to provide for the state’s administrative costs of preparing and submitting the request, to make the payment described in paragraph (a) of this subsection (3) and to include room and board at a licensed hospice inpatient facility as described in paragraph (b) of this subsection (3). On or before January 15, 2011, the state department shall submit a brief report to the members of the health and human services committees of the senate and house of representatives, or any successor committees, on the status of any request for authorization pursuant to this subparagraph (I). If federal authorization to implement the changes described in paragraphs (a) and (b) of this subsection (3) is obtained, the state department shall request, through the state budget process, that the changes be implemented during the fiscal year following the year in which the approval is obtained.

(II) The state department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purpose of providing for the administrative costs of preparing and submitting the request for federal approval for the payments described in paragraphs (a) and (b) of this subsection (3). All such private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit

the same to the hospice care account in the department of health care policy and financing cash fund created pursuant to section 25.5-1-109, which account is hereby created. Moneys in the account shall be subject to appropriation and shall only be used for the purposes described in this subparagraph (II).

(4) Repealed.

Source: **L. 2006:** Entire article added with relocations, p. 1868, § 7, effective July 1. **L. 2010:** IP(1) and (1)(a) amended and (4) added, (HB 10-1027), ch. 274, p. 1256, § 1, effective August 11; (3) added, (SB 10-061), ch. 247, p. 1104, § 1, effective August 11.

Editor's note: (1) This section is similar to former § 26-4-520 as it existed prior to 2006.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective the July 1 following the revisor of statutes' receipt of the required notice. (See L. 2010, p. 1256.) The revisor of statutes received the required notice on May 31, 2012.

25.5-5-305. Pediatric hospice care - legislative declaration - federal authorization - rules - fund. (1) **Legislative declaration.** (a) The general assembly finds and declares that:

(I) The death of a child has a devastating and enduring impact on the child's family;

(II) Too often, children with fatal conditions and their families fail to receive compassionate and consistent care that meets their physical, emotional, and spiritual needs;

(III) Better care is possible but current methods of organizing and financing palliative, end-of-life, and bereavement care impede the provision of services that are both more appropriate and more cost-efficient;

(IV) Current federal medicaid regulations contain inherent barriers to providing appropriate palliative and end-of-life care to pediatric patients. These barriers include requirements that preclude the pursuit of curative treatments, mandate a do-not-resuscitate order, and require physician certification that death is expected within six months.

(b) The general assembly declares that it is in the best interest of the state to investigate and implement hospice guidelines that provide appropriate, compassionate care to dying children and their families while proving to be cost-neutral or cost-saving to the state and federal medicaid programs.

(c) The general assembly further finds and declares that, while this direction immediately concerns federal approval for hospice care that recognizes the distinct circumstances of children facing life-threatening illnesses and their families, it is the intent of the general assembly that the information and data produced as a result of this act shall be used to improve the delivery of palliative and end-of-life services to persons of all ages when such improvements can be made in a manner that is cost-neutral or cost-saving to the state.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Eligible child" means a child who:

(I) Is less than nineteen years of age; and

(II) Is eligible for the state's medicaid program pursuant to section 25.5-5-101, 25.5-5-201, or 25.5-5-203;

(b) "Pediatric hospice care" means hospice care for eligible children as authorized in this section.

(3) **Pediatric hospice care.** (a) (I) The state department shall seek the appropriate federal authorization, conditioned on the receipt of gifts, grants, or donations sufficient to provide for the state's administrative costs of preparing and submitting the request, for pediatric hospice care that shall include but may not be limited to:

(A) Respite care;

(B) Expressive therapies, as defined in rule by the state board;

(C) Palliative care from the time of diagnosis of a potentially life-threatening illness; and

(D) A continuum of care through the coordination of services, which may include skilled, intermittent, and around-the-clock nursing care.

(II) The state department is authorized to seek federal approval for modifications to the provision of hospice care for adults who are eligible for the state's medicaid program.

(b) For the provision of pediatric hospice care, the state department shall seek an exemption from the following federal medicaid requirements for the eligibility of and election for hospice care:

- (I) The mandatory do-not-resuscitate order;
- (II) A physician's certification that a patient is expected to live less than six months; and
- (III) The nonallowance of curative care therapies concurrent with palliative and hospice care.

(c) In any application for federal authorization pursuant to this section, the state department shall retain bereavement services to the extent available under federal law.

(d) Pediatric hospice care, as authorized pursuant to this section, shall meet aggregate federal waiver budget neutrality requirements.

(e) The state department shall implement the provision of pediatric hospice care to the extent authorized by the federal government.

(4) **Review.** The state department shall notify the joint budget committee of the general assembly of the extent to which the state department received federal authorization for pediatric hospice care services pursuant to this section in order for the joint budget committee to review the approved budget neutrality analysis for such services prior to the state department's implementation.

(5) **Rules.** The state department shall develop the service provisions for pediatric hospice care in consultation with medical professionals who have expertise in providing end-of-life and palliative care to pediatric patients and family members who have experienced the death of a child. The state board shall adopt rules necessary to implement and administer the provisions of this section.

(6) **Fund.** The state department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purpose of providing for the administrative costs of preparing and submitting the request for federal approval for the provision of pediatric hospice care. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the pediatric hospice care cash fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for preparing and submitting the request for federal approval pursuant to this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred or revert to the general fund or another fund.

Source: L. 2006: Entire article added with relocations, p. 1868, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-533 as it existed prior to 2006.

25.5-5-306. Residential child health care - waiver - program - rules. (1) The state department, in cooperation with the department of human services, shall implement a program concerning residential child health care under this article and articles 4 and 6 of this title to provide services pursuant to article 67 of title 27, C.R.S., to medicaid-eligible children residing in residential child care facilities, as that term is defined in section 26-6-102 (8), C.R.S., to medicaid-eligible children residing in psychiatric residential treatment facilities, and children placed by the department of human services or through county departments of social services in licensed or certified out-of-home placement facilities. Children with developmental disabilities, as defined in section 27-10.5-102 (11), C.R.S., who are placed in such facilities shall meet the out-of-home placement criteria described in section 19-1-107, C.R.S., and shall be neglected or dependent as described in section 19-3-102, C.R.S. The state board shall establish the type of rehabilitative or medical assistance services to be provided under the program as described in subsection (3) of this section, to the extent such services are cost-efficient, and the recipient eligibility criteria that may include, but are not limited to, a medical necessity determination and a financial

eligibility determination. The state board shall define in rule the staff permitted to order, monitor, and assess seclusion and restraint in psychiatric residential treatment facilities, and the corresponding restrictions on the use of seclusion and restraint.

(2) The state department, in cooperation with the department of human services, may limit the number of recipients or providers participating in the program in accordance with any federal waiver obtained by the state department to implement this section.

(3) The state board, in cooperation with the department of human services, shall promulgate rules as necessary for the implementation of the program, including, but not limited to, rules regarding program services that may include rehabilitative services as appropriate to residential child health care when referred by a physician licensed pursuant to article 36 of title 12, C.R.S. a psychologist licensed pursuant to part 3 of article 43 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who, by reason of postgraduate education and additional nursing preparation, has gained knowledge, judgment, and skill in psychiatric or mental health nursing, a clinical social worker licensed pursuant to part 4 of article 43 of title 12, C.R.S., a marriage and family therapist licensed pursuant to part 5 of article 43 of title 12, C.R.S., or a professional counselor licensed pursuant to part 6 of article 43 of title 12, C.R.S.; the number of recipients participating; eligibility criteria including financial eligibility criteria; reimbursement of providers; and such other rules as are necessary for the implementation and administration of the program. The county contribution established in section 26-1-122, C.R.S., for residential child care facilities may be used by the state to obtain federal financial participation under Title XIX of the social security act for any residential child health care program established pursuant to this section. The county contribution shall not be increased due to any federal financial participation received as a result of any programs established pursuant to this section. Nothing in this section shall be construed to prohibit an adjustment in the county contribution due to caseload or service cost increases. Nothing in this section shall be construed to create a county obligation to directly participate in the financing of any program established pursuant to the "Colorado Medical Assistance Act" as set forth in this article and articles 4 and 6 of this title.

(4) Services provided in a residential child care facility by a provisional licensee as defined in section 12-43-201 (7.8), C.R.S., to medicaid-eligible children shall receive medicaid reimbursement only if approved by the federal government.

Source: **L. 2006:** (1) and (3) amended and (4) added, p. 1202, § 2, effective May 26; entire article added with relocations, p. 1871, § 7, effective July 1. **L. 2008:** (3) amended, p. 1517, § 1, effective May 28. **L. 2010:** (1) amended, (SB 10-175), ch. 188, p. 801, § 69, effective April 29.

Editor's note: (1) This section is similar to former § 26-4-527 as it existed prior to 2006.

(2) (a) Amendments to section 26-4-527 (1) and (3) by House Bill 06-1395 were harmonized with subsections (1) and (3), respectively, as they appeared in Senate Bill 06-219.

(b) Subsection (4) was enacted as § 26-4-527 (6) in House Bill 06-1395 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

25.5-5-307. Child mental health treatment and family support program. (1) The general assembly finds that many parents in Colorado who have experienced challenging circumstances because their children have significant mental health needs and who have attempted to care for their children or seek services on their behalf often are burdened with the excessive financial and personal costs of providing such care. Private insurance companies may not cover mental health services and rarely cover residential mental health treatment services; those that do seldom cover a sufficient percentage of the expense to make such mental health treatment a viable option for many families in need. The result is that many families do not have the ability to obtain the mental health services that they feel their children desperately need. The general assembly finds that it is in the best interests of these families and the citizens of the state to encourage the preservation of family units by making mental health treatment available to these children pursuant to article 67 of title 27, C.R.S.

(2) In order to make mental health treatment available, it is the intent of the general assembly that each medicaid-eligible child who is diagnosed as a person with a mental illness, as that term is defined in section 27-65-102 (14), C.R.S., shall receive mental health treatment, which may include in-home family mental health treatment, other family preservation services, residential treatment, or any post-residential follow-up services, that shall be paid for through federal medicaid funding.

Source: L. 2006: Entire article added with relocations, p. 1872, § 7, effective July 1; (2) amended, p. 1389, § 19, effective August 7. **L. 2010:** Entire section amended, (SB 10-175), ch. 188, p. 802, § 70, effective April 29.

Editor's note: (1) This section is similar to former § 26-4-509.5 as it existed prior to 2006.

(2) Amendments to section 26-4-509.5 (2) by House Bill 06-1277 were harmonized with subsection (2) as it appeared in Senate Bill 06-219.

25.5-5-308. Breast and cervical cancer prevention and treatment program - creation - legislative declaration - definitions - funds - repeal. (1) The general assembly hereby finds and declares that breast and cervical cancer are significant health problems for women in this state. The general assembly further finds and declares that these cancers can and should be prevented and treated whenever possible. It is therefore the intent of the general assembly to enact this section to provide for the prevention and treatment of breast and cervical cancer to women where it is not otherwise available for reasons of cost.

(2) As used in this section, unless the context otherwise requires:

(a) "Eligible person" means a person who:

(I) (A) Has been screened for breast or cervical cancer under the centers for disease control and prevention's national breast and cervical cancer early detection program established under Title XV of the federal "Public Health Service Act", 42 U.S.C. sec. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. sec. 300n, on or after July 1, 2002, unless the centers for medicare and medicaid services approves the state department's amendment to the medical assistance plan and the state department is able to implement the breast and cervical cancer prevention and treatment program before such date, then the person must be screened on or after the implementation date of such program; or

(B) Has been screened for breast or cervical cancer by a provider who does not receive funds through the centers for disease control and prevention's national breast and cervical cancer early detection program but whose screening activities are recognized by the department of public health and environment as part of screening activities under the centers for disease control and prevention's national breast and cervical cancer early detection program. This sub-subparagraph (B) shall apply only if the state department receives authority to receive federal financial participation for such persons. The state department shall request authority for federal financial participation when the state department determines that the amount of moneys accumulated in the eligibility expansion account created in paragraph (c) of subsection (8) of this section, including any amounts pledged or promised through a gift, grant, or donation, is sufficient to sustain the projected number of additional persons who would be eligible for the program under this sub-subparagraph (B).

(II) Has been diagnosed with breast or cervical cancer and is in need of breast or cervical cancer treatment;

(III) Has not yet attained sixty-five years of age; and

(IV) Does not have any creditable coverage as defined under federal law pursuant to 42 U.S.C. sec. 300gg (c).

(b) "Qualified entity" shall be defined pursuant to 42 U.S.C. sec. 1396r-1b(b)(2).

(3) There is hereby created a breast and cervical cancer prevention and treatment program to provide medical benefits to eligible persons under this section.

(4) (a) Benefits for medical assistance to an eligible person shall be made available beginning on the day on which a determination is made that the person is eligible for

medical assistance and throughout the period in which such person meets the definition of an eligible person.

(b) Benefits for medical assistance to an eligible person shall also be available for the following period of presumptive eligibility:

(I) Such period of presumptive eligibility shall begin when a qualified entity determines that the eligible person is in need of treatment for breast or cervical cancer.

(II) Such period of presumptive eligibility shall end with the earlier of:

(A) The day on which a determination is made that the person is eligible or not eligible for medical assistance; or

(B) If the eligible person does not file a simplified application for medical assistance developed by the state department and approved by the centers for medicare and medicaid services on or before the last day of the month following the month during which the eligible person was found to be qualified for services under this section, then benefits shall end on such last day.

(5) The state department shall have the following powers and duties:

(a) To establish, operate, and monitor the breast and cervical cancer prevention and treatment program to provide medical assistance to eligible persons in accordance with the provisions of the federal "Breast and Cervical Cancer Prevention and Treatment Act of 2000", enacted October 24, 2000, Pub.L. 106-354, as amended;

(b) To amend the state's medical assistance plan to incorporate the breast and cervical cancer prevention and treatment program. The state department shall submit such proposed amendment to the centers for medicare and medicaid services regional office for approval.

(c) To accept and expend any grant or award of moneys from the federal government, any moneys appropriated by the general assembly, any moneys received through gifts, grants, or donations from nonprofit or for-profit entities, and any interest and income earned on such moneys for the purposes set forth in this section;

(d) To inform the joint budget committee of the general assembly in writing as soon as practicable about any change in the rate of federal financial participation in the program.

(6) The state board shall adopt such rules as are necessary to carry out the provisions of this section.

(7) The breast and cervical cancer prevention and treatment program shall be subject to the annual financial and compliance audit of the "Colorado Medical Assistance Act" performed by the state auditor's office and shall not be considered a tobacco settlement program for purposes of section 2-3-113, C.R.S., or section 25-1-108.5, C.R.S.

(8) (a) (I) There is hereby created in the state treasury the breast and cervical cancer prevention and treatment fund, referred to in this subsection (8) as the "fund". The fund shall consist of any moneys credited thereto pursuant to section 24-22-115 (1), C.R.S., any gifts, grants, and donations, any moneys appropriated thereto by the general assembly, and any moneys transferred from the eligibility expansion account pursuant to subparagraph (III) of paragraph (c) of this subsection (8). Except as provided for in paragraph (b) of this subsection (8), all moneys credited to the fund and all interest and income earned on the moneys in the fund shall remain in the fund for the purposes set forth in this section. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. The state department is encouraged to secure private gifts, grants, and donations to fund the state costs of the breast and cervical cancer prevention and treatment program.

(II) Moneys in the fund may be used to cover the administrative costs of the department of public health and environment to recognize providers in accordance with sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section as providing screening activities under the centers for disease control and prevention's national breast and cervical cancer early detection program.

(b) Until section 25.5-6-111 is repealed, the state treasurer shall transfer any interest or income earned on moneys in the fund to the coordinated care for people with disabilities fund, created in section 25.5-6-111 (4).

(c) (I) There is hereby created, as an account within the fund, the eligibility expansion account, referred to in this subsection (8) as the "account". The account shall consist of

moneys credited thereto pursuant to section 42-3-217.5 (3) (c), C.R.S., any gifts, grants, and donations, and any other moneys appropriated thereto by the general assembly. Moneys in the account shall be expended only to fund the cost to expand the eligibility criteria for participation in the breast and cervical cancer prevention and treatment program to persons described in sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section who are screened for breast or cervical cancer by a provider who does not receive funds through the centers for disease control and prevention's national breast and cervical cancer early detection program established under Title XV of the federal "Public Health Service Act", 42 U.S.C. sec. 300k et seq., to provide screening activities. The state department shall not be required to track or report on the persons who become eligible for participation in the breast and cervical cancer prevention and treatment program pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section separately from those persons who are eligible for the program pursuant to sub-subparagraph (A) of subparagraph (I) of paragraph (a) of subsection (2) of this section, nor shall the state department be required to track or report separately on expenditures related to persons eligible to participate in the program pursuant to either such sub-subparagraph.

(II) Notwithstanding paragraph (b) of this subsection (8), all moneys credited to the account and all interest and income earned on the moneys in the account shall remain in the account for the purposes set forth in this paragraph (c) and shall not be credited or transferred to the general fund or any other fund except as provided in subparagraph (III) of this paragraph (c). The state department is encouraged to secure private gifts, grants, and donations to help fund the costs to expand the eligibility criteria for participation in the breast and cervical cancer prevention and treatment program as described in this paragraph (c).

(III) (A) Upon determining that the amount of moneys accumulated in the account, including any amounts pledged or promised through a gift, grant, or donation, is sufficient to sustain the projected number of additional persons who would be eligible for the program under sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section, and upon obtaining authority to receive federal financial participation for persons eligible under sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section, the state department shall notify the joint budget committee that the account balance is sufficient to expand eligibility for the program and shall request an appropriation for the fiscal year for which the federal authority has been granted to fund the persons eligible pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) of this section.

(B) Once the state department has notified the joint budget committee, the staff director of the joint budget committee shall request that the state treasurer transfer the moneys in the eligibility expansion account to the breast and cervical cancer prevention and treatment fund and dissolve the account.

(C) This paragraph (c) is repealed, effective when the state treasurer transfers the balance of the eligibility expansion account to the breast and cervical cancer prevention and treatment fund and dissolves the account. The state treasurer shall notify the revisor of statutes in writing when the conditions specified in this sub-subparagraph (C) have been satisfied.

(9) (a) For the fiscal year 2005-06, the general assembly shall appropriate fifty percent of the state costs of the breast and cervical cancer prevention and treatment program from the general fund and fifty percent from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(b) For the fiscal year 2006-07, the general assembly shall appropriate seventy-five percent of the state costs of the breast and cervical cancer prevention and treatment program from the general fund and twenty-five percent from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(c) For the fiscal year 2007-08, the general assembly shall appropriate one hundred percent of the state costs of the breast and cervical cancer prevention and treatment program

from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(d) For the fiscal year 2008-09, the general assembly shall appropriate one hundred percent of the state costs of the breast and cervical cancer prevention and treatment program from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(e) For the fiscal years 2009-10 through 2011-12, the general assembly shall annually appropriate one hundred percent of the state costs of the breast and cervical cancer prevention and treatment program from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(f) For the fiscal years 2012-13 and 2013-14, the general assembly shall annually appropriate fifty percent of the state costs of the breast and cervical cancer prevention and treatment program from the general fund and fifty percent from the moneys credited to the breast and cervical cancer prevention and treatment fund pursuant to section 24-22-115 (1), C.R.S., to such program.

(10) This section is repealed, effective July 1, 2014, unless, in any fiscal year before such date, moneys received as federal financial participation provided pursuant to the federal "Breast and Cervical Cancer Prevention and Treatment Act of 2000", enacted October 24, 2000, Pub.L. 106-354, as amended, are no longer available to the fund or the rate of federal financial participation has been decreased, in which case the general assembly may repeal this section at the regular session of the general assembly immediately following such decrease or discontinuation of federal moneys.

Source: **L. 2006:** (8) amended, p. 1117, § 2, effective May 25; entire article added with relocations, p. 1872, § 7, effective July 1. **L. 2008:** (8)(a), (9)(b), (9)(c), and (10) amended and (9)(d) and (9)(e) added, p. 1830, § 1, effective June 2. **L. 2009:** (9)(e) amended and (9)(f) added, (SB 09-262), ch. 202, p. 912, § 1, effective May 1; (2)(a)(I) and (8)(a) amended and (8)(c) added, (HB 09-1164), ch. 215, p. 973, § 4, effective May 2.

Editor's note: (1) This section is similar to former § 26-4-532 as it existed prior to 2006.

(2) Subsection (8) was originally numbered as § 26-4-532 (7), and the amendments to it in Senate Bill 06-128 were harmonized with subsection (8) as it appeared in Senate Bill 06-219.

Cross references: (1) For the "Breast and Cervical Cancer Prevention and Treatment Act of 2000", Pub.L. 106-354, see 42 U.S.C. 1396r-1b.

(2) For the legislative declaration contained in the 2009 act amending subsections (2)(a)(I) and (8)(a) and adding subsection (8)(c) and for the provision directing legislative staff agencies to conduct a post-enactment review of the act pursuant to § 2-2-1201, scheduled in 2014, see sections 1 and 15 of chapter 215, Session Laws of Colorado 2009. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-5-309. Pregnant women - needs assessment - referral to treatment program.

(1) The health care practitioner for each pregnant woman who is enrolled or eligible for services pursuant to section 25.5-5-101 (1) (c) or 25.5-5-205 shall be encouraged to identify as soon as possible after such woman is determined to be pregnant whether such woman is at risk of a poor birth outcome due to substance abuse during the prenatal period and in need of special assistance in order to reduce such risk. If the health care practitioner makes such a determination regarding any pregnant woman, the health care practitioner shall be encouraged to refer such woman to any entity approved and licensed by the department of human services for the performance of a needs assessment. Any pregnant woman who is eligible for services pursuant to section 25.5-5-205 may refer herself for such needs assessment.

(2) For the purposes of this section, unless the context otherwise requires, a "needs assessment" means an assessment that is designed to make a determination of what services are needed by a pregnant woman to minimize the occurrence of a poor birth outcome due to substance abuse by such pregnant woman.

Source: L. 2006: Entire article added with relocations, p. 1875, § 7, effective July 1.
L. 2010: (1) amended, (HB 10-1043), ch. 92, p. 314, § 6, effective April 15.

Editor's note: This section is similar to former § 26-4-508.2 as it existed prior to 2006.

25.5-5-310. Treatment program for high-risk pregnant women - cooperation with private entities. The state department and the departments of human services and public health and environment shall cooperate with any private entities that desire to assist such departments in the provision of services connected with the treatment program for high-risk pregnant women. Private entities may provide services that are not provided to persons pursuant to this article or article 4 or 6 of this title or article 2 of title 26, C.R.S., which may include, but shall not be limited to, needs assessment services, preventive services, rehabilitative services, care coordination, nutrition assessment, psychosocial counseling, intensive health education, home visits, transportation, development of provider training, child care, and other necessary components of residential or outpatient treatment or care.

Source: L. 2006: Entire article added with relocations, p. 1875, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-508.4 as it existed prior to 2006.

25.5-5-311. Treatment program for high-risk pregnant women - data collection. The state department, in cooperation with the department of human services, shall create a data collection mechanism regarding persons receiving services pursuant to the treatment program for high-risk pregnant women which shall include the collection of such data as such departments deem appropriate.

Source: L. 2006: Entire article added with relocations, p. 1875, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-508.5 as it existed prior to 2006.

25.5-5-312. Treatment program for high-risk pregnant women - extended coverage - federal approval. The state department shall seek federal approval to continue providing substance abuse treatment services for twelve months following a pregnancy to women who are eligible to receive services under the medical assistance program, who are receiving services pursuant to the treatment program for high-risk pregnant women, and who continue to participate in the treatment program. The state department shall implement the continued services to the extent allowed by the federal government.

Source: L. 2006: Entire article added with relocations, p. 1876, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-508.6 as it existed prior to 2006.

25.5-5-313. Outpatient substance abuse treatment - report of state auditor - amendment to state plan - repeal. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1876, § 7, effective July 1.

Editor's note: (1) This section was similar to former § 26-4-536 as it existed prior to 2006.

(2) Subsection (3) provided for the repeal of this section, effective July 1, 2011. (See L. 2006, p. 1876.)

25.5-5-314. Substance abuse treatment for native Americans - federal approval - repeal. (1) The state department shall request federal approval, conditioned on the receipt of gifts, grants, or donations sufficient to provide for the state's administrative costs of preparing and submitting the request, to include any substance abuse treatment benefits

available to native Americans in which there is one hundred percent federal financial participation.

(2) (a) If sufficient moneys to support the cost of preparing a request for federal approval have not been credited to the native American substance abuse treatment cash fund established in section 25.5-5-315 prior to December 31, 2004, the state treasurer shall immediately provide notification of such fact to the state department and to the revisor of statutes.

(b) This section is repealed upon receipt by the revisor of statutes of the notification described in paragraph (a) of this subsection (2).

Source: L. 2006: Entire article added with relocations, p. 1876, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-422 as it existed prior to 2006.

25.5-5-315. Acceptance of gifts, grants, and donations - native American substance abuse treatment cash fund - repeal. (1) The executive director may accept and expend moneys from gifts, grants, and donations for purposes of providing for the administrative costs of preparing and submitting the request for federal approval to provide substance abuse treatment services to native Americans as provided for in section 25.5-5-314. All such gifts, grants, and donations shall be transmitted to the state treasurer who shall credit the same to the native American substance abuse treatment cash fund, which fund is hereby created. The moneys in the native American substance abuse treatment cash fund shall be subject to annual appropriation by the general assembly. All investment earnings derived from the deposit and investment of moneys in the native American substance abuse treatment cash fund shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(2) (a) If sufficient moneys have not been credited to the native American substance abuse treatment cash fund for the purpose of preparing the request for federal approval required under section 25.5-5-314 prior to December 31, 2004, the state treasurer shall immediately provide notification of such fact to the state department and to the revisor of statutes.

(b) This section is repealed upon receipt by the revisor of statutes of the notification described in paragraph (a) of this subsection (2).

Source: L. 2006: Entire article added with relocations, p. 1876, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-423 as it existed prior to 2006.

25.5-5-316. Legislative declaration - state department - disease management programs authorization - report. (1) The general assembly finds that, because Colorado is faced with rising health care costs and limited resources, it is necessary to seek new ways to ensure the availability of high-quality, cost-efficient care for medicaid recipients. The general assembly further finds that disease management is a patient-focused, integrated approach to providing all components of care with attention to both quality of care and total cost. In addition, the general assembly finds that this approach may include coordination of physician care with pharmaceutical and institutional care. The general assembly further finds that disease management also addresses the various aspects of a disease state, including meeting the needs of persons who have multiple chronic illnesses. The general assembly declares that the improved coordination in disease management helps to provide chronically ill patients with access to the latest advances in treatment and teaches them how to be active participants in their health care through health education, thus reducing total health care costs.

(2) The state department, in consultation with the department of public health and environment, is authorized to develop and implement disease management programs, for fee-for-service and primary care physician program recipients, that are designed to address over- or under-utilization or the inappropriate use of services or prescription drugs and that

may affect the total cost of health care utilization by a particular medicaid recipient with a particular disease or combination of diseases. The disease management programs shall target medicaid recipients who are receiving prescription drugs or services in an amount that exceeds guidelines outlined by the state department. The state department shall not restrict a medicaid recipient's access to the most cost-effective and medically appropriate prescription drugs or services. The state department may contract on a contingency basis for the development or implementation of the disease management programs authorized in this subsection (2).

(3) If the state department implements any disease management programs authorized in subsection (2) of this section, the state department shall report to the joint budget committee of the general assembly an estimate of the fiscal implications generated by the implementation of the disease management programs. Such report shall be made on or before February 1 of the year following the implementation of a disease management program and on or before each February 1 thereafter in which such program is in place.

Source: L. 2006: Entire article added with relocations, p. 1877, § 7, effective July 1.
L. 2008: (2) amended, p. 800, § 2, effective May 14.

Editor's note: This section is similar to former § 26-4-408.5 as it existed prior to 2006.

25.5-5-317. Obesity treatment pilot program - development and implementation - report - repeal. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1878, § 7, effective July 1.

Editor's note: (1) This section was similar to former § 26-4-534 as it existed prior to 2006.

(2) Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2006, p. 1878.)

25.5-5-318. Health services - provision by school districts - repeal. (1) As used in this section:

(a) "School district" means any board of cooperative services established pursuant to article 5 of title 22, C.R.S., any state educational institution that serves students in kindergarten through twelfth grade including, but not limited to, the Colorado school for the deaf and the blind, created in article 80 of title 22, C.R.S., and any public school district organized under the laws of Colorado, except a junior college district.

(b) "Underinsured" means a person who has some health insurance, but whose insurance does not adequately cover the types of health services for which a school district may receive federal matching funds under this section.

(2) (a) Any school district may contract with the state department under this section to receive federal matching funds for amounts spent in providing health services through the public schools to students who are receiving medicaid benefits pursuant to this article and articles 4 and 6 of this title.

(a.5) Repealed.

(b) Approval of contracts under this section does not constitute a commitment by the general assembly to continue providing health services to students through the public schools using state general funds if federal matching funds are not available in the future. Any moneys provided to a school district pursuant to a contract entered into under this section shall not supplant state or local moneys provided to school districts pursuant to the provisions of articles 20 to 28 or article 54 of title 22, C.R.S.

(c) Nothing in this section shall be construed as requiring any school district to enter into a contract as provided in this section. Participation in a contract by a school district is voluntary.

(d) The state department may make contracting and reimbursement of moneys under this section contingent upon either:

(I) The contracting school district certifying to the state department, through the department of education, that it has expended local and state moneys in an amount sufficient to meet the nonfederal share of expenditures being claimed for federal financial participation; or

(II) The contracting school district meeting the requirements of the intergovernmental transfer provisions of the federal medicaid law, 42 U.S.C. sec. 1396 et seq.

(3) Each year, by a date established by rule of the state board, the department of education shall notify the state department concerning any school district that chooses to enter into a contract as provided in this section and the anticipated level of funding for the school district. Nothing in this section shall be construed to require a school district to maintain the same level of funding or services from year to year.

(4) (a) (I) Each school district that chooses to enter into a contract as provided in this section shall develop a services plan with input from the local community that identifies the types of health services needed by students within the school district and the services it anticipates providing. Except for medical emergencies and services related to allegations of child abuse, a student's participation in any psychological, behavioral, social, or emotional services, including counseling or referrals, shall be optional and shall require the prior written and informed consent of a parent or legal guardian of the student.

(II) (A) Any health questionnaire or form related to services funded in part through this section shall only relate to the student's personal health, habits, or conduct and shall not include questions concerning the habits or conduct of any other member of the student's family.

(B) No medical or health data or information identifying the student or the student's family shall be disclosed to any person other than a person specifically authorized to receive the information or data without the prior written and informed consent of a parent or legal guardian of the student.

(b) Each school district that chooses to enter into a contract as provided in this section shall perform an assessment of the health care needs of its uninsured and underinsured students and may spend an appropriate portion, not to exceed thirty percent, of the federal moneys received on health care for low-income students. For purposes of this paragraph (b), "low-income students" means students whose families are below one hundred eighty-five percent of the federal poverty line.

(c) The school district shall submit the services plan to the department of education with a notice of participation for purposes of technical assistance evaluation and to the executive director for approval.

(5) Each year not less than ninety days prior to the notification date established pursuant to subsection (3) of this section, the state department shall provide information through the department of education to school districts regarding the amount of available moneys and the administrative activities required to enter into a contract for federal matching funds for that year. To the extent allowed by existing resources, the department of education shall provide technical assistance to school districts in determining levels of funding, meeting administrative requirements, and developing services plans.

(6) Following the notification date established pursuant to subsection (3) of this section, each contracting school district, through the department of education, shall enter into a contract with the state department specifying the health services to be provided by the school district, the amount to be expended in providing the services, and the amount of federal matching funds for which the school district is eligible under the contract.

(7) The state department is authorized to accept and expend donations, contributions, grants, including federal matching funds, and other moneys that it may receive to finance the costs associated with implementing this section.

(8) (a) Under the contract entered into pursuant to this section, a contracting school district shall receive from the state department all of the federal matching funds for which it is eligible under the contract, less the amount of state administrative costs allowed under paragraph (b) of this subsection (8). All moneys received by a school district pursuant to this section shall be used only to offset costs incurred for provision of student health services by the school district or to cash fund student health services in the school district.

(b) Total allowable state administrative costs for contracts entered into under this section for both the state department and the department of education shall not exceed ten percent of the total annual amount of federal funds reflected by the general assembly for such contracts in the annual general appropriations bill. State administrative costs include costs incurred in evaluating the implementation of this section.

(9) The state board shall specify by rule the types of health services for which a school district may receive federal matching funds under a contract created under this section, including but not limited to:

- (a) Basic primary, physical, dental, and mental health services;
- (b) Rehabilitation services;
- (c) Early and periodic screening, diagnosis, and treatment services; and
- (d) Service coordination, outreach, enrollment, and administrative support.

(10) (a) A school district that provides health services under contract pursuant to this section may provide the health services directly or through contractual relationships or agreements with public or private entities, as allowed by applicable federal regulations. However, no moneys shall be expended in any form for abortions, except as provided in section 25.5-4-415 or as required by federal law.

(b) Where possible, the school district shall coordinate the provision of health services to a student with the student's primary health care provider. Except for those services that are required by an individualized educational program developed pursuant to section 22-20-108 (4), C.R.S., or by a section 504 plan developed pursuant to the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 701 et seq., school districts shall not claim reimbursement under this section for direct services to students enrolled in health maintenance organizations that would normally be provided to students by their health maintenance organization.

(11) (a) The executive director shall apply for and secure any federal waivers and state plan amendments required to implement this section.

(b) This section shall remain in effect only for so long as federal financial participation is available for reimbursements to school districts. In the event, as specified in writing by the attorney general to the governor that federal law does not allow or is amended to disallow reimbursements to school districts or otherwise prevent the implementation of this section, this section is repealed, effective on the date of the attorney general's opinion.

(12) The state department and the department of education shall work with the office of state planning and budgeting and the joint budget committee in implementing this section.

(13) The state department and the department of education shall enter into an inter-agency agreement to provide for the implementation of this section. The state board and the state board of education are authorized to promulgate rules as may be necessary in accordance with the agreement.

(14) The state department shall annually, or more often as necessary, hold a public hearing to receive comments from school districts, state agencies, and interested persons regarding implementation of this section.

(15) On or before December 15, 2002, the state department shall submit a formal evaluation of the implementation of this section to the committees on education and the committees on health and human services of the house of representatives and the senate, or any successor committees.

Source: L. 2006: Entire article added with relocations, p. 1878, § 7, effective July 1.
L. 2009: (2)(a.5) added, (SB 09-264), ch. 204, p. 928, § 6, effective May 1. **L. 2010:** (4)(b) amended, (HB 10-1422), ch. 419, p. 2113, § 147, effective August 11.

Editor's note: (1) This section is similar to former § 26-4-531 as it existed prior to 2006.

(2) Subsection (2)(a.5)(II) provided for the repeal of subsection (2)(a.5), effective July 1, 2011. (See L. 2009, p. 928.)

25.5-5-319. Family planning pilot program - rules - federal waiver - repeal.

(1) There is hereby established a family planning pilot program for the provision of family planning services to categorically eligible individuals who are at or below a percentage of

the federal poverty line established pursuant to the federal waiver sought pursuant to subsection (2) of this section. The state board shall promulgate rules setting forth the family planning services to be provided under the family planning pilot program.

(2) The executive director of the state department, in consultation with the department of public health and environment, shall seek a federal waiver that is cost-neutral to the state general fund for the implementation of the family planning pilot program established pursuant to this section such that ten percent of the family planning services provided to low-income families pursuant to the program as described in subsection (1) of this section would be funded with state general fund moneys and ninety percent would be funded with federal matching funds. In the federal waiver, the executive director shall not seek authority to waive or disregard the provisions of 42 U.S.C. sec. 1396a (a) (23) (B).

(3) (a) Upon issuance of the federal waiver sought pursuant to subsection (2) of this section, the departments of health care policy and financing and public health and environment shall seek the necessary appropriation of general funds through the normal budgetary process for the implementation of this act.

(b) The executive director of the state department is authorized to accept and expend on behalf of the state any funds, grants, gifts, and donations from any private or public source for the purpose of implementing the family planning pilot program established in this section; except that no gift, grant, donation, or funds shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(4) The executive director of the state department, or such executive director's designee, shall prepare a written report for the members of the general assembly concerning the findings of the department based upon the family planning pilot program. Such report shall be provided to the members of the general assembly not more than three years after commencement of the program. The report shall address the number of individuals served, the type of services provided, the cost of the program, and such other information as the executive director deems appropriate.

(5) The implementation of this section is conditioned upon the issuance of any necessary waiver by the federal government and available appropriations pursuant to paragraph (a) of subsection (3) of this section. The provisions of this section shall be implemented to the extent authorized by federal waiver. The pilot program established by this section shall continue for five years from the receipt of the federal waiver or for so long as specified in the federal waiver. The executive director of the state department shall provide written notice to the revisor of statutes of the final termination date of the waiver, and this section shall be repealed, effective July 1 five years after the issuance of the federal waiver or July 1 in the year in which the waiver is terminated, whichever occurs first.

Source: L. 2006: Entire article added with relocations, p. 1882, § 7, effective July 1. L. 2008: (1) and (2) amended, p. 41, § 1, effective March 13. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2113, § 148, effective August 11.

Editor's note: This section is similar to former § 26-4-414.7 as it existed prior to 2006.

25.5-5-320. Telemedicine - reimbursement - disclosure statement. (1) On or after July 1, 2006, in-person contact between a health care or mental health care provider and a patient shall not be required under the state's medical assistance program for health care or mental health care services delivered through telemedicine that are otherwise eligible for reimbursement under the program. The services shall be subject to reimbursement policies developed pursuant to the medical assistance program. This section also applies to managed care organizations that contract with the state department pursuant to the statewide managed care system only to the extent that:

(a) Health care or mental health care services delivered through telemedicine are covered by and reimbursed under the medicaid per diem payment program; and

(b) Managed care contracts with managed care organizations are amended to add coverage of health care or mental health care services delivered through telemedicine and any appropriate per diem rate adjustments are incorporated.

(2) The reimbursement rate for a telemedicine service shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person service. The state department may consider setting the reimbursement rate on a monthly basis as well as on a daily or per-visit basis.

(3) The state department shall establish rates for transmission cost reimbursement for telemedicine services, considering, to the extent applicable, reductions in travel costs by health care or mental health care providers and patients to deliver or to access such services and such other factors as the state department deems relevant.

(4) A health care or mental health care provider who delivers health care or mental health care services through telemedicine shall provide to each patient, before treating that patient through telemedicine for the first time, the following written statements:

(a) That the patient retains the option to refuse the delivery of the services via telemedicine at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) That all applicable confidentiality protections shall apply to the services; and

(c) That the patient shall have access to all medical information resulting from the telemedicine services as provided by applicable law for patient access to his or her medical records.

(5) Subsection (4) of this section shall not apply in an emergency.

Source: L. 2006: Entire section added, p. 1548, § 5, effective July 1. L. 2008: (1), (3), IP(4), and (4)(a) amended, p. 112, § 3, effective August 5.

Editor's note: This section was enacted as § 26-4-421.5 in Senate Bill 06-165. Section 9 of the bill provided for the renumbering of that section. (See L. 2006, p. 1552.)

Cross references: For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 312, Session Laws of Colorado 2006.

25.5-5-321. Telemedicine - home health care - home health telemedicine cash fund - rules. (1) On or after August 11, 2010, at-home telemedicine shall be eligible for reimbursement under the state's medical assistance program. The services delivered through telemedicine shall be subject to reimbursement policies promulgated by rule of the state board after consultation with home health care and home- and community-based services providers. This section also applies to managed care organizations that contract with the state department pursuant to the statewide managed care system, but only to the extent that:

(a) Home health care or home- and community-based services delivered through telemedicine are covered by and reimbursed under the medicaid program; and

(b) Managed care contracts with managed care organizations are amended to add coverage of home health care or home- and community-based services delivered through telemedicine.

(2) The reimbursement rate for home health care or home- and community-based services delivered through telemedicine that are otherwise eligible for reimbursement under the medical assistance program shall be set by rule of the state board and shall be:

(I) In the form of a flat fee in one or more levels, depending on acuity.

(II) (Deleted by amendment, L. 2010, (HB 10-1005), ch. 345, p. 1598, § 1, effective August 11, 2010.)

(b) Any cost savings identified pursuant to this section shall be considered for use in paying for home- and community-based services under part 6 of this article, community-based long-term care, and home health services.

(c) For the first two years after August 11, 2010, gifts, grants, and donations shall be used to implement this section. Gifts, grants, and donations made for this purpose shall be transferred to the home health telemedicine cash fund, which is hereby created in the state treasury. Moneys in the home health telemedicine cash fund shall be appropriated to the state board and used to implement this section. Moneys in the fund shall remain in the fund

and not be transferred to the general fund at the end of any fiscal year. After two years or if the moneys in the cash fund are depleted, the department is authorized to go through the normal budget process to continue implementation of this section.

(3) Reimbursement shall not be provided for purchase or lease of telemedicine equipment.

(4) (a) A home health care or home- and community-based services provider who delivers services through telemedicine shall provide to each patient, before treating that patient through telemedicine for the first time, the following written statements:

(I) That the patient retains the option to refuse the delivery of home health care or home- and community-based services via telemedicine at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(II) That all applicable confidentiality protections shall apply to the services; and

(III) That the patient shall have access to all medical information resulting from the telemedicine services as provided by applicable law for patient access to his or her medical records.

(b) The provisions of paragraph (a) of this subsection (4) shall not apply in an emergency.

(5) Nothing in this section shall be construed to:

(a) Alter the scope of practice of any home health care or home- and community-based services provider; or

(b) Authorize the delivery of home health care or home- and community-based services in a setting or manner not otherwise authorized by law.

Source: L. 2007: Entire section added, p. 1182, § 2, effective January 1, 2008. **L. 2010:** (1), (2), and (3) amended, (HB 10-1005), ch. 345, p. 1598, § 1, effective August 11.

25.5-5-322. Over-the-counter medications - rules. (1) (a) Subject to approval through the state budget process in paragraph (b) of this subsection (1), the state board shall adopt by rule a system to allow pharmacies to be reimbursed for providing certain over-the-counter medications to recipients if prescribed by a licensed practitioner authorized to prescribe prescription drugs or, subject to the limitations contained in subsection (2) of this section, a licensed pharmacist. Over-the-counter medications subject to reimbursement pursuant to this section shall be identified through the drug utilization review process established in section 25.5-5-506, and shall be limited to medications that, if reimbursed, shall result in overall cost savings to the state.

(b) After the list of over-the-counter medications is identified pursuant to paragraph (a) of this subsection (1), the state department shall request, through the state budget process, that the reimbursements be implemented. The state department shall report to the joint budget committee annually concerning the amount of any savings realized from the reimbursements.

(2) (a) The state board, in consultation with the state board of pharmacy created pursuant to section 12-42.5-103, C.R.S., shall establish by rule standards for when a licensed pharmacist may prescribe over-the-counter medications as provided under this section for purposes of receiving reimbursement under the medical assistance program.

(b) When prescribing over-the-counter medications under this section, a licensed pharmacist shall consult with the recipient to determine necessity, provide drug counseling, review drug therapy for potential adverse interactions, and make referrals as needed to other health care professionals.

Source: L. 2010: Entire section added, (SB 10-117), ch. 227, p. 985, § 2, effective July 1. **L. 2012:** (2)(a) amended, (HB 12-1311), ch. 281, p. 1628, § 75, effective July 1.

PART 4

STATEWIDE MANAGED CARE SYSTEM

25.5-5-401. Short title. This part 4 shall be known and may be cited as the "Statewide Managed Care System".

Source: L. 2006: Entire article added with relocations, p. 1883, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-111 as it existed prior to 2006.

25.5-5-402. Statewide managed care system. (1) The state board shall adopt rules to implement a managed care system for Colorado medical assistance clients pursuant to the provisions of this article and articles 4 and 6 of this title. The statewide managed care system shall be implemented to the extent possible.

(2) The managed care system implemented pursuant to this article shall not include:

(a) The services delivered under the residential child health care program described in section 25.5-5-306, except in those counties in which there is a written agreement between the county department of social services, the designated and contracted behavioral health organization selected pursuant to section 25.5-5-411, and the state department;

(b) Long-term care services and the program of all-inclusive care for the elderly, as described in section 25.5-5-412. For purposes of this subsection (2), "long-term care services" means nursing facilities and home- and community-based services provided to eligible clients who have been determined to be in need of such services pursuant to the "Colorado Medical Assistance Act" and the state board's rules.

(3) **Bidding.** The state department is authorized to institute a program for competitive bidding pursuant to section 24-103-202 or 24-103-203, C.R.S., for managed care entities seeking to provide medical services for medicaid clients eligible to be enrolled in managed care. The state department is authorized to award contracts to more than one offeror. The state department procedures shall seek to use competitive bidding procedures to maximize the number of managed care choices available to medicaid clients over the long term that meet the requirements of sections 25.5-5-404 and 25.5-5-406.

(4) **Waivers.** The implementation of this part 4 is conditioned, to the extent applicable, on the issuance of necessary waivers by the federal government. The provisions of this part 4 shall be implemented to the extent authorized by federal waiver, if so required by federal law.

(5) **Graduate medical education.** The state department shall continue the graduate medical education, referred to in this subsection (5) as "GME", funding to teaching hospitals that have graduate medical education expenses in their medicare cost report and are participating as providers under one or more MCEs with a contract with the state department under this part 4. GME funding for recipients enrolled in an MCE shall be excluded from the premiums paid to the MCE and shall be paid directly to the teaching hospital. The state board shall adopt rules to implement this subsection (5) and establish the rate and method of reimbursement.

(6) (a) For requests for proposals occurring on and after January 1, 2015, the state department shall allow for payment proposals that include, but need not be limited to, global payment, risk adjustment, risk sharing, and aligned payment incentives, including, but not limited to, gainsharing, for health benefits and services provided to medical assistance clients pursuant to sections 25.5-5-404 (1) (k) and (1) (l), 25.5-5-406 (2), and paragraph (b) of subsection (2) of this section.

(b) The state department shall have the discretion to determine which proposals satisfy the request for proposal, including:

(I) Whether the proposals are appropriate for the state's coordinated care system; and

(II) The state department's ability to ensure inpatient and outpatient hospital reimbursements are maximized up to the upper limits, as defined in 42 CFR 447.272 and 42 CFR 447.321 and calculated by the state department periodically.

(c) The state department may seek any federal waiver necessary to ensure that the effect of the request for proposals does not adversely impact upper payment limits and considerations shall include, but are not limited to, the establishment of an uncompensated care cost pool or a hospital incentive program.

Source: L. 2006: Entire article added with relocations, p. 1883, § 7, effective July 1. L. 2008: (3) and (5) amended, p. 390, § 1, effective August 5. L. 2012: (6) added, (HB 12-1281), ch. 246, p. 1187, § 3, effective June 4.

Editor's note: This section is similar to former § 26-4-113 as it existed prior to 2006.

25.5-5-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “Behavioral health organization”, referred to in this part 4 as a “BHO”, means an entity contracting with the state department to provide only behavioral health services.

(2) “Essential community provider”, referred to in this part 4 as an “ECP”, means a health care provider that:

(a) Has historically served medically needy or medically indigent patients and that demonstrates a commitment to serve low-income and medically indigent populations who comprise a significant portion of its patient population or, in the case of a sole community provider, serves the medically indigent patients within its medical capability; and

(b) Waives charges or charges for services on a sliding scale based on income and does not restrict access or services because of a client’s financial limitations.

(2.5) “Global payment” means a population-based payment mechanism that is constructed on a per-member, per-month calculation. Global payments shall account for prospective local community or health system cost trends and value, as measured by quality and satisfaction metrics, and shall incorporate community cost experience and reported encounter data to the greatest extent possible to address regional variation and improve longitudinal performance. Risk adjustments, risk-sharing, and aligned payment incentives may be utilized to achieve performance improvement. The rate calculations for global payment are exempt from the provisions of section 25.5-5-408. An entity that uses global payment pursuant to section 25.5-5-404 shall meet the applicable financial solvency requirements of section 25.5-5-404 (1) (k) and (1) (l), and the essential community provider requirements of section 25.5-5-404 (2) and (3).

(3) (a) “Managed care” means:

(I) A predefined set of services to recipients delivered by a managed care entity as defined in subsection (4) of this section; or

(II) The delivery of services provided by the primary care physician program established in section 25.5-5-407, which is a primary care case manager as defined in subsection (8) of this section.

(III) (Deleted by amendment, L. 2008, p. 390, § 2, effective August 5, 2008.)

(b) Nothing in this section shall be deemed to affect the benefits authorized for recipients of the state medical assistance program.

(4) “Managed care entity”, referred to in this part 4 as an “MCE”, means an entity that enters into a contract to provide services in a managed care system, including managed care organizations, prepaid inpatient health plans, and prepaid ambulatory health plans but excluding primary care case managers, as defined in subsection (8) of this section.

(5) “Managed care organization”, referred to in this part 4 as an “MCO”, means an entity contracting with the state department that meets the definition of managed care organization as defined in 42 CFR 438.2.

(6) “Prepaid ambulatory health plan”, referred to in this part 4 as a “PAHP”, means an entity contracting with the state department that meets the definition of prepaid ambulatory health plan as defined in 42 CFR 438.2.

(7) “Prepaid inpatient health plan”, referred to in this part 4 as “PIHP”, means an entity contracting with the state department that meets the definition of prepaid inpatient health plan as defined in 42 CFR 438.2.

(8) “Primary care case manager”, referred to in this part 4 as a “PCCM”, means an entity contracting with the state department that meets the definition of primary care case manager as defined in 42 CFR 438.2.

Source: L. 2006: Entire article added with relocations, p. 1884, § 7, effective July 1. L. 2007: (1)(a) amended, p. 1354, § 3, effective May 29. L. 2008: Entire section amended, p. 390, § 2, effective August 5. L. 2012: (2.5) added, (HB 12-1281), ch. 246, p. 1187, § 4, effective June 4.

Editor’s note: This section is similar to former § 26-4-114 as it existed prior to 2006.

25.5-5-404. Selection of managed care entities. (1) In addition to any other criteria specified in rule by the state board, in order to participate in the managed care system, the MCE shall comply with specific criteria that include, but are not limited to, the following:

(a) The MCE shall not interfere with appropriate medical care decisions rendered by the provider nor penalize the provider for requesting medical services outside the standard treatment protocols developed by the MCE or its contractors.

(b) The MCE shall make or ensure payments to providers within the time allowed for the state to make payments on state liabilities under the rules adopted by the department of personnel pursuant to section 24-30-202 (13), C.R.S.

(c) The MCE shall have an educational component in its plan that takes into consideration recipient input and that informs recipients as to availability and use of the medical services system, appropriate preventive health care procedures, self-care, and appropriate health care utilization.

(d) The MCE shall provide the minimum benefit requirements as established by the state board.

(e) The MCE shall provide necessary and appropriate services to recipients that shall include but not be limited to the following:

(I) With respect to recipients who are unable to make decisions for themselves, the MCE and all relevant providers in the MCE's network serving the recipients shall collaborate with the designated advocate or family member in all decision-making, including enrollment and disenrollment.

(II) The MCE shall deliver services that are covered benefits in a manner that accommodates or is compatible with the recipient's ability to fulfill duties and responsibilities in work and community activities.

(f) The MCE shall provide appropriate use of ancillary health care providers by appropriate qualified health care professionals.

(g) The MCE shall comply with all data collection and reporting requirements established by the state department.

(h) The MCE shall, to the extent provided by law or waiver, provide recipient benefits that the state board shall develop and the state department shall implement in partnership with local government and the private sector, including but not limited to:

(I) Recipient options to rent, purchase, or own durable medical equipment; or

(II) (Deleted by amendment, L. 2008, p. 392, § 3, effective August 5, 2008.)

(III) Receipt of medical disposable supplies without charge.

(i) The MCE shall comply with utilization requirements established by the state department.

(j) The MCE shall develop and utilize a form or process for measuring group and individual recipient health outcomes, including but not limited to the use of tools or methods that identify increased health status or maintenance of the individual's highest level of functioning, determine the degree of medical access, and reveal recipient satisfaction and habits. Such tools shall include the use of client surveys, anecdotal information, complaint and grievance data, and disenrollment information. The MCE shall annually submit a care management report to the state department that describes techniques used by the MCE to provide more efficient use of health care services, better health status for populations served, and better health outcomes for individuals.

(k) Except as provided in paragraph (m) of this subsection (1), for capitation payments effective on and after July 1, 2003, an MCE that is contracting for a defined scope of services under a risk contract shall certify the financial stability of the MCE pursuant to criteria established by the division of insurance and shall certify, as a condition of entering into a contract with the state department, that the capitation payments set forth in the contract between the MCE and the state department are sufficient to ensure the financial stability of the MCE with respect to delivery of services to the medicaid recipients covered in the contract.

(l) Except as provided in paragraph (m) of this subsection (1), for capitation payments effective on and after July 1, 2003, an MCE that is contracting for a defined scope of services under a risk contract shall certify, through a qualified actuary retained by the MCE, that the capitation payments set forth in the contract between the MCE and the state department comply with all applicable federal and state requirements that govern said capitation payments. For purposes of this paragraph (l), a "qualified actuary" means a person deemed as such by rule promulgated by the commissioner of insurance.

(m) An MCO providing services under the PACE program as described in section 25.5-5-412 shall certify that the capitation payments are in compliance with applicable federal and state requirements that govern said capitation payments and that the capitation payments are sufficient to ensure the financial viability of the MCO with respect to the delivery of services to the PACE program participants covered in the contract.

(n) The MCE shall ensure, to the extent that voluntary enrollment into the MCE is possible, that the MCE has not provided to a recipient any premiums or other inducements in exchange for the recipient selecting the MCE for coverage.

(o) The MCE has established a grievance procedure pursuant to the provisions in section 25.5-5-406 (1) (b) that allows for the timely resolution of disputes regarding the quality of care, services to be provided, and other issues raised by the recipient. Matters shall be resolved in a manner consistent with the medical needs of the individual recipient. The MCE shall notify all recipients involved in a dispute with the MCE of their right to seek an administrative review of an adverse decision made by the MCE pursuant to section 25.5-1-107.

(p) With respect to pregnant women and infants, the MCE shall comply with the following:

(I) With the exception of BHOs, enrollment of pregnant women without restrictions and including an assurance that the health care provider shall provide timely access to initiation of prenatal care in accordance with practice standards;

(II) With the exception of BHOs, coverage without restrictions for newborns, including all services such as, but not limited to, preventive care, screening, and well-baby examinations during the first month of life;

(III) With the exception of BHOs, the imposition of performance standards and the use of quality indicators with respect to perinatal, prenatal, and postpartum care for women and birthing and neonatal care for infants. The standards and indicators shall be based on nationally approved guidelines.

(IV) With the exception of BHOs, follow-up basic health maintenance services for women and children, including immunizations and early periodic screening, diagnosis, and treatment services for children and appropriate preventive care services for women.

(q) The MCE shall accept all enrollees regardless of health status.

(r) The MCE shall comply with disclosure requirements as established by the state department and the state board.

(s) The MCE shall provide a mechanism whereby a prescribing physician can request to override restrictions to obtain medically necessary, off-formulary prescription drugs, supplies, equipment, or services for his or her patient.

(t) The MCE shall maintain a network of providers sufficient to ensure that all services to recipients will be accessible without unreasonable delay. The state department shall develop explicit contract standards, in consultation with stakeholders, to assess and monitor the MCE's criteria. Sufficiency shall be determined in accordance with the requirements of this paragraph (t) and may be established by reference to any reasonable criteria used by the MCE, including but not limited to the following:

(I) Geographic accessibility in regard to the special needs of recipients;

(II) Waiting times for appointments with participating providers;

(III) Hours of operation;

(IV) Volume of technological and specialty services available to serve the needs of recipients requiring technologically advanced or specialty care.

(u) (I) For the delivery of prescription drug benefits to recipients enrolled in an MCE who are residents of a nursing facility, MCEs that provide prescription drug benefit services shall use pharmacies with a demonstrated capability of providing prescription drugs in a manner consistent with the needs of clients in institutional settings such as nursing facilities. In cases where a nursing facility and a pharmacy have a contract for a single pharmacy delivery system for residents of the nursing facility:

(A) An MCE providing prescription drug benefits for residents of the nursing facility shall agree to contract with that pharmacy under reasonable contract terms; and

(B) The pharmacy shall agree to contract with each MCE that provides prescription drug benefits for residents of the nursing facility under reasonable contract terms.

(II) Any disputes concerning providing prescription drug benefits between nursing facilities, pharmacies, and MCEs that cannot be resolved through good faith negotiations may be resolved through a party requesting an informal review by the state department.

(III) The state board shall adopt rules requiring MCEs that provide prescription drug benefit services to contract with qualified pharmacy providers in a manner permitting a nursing facility to continue to comply with federal medicaid requirements of participation for nursing facilities. Such rules shall define “qualified pharmacy providers” and shall be based upon consultations with nursing facilities, MCEs, pharmacies, and medicaid clients. The state department shall provide MCEs with a list of pharmacies that have a contract with nursing facilities serving recipients in nursing facilities in each county in which the MCE is contracting with the state department.

(2) The MCE shall seek proposals from each ECP in a county in which the MCE is enrolling recipients for those services that the MCE provides or intends to provide and that an ECP provides or is capable of providing. To assist MCEs in seeking proposals, the state department shall provide MCEs with a list of ECPs in each county. The MCE shall consider such proposals in good faith and shall, when deemed reasonable by the MCE based on the needs of its enrollees, contract with ECPs. Each ECP shall be willing to negotiate on reasonably equitable terms with each MCE. ECPs making proposals under this subsection (2) must be able to meet the contractual requirements of the MCE. The requirements of this subsection (2) shall not apply to an MCE in areas in which the MCE operates entirely as a group model health maintenance organization.

(3) In selecting MCEs, the state department shall not penalize an MCE for paying cost-based reimbursement to federally qualified health centers as defined in the “Social Security Act”.

(4) (a) Notwithstanding any waivers authorized by the federal department of health and human services, or any successor agency, each contract between the state department and an MCE selected to participate in the statewide managed care system under this part 4 shall comply with the requirements of 42 U.S.C. sec. 1396a (a) (23) (B).

(b) Each MCE shall advise its enrollees of the services available pursuant to this subsection (4).

(5) Nothing in this part 4 shall be construed to create an exemption from the applicable provisions of title 10, C.R.S.

(6) Nothing in this part 4 shall be construed to create an entitlement to an MCE to contract with the state department.

Source: L. 2006: Entire article added with relocations, p. 1885, § 7, effective July 1.
L. 2008: Entire section amended, p. 392, § 3, effective August 5.

Editor’s note: This section is similar to former § 26-4-115 as it existed prior to 2006.

Cross references: For the definition of “federally qualified health centers” in the federal Social Security Act, see 42 U.S.C. 1395x.

25.5-5-405. Quality measurements. (1) The state department shall measure quality pursuant to the following criteria:

(a) Quality shall be measured and considered based upon individuals and groups with the satisfaction of the service received analyzed and compared to nonrecipient populations for the same or similar services when available.

(b) Quality shall focus on health status or maintenance of the individual’s highest level of functioning, without strict adherence to statistical norms.

(2) The state board shall promulgate rules to clarify and administer quality measurements.

Source: L. 2006: Entire article added with relocations, p. 1889, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-116 as it existed prior to 2006.

25.5-5-406. Required features of managed care system. (1) **General features.** All medicaid managed care programs shall contain the following general features, in addition to others that the state department and the state board consider necessary for the effective and cost-efficient operation of those programs:

(a) **Recipient selection of MCEs.** (I) The state department shall, to the extent it determines feasible, provide medicaid-eligible recipients a choice among competing MCEs. MCEs shall provide enrollees a choice among providers within the MCE. Consistent with federal requirements and rules promulgated by the state board, the state department is authorized to assign a medicaid recipient to a particular MCE or PCCM if:

(A) The state department determines that no other MCE or PCCM has the capacity or expertise necessary to serve the recipient; or

(B) A recipient does not respond within thirty days after the date of a notification of a request for selection of an MCE or PCCM.

(II) The state department shall inform recipients of the choices available in their area by appropriate sources of information and counseling. This may include an independent, objective facilitator acting under the supervision of the state department. The state department may contract for the facilitator through a competitive bidding process. This function shall ensure that consumers have informed choice among available options to assure the fullest possible voluntary participation in managed care. The state department, in conjunction with the state board, shall adopt rules setting forth minimum disclosure requirements for all MCEs and PCCMs. Once a recipient is enrolled in an MCE or PCCM, the recipient may not change to a different MCE or PCCM for a period of twelve months; except that the recipient may disenroll without good cause during the first ninety days of enrollment or any time thereafter for good cause as determined by the state department. Good cause shall include, but need not be limited to, administrative error and an MCE's or PCCM's inability to provide its covered services to a recipient after reasonable efforts on the part of the MCE or PCCM and the recipient, as defined by the state board. Based upon its assessment of any special needs of recipients with cognitive disabilities, the state board may adopt rules relating to any necessary good cause provisions for recipients with cognitive disabilities who are assigned to a particular MCE or PCCM pursuant to subparagraph (I) of this paragraph (a).

(III) When eligible consumers choose to change or disenroll from their selected MCE or PCCM, the state department shall monitor and gather data about the reasons for disenrolling, including denial of enrollment or disenrollment due to an act or omission of an MCE or PCCM. The state department shall analyze this data and provide feedback to the plans or providers and shall use the information in the state department's contracting and quality assurance efforts. Persons who have been denied enrollment or have disenrolled due to an act or omission of an MCE or PCCM may seek review by an independent hearing officer, as provided for and required under federal law and any state statute or rule.

(b) **Complaints and grievances.** Each MCE or PCCM shall utilize a complaint and grievance procedure and a process for expedited reviews that comply with rules established by the state board. The complaint and grievance procedure shall provide a means by which enrollees may complain about or grieve any action or failure to act that impacts an enrollee's access to, satisfaction with, or the quality of health care services, treatments, or providers. The state department shall establish the position of ombudsman for medicaid managed care. It is the intent of the general assembly that the ombudsman for medicaid managed care be independent from the state department and selected through a competitive bidding process. In the event the state department is unable to contract with an independent ombudsman, an employee of the state department may serve as the ombudsman for medicaid managed care. The ombudsman shall, if the enrollee requests, act as the enrollee's representative in resolving complaints and grievances with the MCE or PCCM. The process for expedited reviews shall provide a means by which an enrollee may complain and seek resolution concerning any action or failure to act in an emergency situation that immediately impacts the enrollee's access to quality health care services, treatments, or providers. An enrollee shall be entitled to designate a representative, including but not limited to an attorney, the ombudsman for medicaid managed care, a lay advocate, or the enrollee's physician, to file and pursue a grievance or expedited review on behalf of the enrollee. The

procedure shall allow for the unencumbered participation of physicians. An enrollee whose complaint or grievance is not resolved to his or her satisfaction by a procedure described in this paragraph (b) or who chooses to forego a procedure described in this paragraph (b) shall be entitled to request a second-level review by an independent hearing officer, further judicial review, or both, as provided for by federal law and any state statute or rule. The state department may also provide by rule for arbitration as an optional alternative to the complaint and grievance procedure set forth in this paragraph (b) to the extent that such rules do not violate any other state or federal statutory or constitutional requirements.

(c) **Billing medicaid recipients.** Notwithstanding any federal regulations or the general prohibition of section 25.5-4-301 against providers billing medicaid recipients, a provider may bill a medicaid recipient who is enrolled with a specific medicaid PCCM or MCE and, in circumstances defined by the rules of the state board, receives care from a medical provider outside that organization's network or without referral by the recipient's PCCM.

(d) **Marketing.** In marketing coverage to medicaid recipients, all MCEs shall comply with all applicable provisions of title 10, C.R.S., regarding health plan marketing. The state board is authorized to promulgate rules concerning the permissible marketing of medicaid managed care. The purposes of such rules shall include but not be limited to the avoidance of biased selection among the choices available to medicaid recipients.

(e) **Prescription drugs.** All MCEs that have prescription drugs as a covered benefit shall provide prescription drug coverage in accordance with the provisions of section 25.5-5-202 (1) (a) as part of a comprehensive health benefit and with respect to any formulary or other access restrictions:

(I) The MCE shall supply participating providers who may prescribe prescription drugs for MCE enrollees with a current copy of such formulary or other access restrictions, including information about coverage, payment, or any requirement for prior authorization; and

(II) The MCE shall provide to all medicaid recipients at periodic intervals, and prior to and during enrollment upon request, clear and concise information about the prescription drug program in language understandable to the medicaid recipients, including information about such formulary or other access restrictions and procedures for gaining access to prescription drugs, including off-formulary products.

(f) **Access to prescription drugs.** (I) The state department shall encourage an MCE to solicit competitive bids for the prescription drug benefit and discourage an MCE that has prescription drugs as a covered benefit from contracting for the prescription drug benefit with a sole source provider as much as possible. The state department's reports required by section 25.5-5-410 shall include a summary of each MCE's pharmacy network by geographic catchment area.

(II) If an MCE solicits competitive bids for the prescription drug benefit, the MCE shall request bids from each pharmacy provider located in the geographic areas in which the MCE is soliciting bids. All MCEs shall follow a reasonable standard for recipient access to prescription drugs. At a minimum, the state department shall verify compliance with these requirements by reviewing evidence provided by the commissioner of insurance concerning compliance with any standards or guidance established by the commissioner of insurance for consumer access to prescription drugs.

(III) The standards and guidance from the insurance commissioner shall be based on the following:

(A) Procedures that an MCE shall follow to ensure that pharmacies in rural communities with fewer than twenty-five thousand persons have the opportunity to join retail prescription drug networks if they agree to reasonable contract terms;

(B) Procedures that an MCE shall follow to notify the pharmacy community of competitively bid prescription drug contracts;

(C) Procedures that an MCE shall follow to give all pharmacies and pharmacy networks a fair opportunity to participate in prescription drug contracts;

(D) Any related matters that are designed to expand consumer access to pharmacy services; and

(E) Any related matters that will enhance the functioning of the free market system with respect to pharmacies.

(IV) Nothing in this paragraph (f) shall apply to the delivery of prescription drug benefits to recipients enrolled in an MCE who are residents of a nursing facility or to the delivery of medicare part D prescription drugs to recipients who are eligible for such drugs.

(g) **Continuity of care.** (I) New enrollees, with special needs as defined by the state board and as certified by a non-plan physician, may continue to see a non-plan provider for sixty days from the date of enrollment in an MCE, if the enrollee is in an ongoing course of treatment with the previous provider and only if the previous provider agrees:

(A) To accept reimbursement from the MCE as payment in full at rates established by the MCE that shall be no more than the level of reimbursement applicable to similar providers within the MCE's group or network for such services;

(B) To adhere to the MCE's quality assurance requirements and to provide to the MCE necessary medical information related to such care; and

(C) To otherwise adhere to the MCE's policies and procedures including but not limited to procedures regarding referrals, obtaining pre-authorizations, and MCE-approved treatment plans.

(II) New enrollees who are in their second or third trimester of pregnancy may continue to see their practitioner until the completion of postpartum care directly related to the delivery only if the practitioner agrees:

(A) To accept reimbursement from the MCE as payment in full at rates established by the MCE that shall be no more than the level of reimbursement applicable to similar providers within the MCE's group or network for such services;

(B) To adhere to the MCE's quality assurance requirements and to provide to the MCE necessary medical information related to such care; and

(C) To otherwise adhere to the MCE's policies and procedures including but not limited to procedures regarding referrals, obtaining pre-authorizations, and MCE-approved treatment plans.

(III) New enrollees with special needs as defined by the state department may continue to see ancillary providers at the level of care received prior to enrollment for a period of up to seventy-five days. The terms and conditions, including reimbursement rates, shall remain the same as prior to enrollment if the provider and enrollee agree to work in good faith with the MCE toward a transition.

(IV) This paragraph (g) shall not be construed to require an MCE to provide coverage for benefits not otherwise covered.

(2) (a) After January 1, 2015, the state department shall open for competitive bid the state department's medicaid coordinated care system within regions of the state. Before issuing a request for proposal, the state department shall analyze the regions of the state to determine the appropriate number of care coordination regions that should be created. Further, before issuing a request for proposal, the state department shall also analyze the appropriate number of care coordination contracts in each region of the state.

(b) Nothing in this subsection (2) shall delay the implementation of the medicaid payment reform and innovation pilot program created in section 25.5-5-415.

Source: L. 2006: Entire article added with relocations, p. 1889, § 7, effective July 1. **L. 2008:** Entire section amended, p. 396, § 4, effective August 5. **L. 2012:** (2) amended, (HB 12-1281), ch. 246, p. 1187, § 5, effective June 4.

Editor's note: This section is similar to former § 26-4-117 as it existed prior to 2006.

25.5-5-407. State department recommendations - primary care physician program. (1) The primary care physician program requires medicaid recipients to select a primary care physician who is solely authorized to provide primary care and referral to all necessary specialty services. To encourage low-cost and accessible care, the state department is authorized to utilize the primary care physician program to deliver services to appropriate medicaid recipients.

(2) The state department shall establish procedures and criteria for the cost-effective operation of the primary care physician program, including but not limited to such matters as appropriate eligibility criteria and geographic areas served by the programs.

Source: L. 2006: Entire article added with relocations, p. 1893, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-118 as it existed prior to 2006.

25.5-5-407.5. Prepaid inpatient health plan agreements - rules. (1) Subject to the receipt of any required federal authorizations, pursuant to the requirements of this section, the state department may enter into prepaid inpatient health plan agreements, referred to in this section as a "PIHP agreement", with an entity that:

(a) Provides medical services to enrollees on the basis of prepaid capitation payments, or other payment arrangements that do not use payment rates contained in the state plan; and

(b) Provides, arranges for, or otherwise has responsibility for the provision of any inpatient hospital or institutional services for its enrollees.

(1.5) Repealed.

(2) (a) A PIHP agreement may include a provision for a quality incentive payment that is distributed to the contractor within six months following the end of each fiscal year if the contractor substantially exceeds predetermined quality indicators. The quality indicators shall be based upon broadly accepted measures of performance adopted by rule of the state board and agreed upon at the outset of the contract period, and shall include, but need not be limited to, the health plan employers data and information set measures. The quality incentive payment may be made proportional if the state board establishes multiple quality measurements. The quality incentive payments shall not exceed the total cost savings created under the PIHP agreement, as determined by comparison of the PIHP members with an actuarially equivalent fee-for-service population, and the quality incentive payment shall not exceed five percent of the total medicaid payments received by the contractor during the performance period of the PIHP agreement.

(b) (I) Except as provided for in subparagraph (II) of this paragraph (b), the contractor shall distribute at least seventy-five percent of the incentive payment to providers with which it has contracted to serve medicaid recipients.

(II) Subparagraph (I) of this paragraph (b) shall not apply to a contractor that has an exclusive contract with a single medical group in a specific geographic area to provide or arrange for health care services for its members, such as a multi-specialty group model. Such a contractor shall negotiate the distribution of the qualified incentive payment with the medical group.

(3) Subject to the approval of the state board, a PIHP agreement may also provide for an increase in the fee paid to the contractor in an amount reasonably calculated to cover the costs of collecting and maintaining the medical records of recipients through an electronic medical records system.

(4) Nothing in this section shall prevent, to the extent possible, a government-owned entity from using certified public expenditure or other federally recognized financing mechanisms to provide the state share for the federal match to enhance capitation payments up to or above the one hundred percent limit contained in section 25.5-5-408 (9). The state shall not be obligated to increase any general fund expenditures because of the use of certified public expenditure or other federally recognized financing mechanism pursuant to this subsection (4).

Source: L. 2007: Entire section added, p. 1351, § 1, effective May 29. **L. 2009:** (1.5) added, (SB 09-265), ch. 205, p. 936, § 3, effective May 1. **L. 2010:** (1.5) repealed, (HB 10-1382), ch. 217, p. 939, § 2, effective May 6.

25.5-5-407.7. Disability care coordination organization - rules. Subject to the receipt of any required federal authorizations, the state department may enter into an agreement for the provision of care to recipients with a disability with a disability care coordination organization identified as the nonprofit organization in section 25.5-6-111.

Source: L. 2007: Entire section added, p. 1352, § 1, effective May 29. **L. 2008:** Entire section amended, p. 1909, § 109, effective August 5.

25.5-5-408. Capitation payments - availability of base data - adjustments - rate calculation - capitation payment proposal - preference - assignment of medicaid recipients. (1) (a) (I) The state department shall make capitation payments to MCEs based upon a defined scope of services under a risk contract.

(II) Repealed.

(b) A certification by a qualified actuary retained by the state department shall be conclusive evidence that the state department has correctly calculated the direct health care cost of providing these same services on an actuarially equivalent Colorado medicaid population group consisting of unassigned recipients and recipients in the primary care physician program provided in section 25.5-5-407.

(c) Except as otherwise provided in paragraph (d) of this subsection (1) and where the state department has instituted a program of competitive bidding provided in section 25.5-5-402 (3), the state department may utilize a market rate set through the competitive bid process for a set of defined services. The state department shall only use market rate bids that do not discriminate and are adequate to assure quality and network sufficiency. A certification of a qualified actuary, retained by the state department, to the appropriate lower limit shall be conclusive evidence of the state department's compliance with the requirements of this paragraph (c). For the purposes of this subsection (1), a "qualified actuary" shall be a person deemed as such under rules promulgated by the commissioner of insurance.

(d) A federally qualified health center, as defined in the federal "Social Security Act", shall be reimbursed by the state department for the total reasonable costs incurred by the center in providing health care services to all recipients of medical assistance.

(2) The state department shall develop capitation rates for MCEs contracting for a defined scope of services under a risk contract that include risk adjustments, reinsurance, or stop-loss funding methods. Payments to plans may vary when it is shown through diagnoses or other relevant data that certain populations are expected to cost more or less than the capitated population as a whole.

(3) The state board, in consultation with recognized medical authorities, shall develop a definition of special needs populations that includes evidence of diagnosed or medically confirmed health conditions. The state department shall develop a method for adjusting payments to plans for such special needs populations when diagnoses or other relevant data indicates these special needs populations would cost significantly more than similarly capitated populations.

(4) Under no circumstances shall the risk adjustments, reinsurance, or stop-loss methods developed by the state department pursuant to subsection (2) of this section cause the average per capita medicaid payment to a plan to be greater than the projected medicaid expenditures for treating medicaid enrollees of that plan under fee-for-service medicaid.

(5) The state department may develop quality incentive payments to recognize superior quality of care or service provided by a managed care plan.

(6) Within thirty days from the beginning of each fiscal year, the state department, in cooperation with the MCEs, shall set a timeline for the rate-setting process for the following fiscal year's rates and for the provision of base data to the MCEs that is used in the calculation of the rates, which shall include but not be limited to the information included in subsection (7) of this section.

(7) The state department shall identify and make available to the MCEs the base data used in the calculation of the direct health care cost of providing these same services on an actuarially equivalent Colorado medicaid population group consisting of unassigned recipients and recipients in the primary care physician program provided in section 25.5-5-407. The state department shall consult with the MCEs regarding any and all adjustments in the base data made to arrive at the capitation payments.

(8) For capitation payments effective on and after July 1, 2003, the state department shall recalculate the base calculation every three years. The three-year cycle for the recalculation of the base calculation shall begin with capitation payments effective for fiscal year 2003-04. In the years in which the base calculation is not recalculated, the state department shall annually trend the base calculation after consulting with the MCEs. The

state department shall take into consideration when trending the base calculation any public policy changes that affect reimbursement under the "Colorado Medical Assistance Act".

(9) The rate-setting process referenced in subsection (6) of this section shall include a time period after the MCEs have received the direct health care cost of providing these same services on an actuarially equivalent Colorado medicaid population group consisting of unassigned recipients and recipients in the primary care physician program provided in section 25.5-5-407, for each MCE to submit to the state department the MCE's capitation payment proposal, which shall not exceed one hundred percent of the direct health care cost of providing these same services on an actuarially equivalent Colorado medicaid population group consisting of unassigned recipients and recipients in the primary care physician program provided in section 25.5-5-407. The state department shall provide to the MCEs the MCE's specific adjustments to be included in the calculation of the MCE's proposal. Each MCE's capitation payment proposal shall meet the requirements of section 25.5-5-404 (1) (k) and (1) (l).

(10) For capitation payments effective on and after July 1, 2003, unless otherwise required by federal law, the state department shall certify, through a qualified actuary retained by the state department, that the capitation payments set forth in the contract between the state department and the MCEs comply with all applicable federal and state requirements that govern said capitation payments.

(11) Effective on and after July 1, 2003, the capitation payments certified by the qualified actuary under subsection (10) of this section shall not be subject to any dispute resolution process, including any such process set forth in any settlement agreement entered into prior to July 1, 2002.

(12) Nothing in this section shall prevent, to the extent possible, an MCE that is also a government-owned entity from using certified public expenditure or other federally recognized financing mechanisms to provide the state share for the federal match to enhance capitation payments up to or above the one hundred percent limit contained in subsection (9) of this section. The state shall not be obligated to increase any general fund expenditures because of the use of certified public expenditure or other federally recognized financing mechanism pursuant to this subsection (12).

Source: L. 2006: Entire article added with relocations, p. 1893, § 7, effective July 1. **L. 2007:** (1)(b) and (9) amended and (12) added, p. 1354, § 4, effective May 29. **L. 2008:** (1)(a), (2), (6), (7), (8), (9), (10), and (12) amended, p. 400, § 5, effective August 5. **L. 2009:** (1)(a) amended, (SB 09-265), ch. 205, p. 936, § 4, effective May 1. **L. 2010:** (1)(a)(II) repealed, (HB 10-1382), ch. 217, p. 939, § 3, effective May 6.

Editor's note: This section is similar to former § 26-4-119 as it existed prior to 2006.

25.5-5-409. State department - privatization. (1) The general assembly finds that the statewide managed care system is a program under which the private sector has a great deal of experience in making various health care plans available to the private sector and serving as the liaison between large employers and health care providers, including but not limited to health maintenance organizations. The general assembly therefore determines that a statewide managed care system involves duties similar to duties currently or previously performed by state employees but is different in scope and policy objectives from the state medical assistance program.

(2) To that end, pursuant to section 24-50-504 (2) (a), C.R.S., the state department shall enter into personal services contracts that create an independent contractor relationship for the administration of not less than twenty percent of the statewide managed care system. The state department shall enter into personal service contracts for the administration of the managed care system according to the implementation of the statewide managed care system in accordance with section 25.5-5-402.

(3) The implementation of this section is contingent upon:

(a) Legislative review of the cost-effectiveness of privatization and the extent to which such privatization enhances the quality of care to recipients; and

(b) A finding by the state personnel director that any of the conditions of section 24-50-504 (2), C.R.S., have been met or that the conditions of section 24-50-503 (1), C.R.S., have been met.

Source: L. 2006: Entire article added with relocations, p. 1896, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-120 as it existed prior to 2006.

25.5-5-410. Data collection for managed care programs - reports. (1) In addition to any other data collection or reporting requirements set forth in this article and articles 4 and 6 of this title, the state department shall access and compile data concerning health data and outcomes. In addition, no later than July 1, 1998, the state department shall conduct or shall contract with an independent evaluator to conduct a quality assurance analysis of each managed care program in the state for medical assistance recipients. No later than July 1, 1999, and each fiscal year thereafter, the state department, using the compiled data and results from the quality assurance analysis, shall submit a report to the house and senate committees on health and human services, or any successor committees, on the cost-efficiency of each managed care program or component thereof, with recommendations concerning statewide implementation of the respective programs or components. For the purposes of this subsection (1), "quality assurance" means costs weighed against benefits provided to consumers, health outcomes or maintenance of the individual's highest level of functioning, and the overall change in the health status of the population served. The state department's report shall address capitation, including methods for adjusting rates based on risk allocations, fees-for-services, copayments, chronically ill populations, long-term care, community-supported services, and the entitlement status of medical assistance. The state department's report shall include a comparison of the effectiveness of the MCE program and the PCCM program based upon common performance standards that shall include but not be limited to recipient satisfaction.

(2) In addition, the state department of human services, in conjunction with the state department, shall continue its existing efforts, which include obtaining and considering consumer input, to develop managed care systems for the developmentally disabled population and to consider a pilot program for a certificate system to enable the developmentally disabled population to purchase managed care services or fee-for-service care, including long-term care community services. The department of human services shall not implement any managed care system for developmentally disabled services without the express approval of the joint budget committee. Any proposed implementation of fully capitated managed care in the developmental disabilities community service system shall require legislative review.

(3) In addition to any other data collection and reporting requirements, each managed care organization shall submit the following types of data to the state department or its agent:

- (a) Medical access;
- (b) Consumer outcomes based on statistics maintained on individual consumers as well as the total consumer populations served;
- (c) Consumer satisfaction;
- (d) Consumer utilization;
- (e) Health status of consumers; and
- (f) Uncompensated care delivered.

Source: L. 2006: Entire article added with relocations, p. 1896, § 7, effective July 1.
L. 2008: (1) amended, p. 402, § 6, effective August 5.

Editor's note: This section is similar to former § 26-4-121 as it existed prior to 2006.

25.5-5-411. Medicaid community mental health services - legislative declaration - administration - rules. (1) The general assembly hereby finds, determines, and declares that:

(a) There is an urgent need to address the economic, social, and personal costs to the state of Colorado and its citizens of untreated mental health and substance use disorders;

(b) Behavioral health disorders, including mental health and substance use disorders, are treatable conditions not unlike other chronic health issues that require a combination of behavioral change and medication or other treatment. When individuals receive appropriate prevention, early intervention, treatment, and recovery services, they can live full, productive lives.

(c) Untreated behavioral health disorders place individuals at high risk for poor health outcomes and significantly affect virtually all aspects of local and state government by reducing family stability, student achievement, workforce productivity, and public safety;

(d) Currently, there is no single behavioral health care system in Colorado. Instead, consumers of all ages with behavioral health disorders receive services from a number of different systems, including the health care, behavioral health care, child welfare, juvenile and criminal justice, education, and higher education systems.

(e) Adult and youth consumers and their families need quality behavioral health care that is individualized and coordinated to meet their changing needs through a comprehensive and integrated system;

(f) Timely access through multiple points of entry to a full continuum of culturally responsive services, including prevention, early intervention, crisis response, treatment, and recovery, is necessary for an effective integrated system;

(g) Evidence-based and promising practices result in favorable outcomes for Colorado's adult and youth consumers, their families, and the communities in which they live;

(h) Lack of public awareness regarding behavioral health issues creates a need for public education that emphasizes the importance of behavioral health as part of overall health and wellness and creates the desire to invest in and support an integrated behavioral health system in Colorado;

(i) To reduce the economic and social costs of untreated behavioral health disorders, Colorado needs a systemic transformation of the behavioral health system through which transformation the state strives to achieve critical goals to address mental health and substance use disorders; and

(j) The overarching goal of this behavioral health system transformation shall be to make the behavioral health system's administrative processes, service delivery, and funding more effective and efficient to improve outcomes for Colorado citizens.

(2) The general assembly further finds and declares that, to improve the quality of life for the citizens of Colorado, strengthen the economy, and continue the responsible management of the state's resources, the leadership of the three branches of Colorado's state government and the stakeholders most affected by mental health and substance use disorders must collaborate to build on the progress of past efforts and to sustain a focus on the improvement of behavioral health services.

(3) Except as provided for in subsection (6) of this section, the state department shall administer all medicaid community mental health services for medical assistance recipients including but not limited to the prepaid capitated single entry point system for mental health services, the fee-for-service mental health services, and alternatives to institutionalization. The administration of medicaid community mental health services shall include but shall not be limited to program approval, program monitoring, and data collection.

(4) (a) The requirements of section 25.5-5-408 shall not apply to the capitated rate calculation process for medicaid community mental health services; except that each medicaid community mental health services MCO shall be subject to the requirements of section 25.5-5-404 (1) (k) and (1) (l).

(b) The state department shall establish cost-effective, capitated rates for community mental health services in a manner that includes cost containment mechanisms. These cost containment mechanisms may include, but are not limited to, restricting average per member per month utilization growth, restricting unit cost growth, limiting allowable

administrative cost, establishing minimum medical loss ratios, or establishing other cost containment mechanisms that the state department determines appropriate.

(c) Repealed.

(5) The state department is authorized to seek federal approval for any necessary changes to the state's waiver that authorizes the statewide system of community mental health care to reflect the provisions of this section. The state department is authorized to limit a recipient's freedom of choice with respect to a provider of mental health services and to restrict reimbursements for mental health services to designated and contracted agencies in such waiver.

(6) The administration of the mental health institutes shall remain the responsibility of the department of human services.

(7) On and after April 6, 2004, all positions of employment in the department of human services concerning the powers, duties, and functions of administering all medicaid community mental health services for medical assistance recipients transferred to the state department pursuant to this section and determined to be necessary to carry out the purposes of this section by the executive director of the state department shall be transferred to the state department and shall become employment positions therein.

(8) On and after April 6, 2004, all items of property, real and personal, including office furniture and fixtures, computers and software, books, documents, and records of the department of human services pertaining to the duties and functions of administering all medicaid community mental health services for medical assistance recipients are transferred to the state department and shall become the property thereof.

(9) On and after April 6, 2004, for state fiscal year 2003-04, the state department may bill the department of human services medicaid-funded programs division appropriation within the state department's appropriation for the provision of medicaid community mental health services as authorized in this section.

(10) On or before July 1, 2004, the state department and the department of human services shall jointly produce a document to assist mental health consumers and advocates and providers that participate in Colorado's publicly funded mental health system to understand the respective roles of each department in the provision of mental health services and each department's ability to provide high quality and accessible mental health services. The state department and the department of human services shall make the document available to the public and shall send at least one copy to each community mental health center, statewide mental health advocacy organization, and mental health assessment and services agency. The information contained in the document shall be made available on each department's internet web site. The state department and the department of human services are encouraged to consult with representatives of mental health consumer and provider organizations in the development of the document to ensure that it benefits consumers seeking mental health services and consumers who need to express concerns or complaints regarding the quality, availability, or accessibility of mental health services.

(11) When the state auditor conducts an audit of the statewide mental health system, the state auditor shall evaluate the coordination of services between the state department and the department of human services and the impact of the administration of the mental health system on the quality of care within the statewide mental health system.

(12) The state board shall adopt any rules necessary for the implementation of this section. In adopting rules concerning medicaid community mental health services, the state board shall consider the effect the rules may have on the statewide mental health system.

Source: L. 2006: Entire article added with relocations, p. 1897, § 7, effective July 1. L. 2007: (3) amended, p. 331, § 1, effective August 3. L. 2008: (1.5) added, p. 289, § 1, effective April 3. L. 2009: (1.5)(c) added, (SB 09-265), ch. 205, p. 936, § 5, effective May 1. L. 2010: (1.5)(c) repealed, (HB 10-1382), ch. 217, p. 940, § 4, effective May 6; entire section amended, (SB 10-153), ch. 295, p. 1372, § 3, effective May 26.

Editor's note: (1) This section is similar to former § 26-4-123 as it existed prior to 2006.

(2) Subsection (4)(c) was numbered as subsection (1.5)(c) in House Bill 10-1382 (see L. 2010, p. 940). That provision was harmonized with subsection (4)(c) as it appears in Senate Bill 10-153.

25.5-5-412. Program of all-inclusive care for the elderly - legislative declaration - services - eligibility - rules. (1) (a) The general assembly hereby finds and declares that it is the intent of this section to replicate the ON LOK program in San Francisco, California, that has proven to be cost-effective at both the state and federal levels. The PACE program is part of a national replication project authorized in section 9412(b)(2) of the federal "Omnibus Budget Reconciliation Act of 1986", as amended, which instructs the secretary of the federal department of health and human services to grant medicare and medicaid waivers to permit not more than ten public or nonprofit private community-based organizations in the country to provide comprehensive health care services on a capitated basis to frail elderly who are at risk of institutionalization. The general assembly finds that, by coordinating an extensive array of medical and nonmedical services, the needs of the participants will be met primarily in an outpatient environment in an adult day health center, in their homes, or in an institutional setting. The general assembly finds that such a service delivery system will enhance the quality of life for the participant and offers the potential to reduce and cap the costs to Colorado of the medical needs of the participants, including hospital and nursing home admissions.

(b) The general assembly finds and declares that the success of the current provider in providing a service delivery system has enhanced the quality of life for many participants in the PACE program and, therefore, the state should develop additional PACE program sites. The general assembly finds that section 4802 of the federal "Balanced Budget Act of 1997", as amended, allows the state to develop additional PACE program sites. The general assembly further finds that new PACE program sites should be developed using the program developed by the current provider as a model. The general assembly also finds that the state should capitalize on the success, experience, and quality of care of such provider in operating the PACE model by utilizing the provider's technical assistance capabilities. Additionally, the general assembly finds that it is necessary to provide technical assistance to new PACE program sites to ensure consistent quality of services and ultimate success. The general assembly, therefore, encourages the state department to seek grants and donations from national PACE organizations that have received funding to assist states in PACE expansion initiatives and to secure funding to dedicate a full-time staff person to the implementation of this PACE expansion.

(2) The general assembly has determined on the recommendation of the state department that the PACE program is cost-effective. As a result of such determination and after consultation with the joint budget committee of the general assembly, application has been made to and waivers have been obtained from the federal health care financing administration to implement the PACE program as provided in this section. The general assembly, therefore, authorizes the state department to implement the PACE program in accordance with this section. In connection with the implementation of the program, the state department shall:

(a) Provide a system for reimbursement for services to the PACE program pursuant to this section;

(b) Develop and implement a contract with any nonprofit organization providing the PACE program that sets forth contractual obligations for the PACE program, including but not limited to reporting and monitoring of utilization of services and of the costs of the program as required by the state department;

(c) Acknowledge that it is participating in the national PACE project as initiated by congress;

(d) Be responsible for certifying the eligibility for services of all PACE program participants.

(3) The general assembly declares that the purpose of this section is to provide services that would foster the following goals:

(a) To maintain eligible persons at home as an alternative to long-term institutionalization;

(b) To provide optimum accessibility to various important social and health resources that are available to assist eligible persons in maintaining independent living;

(c) To provide that eligible persons who are frail elderly but who have the capacity to remain in an independent living situation have access to the appropriate social and health services without which independent living would not be possible;

(d) To coordinate, integrate, and link such social and health services by removing obstacles that impede or limit improvements in delivery of these services;

(e) To provide the most efficient and effective use of capitated funds in the delivery of such social and health services;

(f) To assure that capitation payments amount to no more than ninety-five percent of the amount paid under the medicaid fee-for-service structure for an actuarially similar population.

(4) Within the context of the PACE program, the state department may include any or all of the services listed in sections 25.5-5-102, 25.5-5-103, 25.5-5-202, and 25.5-5-203, as applicable.

(5) An eligible person may elect to receive services from the PACE program as described in subsection (4) of this section. If such an election is made, the eligible person shall not remain eligible for services or payment through the regular medicare or medicaid programs. All services provided by said programs shall be provided through the PACE program in accordance with this section. An eligible person may elect to disenroll from the PACE program at any time.

(6) The state department, in cooperation with the single entry point agencies established in section 25.5-6-106, shall develop and implement a coordinated plan to provide education about PACE program site operations under this section. The state board shall adopt rules:

(a) To ensure that case managers and any other appropriate state department staff discuss the option and potential benefits of participating in the PACE program with all eligible long-term care clients. These rules shall require additional and on-going training of the single entry point agency case managers in counties where a PACE program is operating. This training shall be provided by a federally approved PACE provider. In addition, each single entry point agency may designate case managers who have knowledge about the PACE program; and

(b) To allow PACE providers to contract with an enrollment broker to include the PACE program in its marketing materials to eligible long-term clients.

(6.5) An eligible person who is enrolled in a managed care organization, an organization contracted with the state department pursuant to part 4 of article 5 of this title, or other risk-bearing entity may elect to withdraw from or terminate such enrollment and enroll in and receive services through a PACE program. The state board's rules shall define how such election is made. The effective date of an eligible person's election shall not be more than thirty days after the eligible person's date of election.

(7) For purposes of this section:

(a) "Dually eligible person" means a person who is eligible for assistance or benefits under both medicaid and medicare.

(b) "Eligible person" means a frail elderly individual who voluntarily enrolls in the PACE program and whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, whose resources do not exceed the limit established by the state department of human services for individuals receiving a mandatory minimum state supplementation of SSI benefits pursuant to section 26-2-204, C.R.S., or in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101, and for whom a physician licensed pursuant to article 36 of title 12, C.R.S., certifies that such a program provides an appropriate alternative to institutionalized care. "Eligible person" may also include a dually eligible person.

(c) "Frail elderly" means an individual who meets functional eligibility requirements, as established by the state department, for nursing home care and who is fifty-five years of age or older.

(8) Using a risk-based financing model, any nonprofit organization providing the PACE program shall assume responsibility for all costs generated by PACE program participants, and shall create and maintain a risk reserve fund that will cover any cost overages for any participant. The PACE program is responsible for the entire range of services in the consolidated service model, including hospital and nursing home care, according to participant need as determined by the multidisciplinary team. Any nonprofit organization providing the PACE program is responsible for the full financial risk at the conclusion of the demonstration period and when permanent waivers from the federal health care

financing administration are granted. Specific arrangements of the risk-based financing model shall be adopted and negotiated by the federal health care financing administration, any nonprofit organization providing the PACE program, and the state department.

(9) Nothing in this section requires a PACE program site operator to hold a certificate of authority as a health maintenance organization under part 4 of article 16 of title 10, C.R.S., for purposes of the PACE program.

(10) (a) The state department shall perform a feasibility study, conditioned on the receipt of sufficient gifts, grants, and donations, in order to identify viable communities that may support a PACE program site. This study shall be completed on or before May 1, 2003.

(b) The state department, consistent with the results of the feasibility study, shall use its best efforts to have in operation:

(I) One additional PACE program site by July 1, 2004;

(II) A total of four additional PACE program sites by July 1, 2005; and

(III) A total of six additional PACE program sites by July 1, 2006.

(c) (I) No later than May 30, 2003, the executive director of the state department shall submit to the joint budget committee of the general assembly and to the health and human services committees of the house of representatives and the senate, or any successor committees, a written report of the results of the feasibility study conducted under paragraph (a) of this subsection (10).

(II) No later than January 1, 2007, the executive director of the state department shall submit to the joint budget committee of the general assembly and to the health and human services committees of the house of representatives and the senate, or any successor committees, a final written report detailing the expansion of PACE program sites across the state.

(11) The state board shall promulgate such rules, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this section.

(12) (a) The general assembly shall make appropriations to the state department to fund services under this section provided at a monthly capitated rate. The state department shall annually renegotiate a monthly capitated rate for the contracted services.

(b) Repealed.

(13) The state department may accept grants and donations from private sources for the purpose of implementing this section.

Source: **L. 2006:** Entire article added with relocations, p. 1898, § 7, effective July 1. **L. 2008:** (12) amended, p. 1749, § 1, effective June 2. **L. 2009:** (12) amended, (SB 09-265), ch. 205, p. 936, § 6, effective May 1. **L. 2010:** (12)(b) repealed, (HB 10-1382), ch. 217, p. 940, § 5, effective May 6. **L. 2012:** (6) and (7) amended and (6.5) added, (SB 12-023), ch. 94, p. 308, § 1, effective April 12.

Editor's note: This section is similar to former § 26-4-124 as it existed prior to 2006.

Cross references: For the federal laws creating the Program of All-Inclusive Care for the Elderly (PACE), see section 9412 (b) (2) of the "Omnibus Budget Reconciliation Act of 1986", Pub.L. 99-509, and section 4802 of the federal "Balanced Budget Act of 1997", Pub.L. 105-33, codified at 42 U.S.C. secs. 1395 and 1396.

25.5-5-413. Direct contracting with providers - legislative declaration. (1) The general assembly hereby finds, determines, and declares that costs associated with providing medical assistance to recipients have increased substantially due in part to increased costs of health care services and higher utilization rates. These cost pressures have been most dramatically demonstrated in the southern area of the state. Therefore, the general assembly finds, determines, and declares that pilot programs should be created to evaluate whether a provider may contract directly with the state department for the provision of services to recipients.

(2) The state department is authorized to contract directly with any provider who is able to demonstrate compliance with state laws and rules pertaining to risk-bearing entities to provide a capitated-risk program on a per member per month basis. The provider shall

not serve more than two thousand five hundred recipients. The provider shall accept full risk for each participant, except for transplants or out-of-area services.

(3) The state department is authorized to contract directly with any provider who is able to provide a cost-effective and quality health care system through a capitated partial risk program on a per member per month basis or through any other financial arrangement with the department where the provider manages the health care available to the recipients and shares with the state department the savings associated with management of such health care.

(4) **Selection of the provider.** The state department shall select any provider who:

(a) Is able to provide evidence of a successful history of risk management for recipients;

(b) Initiates direct contracting with the state department; and

(c) Is able to demonstrate compliance with state laws and rules pertaining to risk-bearing entities.

Source: L. 2006: Entire article added with relocations, p. 1902, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-127 as it existed prior to 2006.

25.5-5-414. Telemedicine - legislative intent. (1) It is the intent of the general assembly to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with a provider.

(2) For the purposes of this section, "telemedicine" shall have the same meaning as set forth in section 12-36-106 (1) (g), C.R.S.

(3) On or after January 1, 2002, face-to-face contact between a health care provider and a patient shall not be required under the managed care system created in this part 4 for services appropriately provided through telemedicine, subject to reimbursement policies developed by the state department to compensate providers who provide health care services covered by the program created in section 25.5-4-104. Telemedicine services may only be used in areas of the state where the technology necessary for the provision of telemedicine exists. The audio and visual telemedicine system used shall, at a minimum, have the capability to meet the procedural definition of the most recent edition of the current procedural terminology that represents the service provided through telemedicine. The telecommunications equipment shall be of a level of quality to adequately complete all necessary components to document the level of service for the current procedural terminology fourth edition codes that are billed. If a peripheral diagnostic scope is required to assess the patient, it shall provide adequate resolution or audio quality for decision-making.

(4) The state department shall report to the health and human services committees of the house of representatives and the senate, or any successor committees, no later than January 1, 2006, on the application of telemedicine to provide home health care; emergency care; critical and intensive care, including, but not limited to, neonatal care; psychiatric evaluation; psychotherapy; and medical management as potential managed care system benefits. Such report shall take into account the availability of technology as of the time of the report to use telemedicine for home health care, emergency care, and critical and intensive care and the availability of broadband access within the state.

(5) The managed care system shall not be required to pay for consultation provided by a provider by telephone or facsimile machines.

(6) The state department may accept and expend gifts, grants, and donations from any source to conduct the valuation of the cost-effectiveness and quality of health care provided through telemedicine by those providers who are reimbursed for telemedicine services by the managed care system.

(7) Nothing in this section shall be construed to:

(a) Alter the scope of practice of any health care provider; or

(b) Authorize the delivery of health care services in a setting or manner not otherwise authorized by law.

Source: **L. 2006:** Entire article added with relocations, p. 1903, § 7, effective July 1; (3) amended and (7) added, p. 1547, § 4, effective July 1.

Editor's note: (1) This section is similar to former § 26-4-421 as it existed prior to 2006.

(2) (a) Amendments to section 26-4-421 (3) by Senate Bill 06-165 were harmonized with subsection (3) as it appeared in Senate Bill 06-219.

(b) Subsection (7) was enacted as 26-4-421 (7) in Senate Bill 06-165 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

Cross references: For the legislative declaration contained in the 2006 act amending subsection (3) and enacting subsection (7), see section 1 of chapter 312, Session Laws of Colorado 2006.

25.5-5-415. Medicaid payment reform and innovation pilot program - legislative declaration - creation - selection of payment projects - report - rules. (1) (a) The general assembly finds that:

(I) Increasing health care costs in Colorado's medicaid program creates challenges for the state's budget. Further, the increasing health care costs do not necessarily reflect improvements in either health outcomes for patients or in patient satisfaction with the care received;

(II) Moreover, the fee-for-service payment model may not support or align financially with evolving care coordination and delivery systems;

(III) The reform of medicaid payment policies offers a significant opportunity for the state to contain costs and improve quality;

(IV) New payment methodologies, including global payments, have been developed to respond to rising costs and the complexities of health care delivery. Opportunities now exist to explore, test, and implement such payment reforms in the medicaid program.

(V) The state department should explore how these new payment methodologies may result in improved health outcomes and patient satisfaction and support the financial sustainability of the medicaid program.

(b) Therefore, the general assembly declares that Colorado should build upon ongoing reforms of health care delivery in the medicaid program by implementing a pilot program within the structure of the state department's current medicaid coordinated care system that encourages the use of new and innovative payment methodologies, including global payments.

(2) (a) There is hereby created the medicaid payment reform and innovation pilot program for purposes of fostering the use of innovative payment methodologies in the medicaid program that are designed to provide greater value while ensuring good health outcomes and client satisfaction.

(b) (I) The state department shall create a process for interested contractors of the state department's current medicaid coordinated care system to submit payment projects for consideration under the pilot program. Payment projects submitted pursuant to the pilot program may include, but need not be limited to, global payments, risk adjustment, risk sharing, and aligned payment incentives, including, but not limited to, gainsharing, to achieve improved quality and to control costs.

(II) The design of the payment project or projects shall address the client population of the state department's current medicaid coordinated care system and be tailored to the region's health care needs and the resources of the state department's current medicaid coordinated care system.

(III) A contractor of the state department's current medicaid coordinated care system shall work in coordination with the providers and managed care entities contracted with the contractor of the state department's current medicaid coordinated care system in developing the payment project or projects.

(c) (I) On or before July 1, 2013, the state department shall complete its review of payment projects and shall select payment projects to be included in the pilot program.

(II) For purposes of selecting payment projects for the pilot program, the state department shall consider, at a minimum:

(A) The likely effect of the payment project on quality measures, health outcomes, and client satisfaction;

(B) The potential of the payment project to reduce the state's medicaid expenditures;

(C) The state department's ability to ensure that inpatient and outpatient hospital reimbursements are maximized up to the upper payment limits, as defined in 42 CFR 447.272 and 42 CFR 447.321 and calculated by the state department periodically;

(D) The client population served by the state department's current medicaid coordinated care system and the particular health needs of the region;

(E) The business structure or structures likely to foster cooperation, coordination, and alignment and the ability of the contractor of the state department's current medicaid coordinated care system to implement the payment project, including the resources available to the contractor of the state department's current medicaid coordinated care system and the technological infrastructure required; and

(F) The ability of the contractor of the state department's current medicaid coordinated care system to coordinate among providers of physical health care, behavioral health care, oral health care, and the system of long-term care services and supports.

(III) For payment projects not selected by the state department, the state department shall respond to the contractor of the state department's current medicaid coordinated care system, in writing, on or before July 1, 2013, stating the reason or reasons why the payment project was not selected. The state department shall send a copy of the response to the joint budget committee of the general assembly, the health and human services committee of the senate, or any successor committee, and the health and environment committee of the house of representatives, or any successor committee.

(d) (I) The payment projects selected for the program shall be for a period of at least two years, but shall not extend beyond June 30, 2016. The provider contract shall specify the payment methodology utilized in the payment project.

(II) The requirements of section 25.5-5-408 do not apply to the rate-calculation process for payments made to MCEs pursuant to this section.

(III) MCEs participating in the pilot program are subject to the requirements of section 25.5-5-404 (1) (k) and (1) (l), as applicable.

(IV) Payments made to MCEs under the pilot program shall account for prospective, local community or health system cost trends and values, as measured by quality and satisfaction measures, and shall incorporate community cost experience and reported encounter data to the extent possible to address regional variation and improve longitudinal performance.

(V) Notwithstanding any provisions of this section or state board rules to the contrary, it is the intent of the general assembly that total payments, adjustments, and incentives will be budget-neutral with respect to state expenditures. The state department shall not enter into a contract with a provider pursuant to this section if the state department estimates that total payments to the provider will be greater than without the contract.

(3) Pilot program participants shall provide data and information to the state department and any designated evaluator concerning health outcomes, cost, provider participation and satisfaction, client satisfaction, and any other data and information necessary to evaluate the efficacy of the payment methodology.

(4) (a) The state department shall submit a report to the joint budget committee of the general assembly, the health and human services committee of the senate, or any successor committee, and the health and environment committee of the house of representatives, or any successor committee, as follows:

(I) On or before February 1, 2013, concerning the design and implementation of the pilot program, including a description of any payment projects received by the state department and the time frame for implementation;

(II) On or before September 15, 2014, concerning the pilot program as implemented, including but not limited to an analysis of the initial data and information concerning the utilization of the payment methodology, quality measures, and the impact of the payment methodology on health outcomes, cost, provider participation and satisfaction, and patient satisfaction; and

(III) On or before September 15, 2015, and each September 15 that the program is being implemented, concerning the program as implemented, including but not limited to an analysis of the data and information concerning the utilization of the payment method-

ology, including an assessment of how the payment methodology drives provider performance and participation and the impact of the payment methodology on quality measures, health outcomes, cost, provider satisfaction, and patient satisfaction, comparing those outcomes across all patients utilizing existing state department data.

(b) For purposes of evaluating the pilot program and payment methodologies, the state department may collaborate with a nonprofit entity or an institution of higher education to analyze and verify data and information received from pilot participants and to evaluate quality measures and the cost effectiveness of the payment reforms.

(5) The state department shall seek any federal authorization necessary to implement the pilot program.

(6) The state department may promulgate any rules necessary to implement the pilot program.

Source: L. 2012: Entire section added, (HB 12-1281), ch. 246, p. 1182, § 2, effective June 4.

25.5-5-416. Report concerning efficient contracting in managed care - legislative declaration - repeal. (1) The general assembly finds and declares that the state department administers a wide variety of contracts that are authorized pursuant to this part 4. Each contract requires a separate administrative infrastructure and the commitment of state department resources. Streamlining and simplifying the administrative structure may make the state department more efficient and allow the state department to focus more resources on improving value in health care.

(2) On or before January 1, 2013, the state department shall report to the joint budget committee of the general assembly, the health and human services committee of the senate, or any successor committee, and the health and environment committee of the house of representatives, or any successor committee, concerning:

(a) An assessment of the policy goal and efficacy of each type of contract administered pursuant to this part 4;

(b) A comparison of the policy goal with the relative amount of administrative cost necessary to appropriately manage each program; and

(c) Recommendations to the general assembly for statutory or other changes necessary to streamline and simplify contracts authorized pursuant to this part 4.

(3) This section is repealed, effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1281), ch. 246, p. 1186, § 2, effective June 4.

PART 5

PRESCRIPTION DRUGS

25.5-5-500.3. Authorization to bill third party. As a condition of doing business in the state, each provider is deemed to authorize the state department, or an independent contractor retained by the state department, to bill a third party, as defined in section 25.5-4-209 (2) (g) (II), on behalf of the provider if the third party is determined to be liable to pay for care pursuant to sections 25.5-4-209 and 25.5-4-300.4.

Source: L. 2010: Entire section added, (SB 10-167), ch. 296, p. 1379, § 9, effective May 26.

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2015, see sections 1 and 17 of chapter 296, Session Laws of Colorado 2010. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

25.5-5-501. Providers - drug reimbursement. (1) (a) As to drugs for which payment is made, the state board's rules for the payment therefor shall include the requirement that the generic equivalent of a brand-name drug be prescribed if the generic equivalent is a therapeutic equivalent to the brand-name drug, except when reimbursement to the state for a brand-name drug makes the brand-name drug less expensive than the cost of the generic equivalent. The state department shall grant an exception to this requirement if the patient has been stabilized on a medication and the treating physician, or a pharmacist with the concurrence of the treating physician, is of the opinion that a transition to the generic equivalent of the brand-name drug would be unacceptably disruptive. The requirements of this subsection (1) shall not apply to medications for the treatment of biologically based mental illness, as defined in section 10-16-104 (5.5), C.R.S., the treatment of cancer, the treatment of epilepsy, or the treatment of human immunodeficiency virus and acquired immune deficiency syndrome.

(b) The provisions of this subsection (1) shall apply to fee-for-service and primary care physician program recipients.

(2) It is the general assembly's intent that requiring the use of a generic equivalent of a brand-name drug will produce savings within the state's medicaid program. The state department, therefore, is authorized to use savings in the medical services premiums appropriations to fund the administrative review process required by subsection (1) of this section.

Source: L. 2006: Entire article added with relocations, p. 1904, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-406 as it existed prior to 2006.

25.5-5-502. Unused medications - reuse - rules. (1) As used in this section, unless the context otherwise requires, "medication" means prescription medication that is not a controlled substance.

(2) A pharmacist participating in the medical assistance program may accept unused medication from a licensed facility, as defined in section 12-42.5-133 (1) (a), C.R.S., or a licensed health care provider for the purpose of dispensing the medication to another person. A pharmacist shall reimburse the state department for the cost of medications that the state department has paid to the pharmacist if medications are returned to a pharmacist and the medications are available to be dispensed to another person. Medications shall only be available to be dispensed to another person under this section if the medications are:

- (a) Liquid and the vial is still sealed and properly stored;
 - (b) Individually packaged and the packaging has not been damaged; or
 - (c) In the original, unopened, sealed, and tamper-evident unit dose packaging.
- (3) Medication dispensed pursuant to this section shall bear an expiration date that is later than six months after the date the drug was donated.
- (4) Any savings realized through reimbursements received pursuant to subsection (1) of this section shall fund the administration of this section.
- (5) The state board, in consultation with the state board of pharmacy, shall adopt rules for the implementation of this section.

Source: L. 2006: Entire article added with relocations, p. 1904, § 7, effective July 1.
L. 2012: IP(2) amended, (HB 12-1311), ch. 281, p. 1621, § 76, effective July 1.

Editor's note: This section is similar to former § 26-4-406.3 as it existed prior to 2006.

25.5-5-503. Prescription drug benefits - authorization - dual-eligible participation. (1) The state department is authorized to ensure the participation of Colorado medical assistance recipients, who are also eligible for medicare, in any federal prescription drug benefit enacted for medicare recipients.

(2) Prescribed drugs shall not be a covered benefit under the medical assistance program for a recipient who is eligible for a prescription drug benefit program under

medicare; except that, if a prescribed drug is not a covered Part D drug as defined in the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Pub.L. 108-173, the prescribed drug may be a covered benefit if it is otherwise covered under the medical assistance program and federal financial participation is available.

Source: **L. 2006:** Entire article added with relocations, p. 1905, § 7, effective July 1.
L. 2007: (2) amended, p. 1631, § 1, effective July 1.

Editor's note: This section is similar to former § 26-4-406.5 as it existed prior to 2006.

Cross references: For additional information on the federal "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", see Pub.L. 108-173.

25.5-5-504. Providers of pharmaceutical services. (1) Consistent with the provisions of section 25.5-4-401 (1), and consistent with subsections (2) and (3) of this section, and subject to available appropriations, no provider of pharmaceutical services who meets the conditions imposed by this article and articles 4 and 6 of this title and who complies with the terms and conditions established by the state department and contracting health maintenance organizations and prepaid health plans shall be excluded from contracting for the provision of pharmaceutical services to recipients authorized in this article and articles 4 and 6 of this title.

(2) This provision shall not apply to a health maintenance organization or prepaid health plan that enrolls less than forty percent of all the resident medicaid recipients in any county with over one thousand medicaid recipients.

(3) The state board shall establish specifications in rules in order to provide criteria to health maintenance organizations and prepaid health plans which ensure the accessibility and quality of service to clients and the terms and conditions for pharmaceutical contracts.

Source: **L. 2006:** Entire article added with relocations, p. 1905, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-407 as it existed prior to 2006.

25.5-5-505. Prescribed drugs - mail order - rules. (1) (a) (I) The state board shall adopt by rule a system to allow the following medical assistance recipients to receive prescribed maintenance medications through mail order:

(A) Recipients who suffer from a physical hardship that prohibits the recipient from obtaining prescription medications from a local pharmacy; and

(B) Recipients who have third-party insurance that allows the recipient to obtain maintenance medications through mail order.

(II) The state board shall include in the rules the definition of maintenance medications. The rules may allow for a medical assistance recipient who qualifies to receive medication through mail order pursuant to this section to receive up to a three-month supply, or the maximum allowed under federal law, of maintenance medications used to treat chronic medical conditions.

(b) The state board shall, to the extent possible, require the use of local pharmacies that are able to provide the same services as mail order. To the extent allowed by federal law, the state department shall require that the same copayment amount be paid by a medical assistance recipient receiving prescription medication through mail order as a medical assistance recipient receiving prescription medication from a local pharmacy.

(c) A nonresident prescription drug outlet doing business in this state shall provide a means for recipients of state medical assistance who have third-party insurance with whom the nonresident prescription drug outlet has a contractual relationship to receive their required pharmacy benefits at a cost to the recipients of no more than the legally allowed state medical assistance copayment. If a third-party insurance carrier's copayment or deductible for pharmacy benefits is larger than the legally allowed state medical assistance copayment, the prescription drug outlet may bill the state medical assistance program for the difference pursuant to state medical assistance reimbursement rules.

(2) The state department shall seek any federal authorization necessary to implement this section.

Source: L. 2006: Entire article added with relocations, p. 1905, § 7, effective July 1. L. 2008: (1) amended, p. 890, § 1, effective May 20. L. 2009: (1)(a)(I)(B) amended, (SB 09-252), ch. 271, p. 1228, § 1, effective May 18.

Editor's note: This section is similar to former § 26-4-407.5 as it existed prior to 2006.

25.5-5-506. Prescribed drugs - utilization review. (1) The state department shall develop and implement a drug utilization review process to assure the appropriate utilization of drugs by patients receiving medical assistance in the fee-for-service and primary care physician programs. The review process shall include the monitoring of prescription information and shall address at a minimum underutilization and overutilization of benefit drugs. Periodic reports of findings and recommendations shall be forwarded to the state department.

(2) It is the general assembly's intent that the implementation of a drug utilization review process for the fee-for-service and primary care physician programs will produce savings within the state's medicaid program. The state department, therefore, is authorized to use savings in the medical services premiums appropriations to fund the development and implementation of a drug utilization review process for these programs, as required by subsection (1) of this section. The state department may contract on a contingency basis for the development or implementation of the review process required by subsection (1) of this section.

(3) (a) The state department shall implement drug utilization mechanisms, including, but not limited to, prior authorization, to control costs in the medical assistance program associated with prescribed drugs. The state board shall promulgate a rule that outlines a process in which any interested party may be notified of and comment on the implementation of any prior authorization for a class of prescribed drugs before the class is prior authorized.

(b) The state department shall report to the health and human services committees for the house of representatives and the senate, or any successor committees, and the joint budget committee no later than December 1, 2003, and each December 1 thereafter, on plan utilization mechanisms that have been implemented or that will be implemented by the state department, the time frames for implementation, the expected savings associated with each utilization mechanism, and any other information deemed appropriate by the health and human services committees, or any successor committees, or the joint budget committee.

Source: L. 2006: Entire article added with relocations, p. 1906, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-408 as it existed prior to 2006.

25.5-5-507. Prescription drug information and technical assistance program - rules. There is hereby created the prescription drug information and technical assistance program. The program shall provide advice on the prudent use of prescription drugs to persons who receive prescription drug benefits pursuant to this part 5. The state department shall contract with licensed pharmacists for statewide medicaid pharmacy services and pharmacy consultations for persons receiving prescription drug benefits pursuant to this part 5 regarding how each person may, with the approval of the appropriate prescribing health care provider, avoid dangerous drug interactions, improve patient outcomes, and save the state money for the drugs prescribed. The state department shall promulgate rules to establish and administer the program and to provide incentive payments to pharmacists and physicians who participate in the program. The state department shall design a calculation for savings under the program.

Source: L. 2007: Entire section added, p. 1631, § 2, effective July 1.

25.5-5-508. Electronic prescriptions - study - report - repeal. (Repealed)

Source: L. 2009: Entire section added, (HB 09-1073), ch. 282, p. 1286, § 1, effective August 5.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 1286.)

PART 6**PROGRAM FOR TEEN PREGNANCY
AND DROPOUT PREVENTION**

Editor's note: This part 6 was formerly numbered as part 8 of article 4 of title 26. It was not included in Senate Bill 06-219, which relocated article 4 of title 26 to title 25.5, because the part was scheduled to repeal on July 1, 2006; however, House Bill 06-1351 extended the repeal date of the part. To keep with the legislative intent of both bills, the entire part was renumbered and relocated on revision. The former section number is located in an editor's note following each section that was relocated.

25.5-5-601. Legislative declaration. The general assembly finds that the incidences of teen pregnancies in the state raise health issues such as prenatal care, low-weight births, proper immunizations, and other well-care issues and that those health issues result in a significant impact on the state's medical assistance budget. The general assembly also finds that teenagers who become parents have a greater propensity to drop out of school before finishing high school and frequently become an economic burden upon the public assistance program of the state. The general assembly, therefore, declares that the department of health care policy and financing should analyze the feasibility of a teen pregnancy and dropout prevention program that promotes self-sufficiency, self-reliance, and a sense of personal responsibility in teenagers to make appropriate family planning decisions.

Source: L. 95: Entire part added, p. 595, § 1, effective May 22.

Editor's note: This section is similar to former § 26-4-801 as it existed prior to 2006.

25.5-5-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "At-risk teenager" means a person under nineteen years of age who resides in a neighborhood in which there is a preponderance of poverty, unemployment and underemployment, substance abuse, crime, school dropouts, a significant public assistance population, teen pregnancies and teen parents, or other conditions that put families at risk.

(2) "Department" means the state department of health care policy and financing.

Source: L. 95: Entire part added, p. 595, § 1, effective May 22.

Editor's note: This section is similar to former § 26-4-802 as it existed prior to 2006.

25.5-5-603. Program - teen pregnancy and dropout prevention. (1) (a) The general assembly authorizes the department to implement a statewide program for teen pregnancy and dropout prevention to serve teenagers who are medicaid recipients. The department shall design a program based upon community support and assistance, percentage of births in the community that have been funded under the state medical assistance program, the use of program designs that include accurate methods for measuring the effectiveness of the program, and availability of additional federal funds and local or private funding. The department may seek any federal waivers that may be necessary to implement this part 6.

(b) In implementing a statewide program pursuant to paragraph (a) of this subsection (1), the department shall collaborate with the department of public health and environment

and may collaborate with other public agencies and nonprofit organizations to promote and expand provider participation in the program. Additionally, the department shall collaborate with the department of education to facilitate the provision of services to at-risk teenagers and teen parents.

(2) (a) The purpose of the program shall be to reduce the incidences of teen pregnancy and school dropouts by providing support services to at-risk teenagers and to teen parents.

(b) Such services may include, but shall not be limited to, the following services or combination of services:

(I) Intensive individual or group counseling, which includes a component on sexual abstinence and delayed parenting;

(II) Vocational, health, and educational guidance;

(III) Public health services such as home visits or visiting nurse services; and

(IV) Instruction concerning human sexuality; except that the department, in providing a teen pregnancy prevention program pursuant to the provisions of this part 6 that provides instruction concerning human sexuality, shall adopt science-based content standards to ensure that any instruction concerning human sexuality that is provided satisfies the requirements of section 22-1-110.5 (5), C.R.S., as if the program were provided by a school district.

(c) In addition to providing the services described in paragraph (b) of this subsection (2), the department may develop incentives for teen parents who receive public assistance to become self-sufficient and delay further parenting choices.

(2.5) (a) Providers providing services under the program shall collect data relevant to measuring the program's effectiveness by surveying program participants at the beginning of participation, during the program, and at the end of participation concerning certain behaviors that decrease the likelihood of teen pregnancy, including:

(I) Postponing the first sexual encounter;

(II) Reducing the frequency of sexual intercourse;

(III) Reducing the number of sexual partners or maintaining monogamous relationships;

(IV) Increasing the effective use of contraception; and

(V) Reducing the incidence of unprotected sex.

(b) Providers shall provide the department with a summary of the survey results collected pursuant to paragraph (a) of this subsection (2.5) along with information, to the extent determinable by the provider, concerning the number of participants who, while enrolled in the program or after leaving the program:

(I) Drop out of school;

(II) Become pregnant as a teenager; or

(III) As a teenager, impregnate someone.

(3) The teen pregnancy and dropout prevention program shall be financed with federal funds, local contributions, and any grants or donations from private entities. No general fund moneys shall be used to finance the program; except that the general assembly may appropriate any moneys necessary for the internal administrative costs of the department for providing expanded program promotion and oversight.

Source: **L. 95:** Entire part added, p. 596, § 1, effective May 22. **L. 2006:** (1) amended, p. 562, § 1, effective April 24. **L. 2007:** (2)(b) amended, p. 830, § 5, effective July 1. **L. 2011:** (1) and (3) amended and (2.5) added, (SB 11-177), ch. 303, p. 1456, § 1, effective June 8.

Editor's note: This section is similar to former § 26-4-803 as it existed prior to 2006.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (2)(b), see section 1 of chapter 212, Session Laws of Colorado 2007.

25.5-5-604. Report. The department shall report annually to the joint budget committee, the health and environment committee of the house of representatives, or any successor committee, and the health and human services committee of the senate, or any successor

committee, concerning the effectiveness of the program. The report shall include at a minimum the number of new providers participating in the program, the number of additional program participants, the pregnancy rate for program participants as compared to the pregnancy rate for medicaid clients of the same age group in the same geographic area, and a summary of the information collected by the department pursuant to section 25.5-5-603 (2.5) concerning participant behaviors that decrease the likelihood of teen pregnancy.

Source: **L. 95:** Entire part added, p. 596, § 1, effective May 22. **L. 2000:** Entire section amended, p. 407, § 3, effective April 13. **L. 2003:** Entire section amended, p. 756, § 1, effective March 25. **L. 2006:** Entire section amended, p. 562, § 2, effective April 24. **L. 2011:** Entire section amended, (SB 11-177), ch. 303, p. 1457, § 2, effective June 8.

Editor's note: This section is similar to former § 26-4-804 as it existed prior to 2006.

25.5-5-605. Repeal of part. This part 6 is repealed, effective September 1, 2016. Prior to such repeal, the teen pregnancy and dropout prevention program implemented by the department pursuant to this part 6 shall be reviewed as provided in section 24-34-104, C.R.S.

Source: **L. 95:** Entire part added, p. 597, § 1, effective May 22. **L. 2000:** Entire section amended, p. 407, § 4, effective April 13. **L. 2003:** Entire section amended, p. 756, § 2, effective March 25. **L. 2006:** Entire section amended, p. 562, § 3, effective April 24. **L. 2011:** Entire section amended, (SB 11-177), ch. 303, p. 1458, § 3, effective June 8.

Editor's note: This section is similar to former § 26-4-805 as it existed prior to 2006.

PART 7

TELEMEDICINE PILOT PROGRAMS FOR CHRONIC MEDICAL CONDITIONS

Editor's note: This part 7 was added in 2006 and was not amended prior to its repeal in 2010. For the text of this part 7 prior to 2010, consult the 2009 Colorado Revised Statutes.

25.5-5-701 to 25.5-5-703. (Repealed)

Source: **L. 2010:** Entire part repealed, (HB 10-1322), ch. 29, p. 105, § 1, effective March 18.

ARTICLE 6

Colorado Medical Assistance Act - Long-term Care

Editor's note: This article was added with relocations in 2006 containing provisions of some sections formerly located in article 4 of title 26. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For definitions applicable to this article, see § 25.5-4-103.

Law reviews: For article, "Colorado Medicaid Home and Community-Based Services and Least-Restrictive Environment", see 39 Colo. Law. 35 (May 2010).

PART 1

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PART 4

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PART 1

LONG-TERM CARE ADMINISTRATION

25.5-6-101. Spousal protection - protection of income and resources for community spouse - definitions - amounts retained - responsibility of state department - right to appeal. (1) As used in this section, unless the context otherwise requires:

(a) "Community spouse" means the spouse of a person who is in an institution or nursing facility, the spouse of a person who is enrolled in the PACE program authorized pursuant to section 25.5-5-412, or the spouse of a person who is receiving home- and community-based services pursuant to this article.

(b) "Community spouse monthly income allowance" means the amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income that is available to the community spouse.

(c) "Community spouse resource allowance" means the amount of assets, excluding the value of the home and other exempt resources under federal law, that the community spouse shall be allowed to retain and that shall not be available to cover an institutionalized spouse's cost of care.

(d) (I) "Institutionalized spouse" means an individual who is in an institution or nursing facility who is married to a spouse who is not in an institution or nursing facility.

(II) For purposes of this section, "institutionalized spouse" includes an individual who is enrolled in the PACE program authorized pursuant to section 25.5-5-412 or is receiving home- and community-based services pursuant to this article, and who is married to a spouse who is not enrolled in the PACE program or receiving home- and community-based services.

(e) (I) (A) "Minimum monthly maintenance needs allowance" means an amount which is equal to an applicable percent of the nonfarm income official poverty line (increased annually by the consumer price index for all urban consumers), as defined by the federal office of management and budget, for a family unit of two members.

(B) For the purposes of sub-subparagraph (A) of this subparagraph (I), the applicable percent shall be: As of September 30, 1989, one hundred twenty-two percent; as of July 1, 1991, one hundred thirty-three percent; as of July 1, 1992, one hundred fifty percent.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (e), the minimum monthly maintenance needs allowance may be increased on an individual basis if:

(A) The community spouse has shelter and utilities expenses that exceed thirty percent of the minimum monthly maintenance needs allowance; except that the total allowance shall not exceed fifteen hundred dollars (increased annually by the consumer price index for all urban consumers);

(B) Either spouse is responsible for a dependent family member, including children, parents, or siblings who reside with the community spouse; or

(C) The community spouse has exceptional circumstances which would result in significant financial duress.

(2) (a) In order to implement the medical assistance program in compliance with the federal “Medicare Catastrophic Coverage Act of 1988”, as amended, the state department shall ensure, when an institutionalized spouse is eligible for medical assistance under this article and articles 4 and 5 of this title, that the community spouse retain a community spouse monthly income allowance but only to the extent that income of the institutionalized spouse is made available to the community spouse.

(b) (I) The resources available to the married couple shall be calculated at the beginning of a continuous period of institutionalization of the institutionalized spouse. The community spouse shall retain the remainder of the couple’s countable resources up to the federal maximum resource allowance as a community spouse resources allowance. The institutionalized spouse may keep an amount up to the amount of resources allowed under the federal medicaid program.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), if either spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse’s income to the minimum monthly maintenance needs allowance, an amount adequate to provide the minimum monthly maintenance needs allowance shall be substituted.

(3) The state board shall have the authority to promulgate any rules that are necessary to implement the provisions of this section in accordance with the federal “Medicare Catastrophic Coverage Act of 1988”, as amended. The rules adopted by the state board shall include, as a minimum, provisions regarding the following matters:

(a) The treatment of a married couple’s income and resources before and after eligibility for medical assistance is established, including the basis for dividing such income and resources between the two parties;

(b) The process for appealing any determinations regarding income and resources that are made pursuant to these rules.

Source: L. 2006: Entire article added with relocations, p. 1907, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-506 as it existed prior to 2006.

Cross references: For provisions of the federal “Medicare Catastrophic Coverage Act of 1988” referenced in this section, see section 303 of Pub.L. 100-360, codified at 42 U.S.C. sec. 1396r-5.

ANNOTATION

Subsections (1)(d)(I) and (1)(d)(II) must be read in the disjunctive. In determining whether a spouse is entitled to the community spouse resource allowance, an institutionalized spouse can be either a person described in (1)(d)(I) or in (1)(d)(II). Under federal law, the fact that the

wife received home- and community-based services did not make her ineligible to receive the community spouse resource allowance based upon her husband’s institutionalization. *Koehler v. Colo. Dept. of Health Care Policy & Fin.*, 252 P.3d 1174 (Colo. App. 2010).

25.5-6-102. Court-approved trusts - transfer of property for persons seeking medical assistance for nursing home care - undue hardship - legislative declaration.
(1) The general assembly hereby finds, determines, and declares that:

(a) The state makes significant expenditures for nursing home care under the "Colorado Medical Assistance Act";

(b) A large number of persons do not have enough income to afford nursing home care, but have too much income to qualify for state medical assistance, a situation popularly referred to as the "Utah gap";

(c) Some persons in the Utah gap, through innovative court-approved trust arrangements, have become qualified for state medical assistance, thereby increasing state medical assistance expenditures;

(d) It is therefore appropriate to enact state laws which limit such court-approved trusts in a manner that is consistent with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396 et seq., as amended, and which provide that persons who qualify for assistance as a result of the creation of such trusts shall be treated the same as any other recipient of medical assistance for nursing home care;

(e) In enacting this section, the general assembly intends only to limit certain court-approved trusts and court-approved transfers of property. It is not the general assembly's intent to approve or disapprove of privately created trusts or private transfers of property made under the same or similar circumstances.

(2) The county department shall verify that an applicant for medical assistance for nursing home care, pursuant to the provisions of this title, meets applicable eligibility criteria for assistance other than those set forth in subsection (3) of this section. Upon verification, for eligibility purposes and in accordance with subsection (3) of this section, the county department shall make a determination of the status of any court-approved trust established for or court-approved transfer of property made by or for the applicant.

(3) (a) If a person who applies for medical assistance for nursing home care would be deemed ineligible for assistance as a result of deeming a court-approved trust established for the applicant as a medicaid qualifying trust or as a result of deeming property in the court-approved trust as an improper transfer of assets, the person's application shall, nonetheless, be treated as a case of undue hardship and the person shall be eligible for medical assistance for said care if the establishment of the court-approved trust meets the following criteria:

(I) The applicant's monthly gross income from all sources, without reference to the court-approved trust, exceeds the income eligibility standard for medical assistance then in effect but is less than the average private pay rate for nursing home care for the geographic region in which the applicant lives;

(II) The property used to fund the trust shall be limited to monthly unearned income owned by the applicant, including any pension payment;

(III) The applicant and the state medical assistance program shall be the sole beneficiaries of the trust. The entire corpus of the trust, or as much of the corpus as may be distributed each month without violating federal requirements for federal financial participation, shall be distributed each month for expenses related to the beneficiary's nursing home care that are approved under the medical assistance program; except that an amount reasonably necessary to maintain the existence of the trust and to comply with federal requirements may be retained in the trust. Deductions may be distributed from the trust to the same extent deductions from the income of a nursing home resident who is not a trust beneficiary are allowed under the medical assistance program, which shall include the following:

(A) A monthly personal needs allowance;

(B) Payments to the beneficiary's community spouse or dependent family members as provided and in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396r-5, as amended, and section 25.5-6-101;

(C) Specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396a(r), as amended; and

(D) Any other deduction provided in the rules of the state department.

(IV) Upon the death of the beneficiary, a remainder interest in the corpus of the trust shall pass to the state agency responsible for administering the state medical assistance program;

(V) The trust shall not be subject to modification by the beneficiary or the trustee unless otherwise provided by this section or section 15-14-412.5, C.R.S.

(b) For the purposes of this subsection (3), "medicaid qualifying trust" shall have the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396a(k).

(4) The state board shall adopt rules as are necessary for the implementation of this section and as are necessary to comply with federal law. In addition, the state department shall amend the state medical assistance plan in a manner that is consistent with the provisions of this section.

(5) This section shall take effect January 1, 1992, and shall apply to any court-approved trust established for or court-approved transfer of property made by or for a protected person applying for or receiving medical assistance for nursing home care pursuant to the provisions of this title, on or after said date; except that a court-approved trust created before said date that does not comply with this section shall be modified to comply with this section no later than July 1, 1992, before which time the court-approved trust or court-approved transfer of property to a trust shall not render the protected person ineligible for medical assistance.

(6) The provisions of this section shall not apply if federal funds are not available for persons who would qualify for medical assistance as a result of a court-approved trust that meets the criteria set forth in this section.

(7) This section shall apply to trusts established or transfers of property made prior to July 1, 1994. The provisions set forth in sections 15-14-412.6 to 15-14-412.9, C.R.S., and any rules adopted by the state board pursuant to section 25.5-6-103 shall apply to trusts established or property transferred on or after that date.

Source: L. 2006: Entire article added with relocations, p. 1908, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-506.5 as it existed prior to 2006.

25.5-6-103. Court-approved trusts - transfer of property for persons seeking medical assistance - rule-making authority for trusts created on or after July 1, 1994 - undue hardship. (1) The state board shall adopt such rules as are necessary with respect to trusts established pursuant to sections 15-14-412.6 to 15-14-412.9, C.R.S. The state board shall adopt rules that address, but need not be limited to, the following:

(a) The definition, including any limitations, of permissible distributions from trusts, taking federal guidelines into consideration;

(b) Reasonable financial reimbursement or incentives to the state department, county departments of social services, and any other designated agencies for the efforts and expenses in monitoring trusts, and where necessary, for the recovery of trust property that has been improperly distributed or otherwise expended.

(2) The state board shall comply with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (d) (5), as amended, which requires the state medicaid agency to establish procedures, in accordance with standards specified by the secretary of the United States department of health and human services, under which the state medicaid agency may waive the application of the general rules for considering trust property in determining eligibility for medical assistance if the applicant for medical assistance establishes that the application of the general rules would work an undue hardship on the individual.

(3) The state department shall determine the feasibility of providing ongoing support of dependents by using the trust corpus during the life of the person for whom a trust is created or using the remainder of the trust after the death of the person for whom the trust was created. If the state department determines that it is feasible to provide that support, the state department shall seek a waiver from the federal government to permit the use of trust property for that purpose.

Source: L. 2006: Entire article added with relocations, p. 1911, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-506.6 as it existed prior to 2006.

25.5-6-104. Long-term care placements - comprehensive and uniform client assessment instrument - legislative declaration - definitions. (1) (a) The general assembly hereby finds, determines, and declares that there is an increasing strain on long-term care services in the state; that the number of persons in need of long-term care continues to grow; that community-based resources are not integrated into a centralized system for referrals, assessment of needs, development of care plans, and case management; and that persons in need of long-term care services have difficulty accessing and using the current system, which is fragmented and which results in inappropriate placements.

(b) The general assembly further finds, determines, and declares that the state is in need of a long-term care system that organizes each long-term care client's entry, assessment of need, and service delivery into a single unified system; and that such system must include, at a minimum, a locally established single entry point administered by a designated entity, a single client assessment instrument and administrative process, targeted case management in order to maximize existing federal, state, and local funding, case management, and an accountability mechanism designed to assure that budget allocations are being effectively managed.

(c) The general assembly therefore concludes that it is appropriate to develop and implement a comprehensive and uniform long-term care client assessment process and to study the establishment of a single entry point system that provides for the coordination of access and service delivery to long-term care clients at the local level, that is available to all persons in need of long-term care, and that is well managed and cost-efficient.

(2) As used in this section and in sections 25.5-6-105 to 25.5-6-107, unless the context otherwise requires:

(a) "Activities of daily living" means the basic self-care activities, including eating, bathing, dressing, transferring from bed to chair, bowel and bladder control, and independent ambulation.

(b) "Case management services" means the assessment of a long-term care client's needs, the development and implementation of a care plan for such client, the coordination and monitoring of long-term care service delivery, the direct delivery of services as provided by this article or by rules adopted by the state board pursuant to this article, the evaluation of service effectiveness, and the reassessment of such client's needs, all of which shall be performed by a single entry point as defined in paragraph (k) of this subsection (2).

(c) "Community-based" means services provided in an individual's home or in a homelike setting. "Community-based" does not include a hospital, hospital unit, nursing facility, or nursing home.

(d) "Comprehensive and uniform client assessment process" means a standard procedure, which includes the use of a uniform assessment instrument, to measure a client's functional capacity, to determine the social and medical needs of a current or potential client of any long-term care program, and to target resources to the functionally impaired.

(e) "Continuum of care" means an organized system of long-term care, benefits, and services to which a client has access and which enables a client to move from one level or type of care to another without encountering gaps in or barriers to service.

(f) "Information and referral" means the provision of specific, accurate, and timely public information about services available to aging and disabled adults in need of long-term care and referral to alternative agencies, programs, and services based on client inquiries.

(g) "Instrumental activities of daily living" means home management and independent living activities such as cooking, cleaning, using a telephone, shopping, doing laundry, providing transportation, and managing money.

(h) "Long-term care" means those services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive, and maintenance services for individuals who have chronic physical or mental impairments, or both, in a variety of institutional and noninstitutional settings, including the home, with the goal of promoting the optimum level of physical, social, and psychological functioning of the individuals.

(i) "Resource development" means the study, establishment, and implementation of additional resources or services which will extend the capabilities of community long-term care systems to better serve long-term care clients.

(j) “Screening” means a preliminary determination of need for long-term care services and, on the basis of such determination, the making of an appropriate referral for a client assessment in accordance with subsection (3) of this section or referral to another community resource to assist clients who are not in need of long-term care services.

(k) “Single entry point” means the availability of a single access or entry point within a local area where a current or potential long-term care client can obtain long-term care information, screening, assessment of need, and referral to appropriate long-term care program and case management services.

(3) (a) On or before July 1, 1991, the state department shall establish, by rule in accordance with article 4 of title 24, C.R.S., a comprehensive and uniform client assessment process for all individuals in need of long-term care, the purpose of which is to determine the appropriate services and levels of care necessary to meet clients’ needs, to analyze alternative forms of care and the payment sources for such care, and to assist in the selection of long-term care programs and services that meet clients’ needs most cost-efficiently.

(b) Participation in the process shall be mandatory for clients of publicly funded long-term care programs, including, but not limited to, the following:

- (I) Nursing facilities;
- (II) Home- and community-based services for the elderly, the blind, and the disabled;
- (III) Alternative care facilities;
- (IV) to (VI) (Deleted by amendment, L. 2008, p. 437, § 1, effective August 5, 2008.)
- (VII) Home health services for long-term care clients; and
- (VIII) Home- and community-based services for persons living with acquired immune deficiency syndrome (AIDS).

(c) Private paying clients of long-term care programs may participate in the process for a fee to be established by the state department and adopted through rules.

(d) The state department, through rules, shall develop and implement no later than July 1, 1991, a uniform long-term care client needs assessment instrument for all individuals needing long-term care. The instrument shall be used as part of the comprehensive and uniform client assessment process to be established in accordance with paragraph (a) of this subsection (3) and shall serve the following functions:

- (I) To obtain information on each client’s status in the following areas:
 - (A) Activities of daily living and instrumental activities of daily living;
 - (B) Physical health;
 - (C) Cognitive and emotional well-being;
 - (D) Social interaction and current support resources;
- (II) To assess each client’s physical environment in terms of meeting the client’s needs;
- (III) To obtain information on each client’s payment sources, including obtaining financial eligibility information for publicly funded long-term care programs;
- (IV) To disclose the need for more intensive needs assessments in areas such as nutrition, adult protection, dementia, and mental health;
- (V) To prioritize a client’s need for care using criteria established by the state department for specific publicly funded long-term care programs;
- (VI) To serve as the functional assessment for the determinations of medical necessity.

(e) On and after July 1, 1991, no publicly funded client shall be placed in a long-term care program unless such placement is in accordance with rules adopted by the state board in implementing this section.

(4) Repealed.

Source: L. 2006: Entire article added with relocations, p. 1911, § 7, effective July 1. L. 2007: (4) added, p. 1393, § 2, effective May 30. L. 2008: (3)(b) amended, p. 437, § 1, effective August 5.

Editor’s note: (1) This section is similar to former § 26-4-507 as it existed prior to 2006.

(2) Subsection (4)(c) provided for the repeal of subsection (4), effective July 1, 2008. (See L. 2007, p. 1393.)

Cross references: For the legislative declaration contained in the 2007 act enacting subsection (4), see section 1 of chapter 328, Session Laws of Colorado 2007.

25.5-6-105. Legislative declaration relating to implementation of single entry point system. (1) The general assembly hereby finds, determines, and declares that:

(a) A study of a single entry point system in accordance with former section 26-4.5-404, C.R.S., has been completed;

(b) The establishment of a single entry point system for the coordination of access to existing services and service delivery for all long-term care clients at the local level can be implemented in a cost-efficient manner;

(c) The implementation of a well-managed single entry point system will result in the utilization of more appropriate services by long-term care clients over time and will provide better information on the unmet service needs of clients; and

(d) The implementation of a statewide single entry point system is a comprehensive undertaking and would be more conducive to a phased-in approach.

(2) The general assembly further finds, determines, and declares that it is appropriate to develop and implement, through four phases, a single entry point system for the state and, therefore, enacts sections 26-4-522 to 26-4-525, which were relocated to sections 25.5-6-106 and 25.5-6-107, respectively, in the 2006 recodification of this title, to provide for such development and implementation.

Source: L. 2006: Entire article added with relocations, p. 1914, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-521 as it existed prior to 2006.

25.5-6-106. Single entry point system - authorization - phases for implementation - services provided. (1) **Authorization.** The state board is hereby authorized to adopt rules providing for the establishment of a single entry point system that consists of single entry point agencies throughout the state for the purpose of enabling persons eighteen years of age or older in need of long-term care to access appropriate long-term care services.

(2) **Single entry point agencies - service programs - functions.** (a) A single entry point agency shall be an agency in a local community through which any person eighteen years of age or older who is in need of long-term care can access needed long-term care services. A single entry point agency may be a private, nonprofit organization, a county agency, including a county department of social services, a county nursing service, an area agency on aging, or a multicounty agency. Persons in need of specialized assistance such as services for developmental disabilities or mental illness may be referred by a single entry point agency to programs under the department of human services.

(b) The agency may serve private paying clients on a fee-for-service basis and shall serve clients of publicly funded long-term care programs, including, but not limited to, the following:

- (I) Nursing facility care;
- (II) Home- and community-based services for the elderly, blind, and disabled;
- (III) Home- and community-based services for persons living with acquired immune deficiency syndrome;
- (IV) Long-term home health care, including services provided by a PACE organization providing a program of all-inclusive care for the elderly pursuant to section 25.5-5-412;
- (V) Home care allowance;
- (VI) Alternative care facilities;
- (VII) Adult foster care;
- (VIII) Certain in-home services available pursuant to the federal "Older Americans Act of 1965", as amended; and
- (IX) Home- and community-based services for persons with brain injury.

(c) The major functions of a single entry point shall include, but need not be limited to, the following:

- (I) Providing information;
- (II) Screening and referral services;

- (III) Assessing clients' needs in accordance with section 25.5-6-104;
- (IV) Developing plans of care for clients;
- (V) Determining payment sources available to clients for long-term care services;
- (VI) Authorizing the provision of certain long-term care services, as designated by the state department;
- (VII) Determining eligibility for certain long-term care programs, as designated by the state department;
- (VIII) Delivering case management services as an administrative function;
- (IX) Targeting outreach efforts to those most at risk of institutionalization;
- (IX.5) Informing eligible persons about the benefits of participating in the program of all-inclusive care for the elderly provided by a PACE organization pursuant to section 25.5-5-412 as an alternative to enrollment in a managed care organization, an organization contracted with the state department pursuant to part 4 of article 5 of this title, or other risk-bearing entity.
- (X) Identifying resource gaps and coordinating resource development;
- (XI) Recovering overpayment of benefits in accordance with rules adopted by the state board;
- (XII) Maintaining fiscal accountability; and
- (XIII) Rendering state certified services, as provided by state board rules, as a qualified and state certified agency.

(3) State certification of a single entry point agency - quality assurance standards.

(a) Upon selection of a single entry point agency, the state department shall contract with an agency for five years but shall recertify the agency annually based on an evaluation procedure provided for in paragraph (b) of this subsection (3).

(b) The state board shall adopt rules for the establishment of a quality assurance program for the purpose of monitoring the quality of services provided to clients and for recertifying single entry point agencies. The rules shall provide for: Procedures to evaluate the quality of services provided by the agency; an assessment of the agency's compliance with program requirements, including compliance with case management standards, which standards shall be adopted by the state department; an assessment of an agency's performance of administrative functions, including reasonable costs per client, timely responses, managing programs in one consolidated unit, on-site visits to clients, community coordination and outreach, and client monitoring; a determination as to whether targeted populations are being identified and served; and an evaluation concerning financial accountability.

(c) The state department shall monitor each single entry point agency in the state for compliance with quality assurance standards adopted by the state and may provide for the implementation of sanctions at any time for noncompliance. In addition, each county department may enter into cooperative agreements or contracts with the single entry point agencies to assure quality performance by the single entry point agency serving such county.

(d) Ongoing reimbursement to single entry points shall be contingent upon compliance with quality assurance standards.

Source: L. 2006: Entire article added with relocations, p. 1915, § 7, effective July 1.
L. 2012: (2)(b)(IV) amended and (2)(c)(IX.5) added, (SB 12-023), ch. 94, p. 309, § 2, effective April 12.

Editor's note: This section is similar to former § 26-4-522 as it existed prior to 2006.

Cross references: For the "Older Americans Act of 1965", see Pub.L. 89-73, codified at 42 U.S.C. sec. 3001 et seq.

25.5-6-107. Financing of single entry point system. (1) The single entry point system shall be financed with the following moneys:

(a) Federal financial participation moneys available for case management for home- and community-based services pursuant to this article, and for administration of medical

assistance programs, pursuant to Title XIX of the federal "Social Security Act", as amended;

(b) The state's share or contribution for specific long-term care programs in accordance with or pursuant to sections 26-1-122 and 26-2-114, C.R.S.;

(c) County contributions, as follows:

(I) The total for the fiscal year beginning July 1, 1990, and for each fiscal year thereafter, which totals shall serve as the base for determining the contribution required in subparagraph (II) of this paragraph (c), of the following: The counties' five percent contribution for home care allowance and adult foster care services as required by section 26-1-122, C.R.S.

(II) The amount contributed from each county in accordance with subparagraph (I) of this paragraph (c) after making an adjustment based on the percentage of an increase or decrease per fiscal year in the service costs for clients of such county. However, in no case shall a county be required under this subparagraph (II) to contribute more than a five percent increase in said service costs.

(2) County contributions for client services made in accordance with subparagraph (I) of paragraph (c) of subsection (1) of this section shall be expended only for clients of the county providing said contribution.

Source: L. 2006: Entire article added with relocations, p. 1917, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-525 as it existed prior to 2006.

25.5-6-108. Legislative declaration - advisory committee - long-term care - report - repeal. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1917, § 7, effective July 1.

Editor's note: (1) This section was similar to former § 26-4-425 as it existed prior to 2006.

(2) Subsection (9) provided for the repeal of this section, effective July 1, 2007. (See L. 2006, p. 1917.)

25.5-6-108.5. Community long-term care studies - authority to implement - alternative care facility report. (1) (a) Subject to the receipt of sufficient moneys pursuant to paragraph (c) of this subsection (1), the state department shall contract for one or more studies of the population of recipients receiving services under the home- and community-based waivers authorized pursuant to this article. The state department shall make necessary data available to the contractor, including but not limited to data on activities of daily living. In selecting a contractor to perform any study conducted pursuant to this subsection (1), the state department is not required to follow the competitive bidding requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S. The state department shall provide copies of all studies conducted pursuant to this subsection (1) to members of the health and human services committees of the general assembly, or any successor committees, and to the members of the joint budget committee.

(b) If a study conducted pursuant to this subsection (1) concludes that a program of home- and community-based services would result in cost savings, the state department shall seek any necessary federal authorization to implement the program. If federal authorization to implement the program is obtained, the state department shall request, through the state budget process, that the program be implemented. The state department shall report to the joint budget committee annually concerning the amount of any savings realized from the program.

(c) The state department is authorized to seek and accept gifts, grants, or donations from private and public sources for the purposes of this subsection (1); except that the state department may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this subsection (1) or any other law of the state. The state department shall transmit all private and public moneys received through gifts, grants, or donations to the

state treasurer, who shall credit the same to the department of health care policy and financing cash fund created in section 25.5-1-109.

(2) (a) Subject to the receipt of sufficient moneys, one of the studies contracted for pursuant to subsection (1) of this section shall include research and analysis of:

(I) The number of recipients with incontinence, Alzheimer's disease, dementia, or other diagnoses of a chronic incapacitating condition that severely limit their activities of daily living who would benefit from receiving additional services through an alternative care facility thereby avoiding nursing home placement;

(II) The actuarially sound rate for providing services for the recipients at an alternative care facility;

(III) The amount of savings associated with providing services at an alternative care facility;

(IV) Recommendations for utilization controls or program controls for a program to provide services at an alternative care facility;

(V) The experiences of the program of all-inclusive care for the elderly, created pursuant to section 25.5-5-412, with tiered rates for alternative care facilities, including cost savings or cost avoidance;

(VI) Other states' experiences with tiered rates for alternative care facilities, including cost savings or cost avoidance; and

(VII) Recommendations for maintaining or improving quality of care.

(b) The study conducted pursuant to this subsection (2) shall be completed by January 1, 2012, and, if federal approval is obtained prior to final figure-setting for the fiscal year commencing July 1, 2012, the state department shall submit a request through the budget process for implementation of the approved changes for that fiscal year.

Source: **L. 2010:** Entire section added, (HB 10-1053), ch. 276, p. 1264, § 2, effective May 26. **L. 2011:** (2)(b) amended, (HB 11-1242), ch. 271, p. 1231, § 2, effective July 1.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 276, Session Laws of Colorado 2010.

25.5-6-109. Community long-term care - coordinated care pilot program - federal authorization - rules - repeal. (Repealed)

Source: **L. 2006:** Entire article added with relocations, p. 1921, § 7, effective July 1. **L. 2007:** (1) and (7) amended, p. 2016, § 1, effective June 1. **L. 2010:** (2)(b) amended, (HB 10-1422), ch. 419, p. 2114, § 149, effective August 11.

Editor's note: (1) This section was similar to former § 26-4-426 as it existed prior to 2006.

(2) Subsection (7) provided for the repeal of this section, effective July 1, 2012. (See L. 2007, p. 2016.)

25.5-6-110. Private-public partnership education and information program concerning long-term care insurance authorized. (1) The general assembly hereby declares that:

(a) A large number of Coloradans are in need of long-term health care;

(b) The cost of long-term care, especially nursing home care, is significant;

(c) Many persons in need of long-term care are ineligible for state medical assistance due to countable resources. When faced with the need for long-term care, such persons expend such resources to pay for nursing home care.

(d) A person's resources may cover only a relatively short period of care, often resulting in rendering such person impoverished, and after which time the person must rely on state medical assistance;

(e) Expenditures for long-term care represent a significant portion of the state's medical assistance budget;

(f) Unless Colorado implements new methods for financing long-term care, which methods include participation by the private sector, the cost to the state for long-term care will increase astronomically; and

(g) It is therefore appropriate to enact legislation that allows the state department, upon a determination by the executive director of the state department that it is feasible, to design and implement a private-public partnership for financing long-term care in this state.

(2) The state department shall cooperate with the division of insurance in the department of regulatory agencies in a private-public partnership for financing long-term care in this state through the availability of long-term care insurance policies that result in a reduction of total dependency on the medical assistance program to finance such care. It is the general assembly's intent that such partnership shall be designed to encourage individuals to purchase long-term care insurance, which, with respect to middle to higher income individuals, will have the result of eliminating or delaying the individual's need for medical assistance.

(3) Under the partnership described in subsection (2) of this section, the division of insurance shall implement statutory changes to article 19 of title 10, C.R.S., concerning long-term care policies that the general assembly hereby declares are necessary to accomplish the purpose of the partnership described in this section. In addition, the state department is encouraged to implement a public education-awareness program based on recommendations from an advisory committee that the executive director of the state department is hereby authorized to establish.

(4) The state department is authorized to seek and accept funds, grants, or donations from any private entity for implementing the public education-awareness program. In addition, if necessary, the state department may assess a fee in connection with conducting any public education-awareness training program or seminar. Any such fee collected shall be transmitted to the state treasurer, who shall credit the same to the long-term care insurance fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the sole purpose of public education-awareness training programs and seminars.

(5) In addition to administering the public education-awareness program under the partnership, the state department shall seek a federal waiver from the requirement of section 13612 of the federal "Omnibus Budget Reconciliation Act of 1993" (OBRA), Public Law 103-66, that prevents the state department from granting medical assistance applicants a full or partial resource exemption in determining eligibility for medical assistance and an exemption from estate recovery requirements.

(6) The state department, if funds are available, shall contract with a public or private entity to conduct an evaluation of the public education-awareness program on or before December 1, 2000.

(7) With respect to a policyholder who has allowed his or her private long-term care insurance policy to lapse, if the person is found to be eligible for the medical assistance program, the state department is authorized to pay the premium for a reinstated policy pursuant to section 10-19-107 (2), C.R.S., if the state department finds that to do so is feasible and cost-efficient.

Source: L. 2006: Entire article added with relocations, p. 1922, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-506.7 as it existed prior to 2006.

25.5-6-111. Pilot program for coordinated care for people with a disability - fund - report - rules - repeal. (1) On or before September 1, 2006, a nonprofit organization shall submit to the state department a proposal for a pilot program to improve the overall quality of care received by recipients with a disability. The nonprofit organization shall be based in Colorado and shall be governed by a board composed of persons interested in recipients with a disability that contains a majority of recipients with a disability, or familial representatives of recipients with a disability, who have experience in representing the interests of persons with a disability. The proposed pilot program shall include, but need not be limited to, the following components:

(a) A system that is a client-centered, comprehensive, integrated approach to primary, acute, and long-term care designed to reduce the incidences of emergency room visits, hospitalizations, secondary disabilities, and institutionalizations;

(b) A system for reimbursement for services that shall not have a negative impact on the budget of the state department;

(c) Operation in at least two geographic areas of the state, at least one of which shall be a rural area and at least one of which shall be an urban area;

(d) Voluntary recipient enrollment and participation in the pilot program;

(e) Voluntary provider participation in the pilot program;

(f) Provider network adequacy;

(g) Contracting with organizations capable of coordinating care for recipients with a disability that demonstrates cost savings, including but not limited to the coordination of services and maintenance of an adequate network of providers for covered services; and

(h) An evaluation of the pilot program's outcomes, including but not limited to program costs, the benefits to recipients and the state, and any net fiscal savings.

(2) (a) The state department shall review the proposed pilot program. On or before January 1, 2007, the state department shall report to the nonprofit organization that submitted the proposal pursuant to subsection (1) of this section and the health and human services committees of the senate and house of representatives and joint budget committee, or any successor committees, on the proposed pilot program. The report shall include, but need not be limited to, an analysis as to whether the proposed pilot program meets the components required by subsection (1) of this section and an identification of the type of federal authorization necessary to implement the pilot program.

(b) If the state department determines that the pilot program meets the components required by subsection (1) of this section, the state department shall request any authorization from the federal government necessary to implement the pilot program. The state department shall implement the program within six months after receipt of any necessary federal authorizations.

(3) The state board shall promulgate rules, pursuant to article 4 of title 24, C.R.S., necessary to implement the pilot program.

(4) There is hereby created in the state treasury the coordinated care for people with disabilities fund, referred to in this section as the "fund", that shall consist of moneys transferred to the fund pursuant to section 25.5-5-308 (8), any moneys that may be appropriated to the fund by the general assembly, and any gifts, grants, or donations received by the state department for the purpose of implementing this section. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the pilot program. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. If this section is repealed, prior to its repeal, all unexpended and unencumbered moneys remaining in the fund shall be transferred to the general fund.

(5) On or before January 15 of the year following the implementation of the pilot program, and on or before each January 15 thereafter, the state department shall report to the health and human services committees of the senate and house of representatives, or any successor committees, and the joint budget committee on the effects of the pilot program.

(6) If, after implementation of the pilot program, the state department can establish that the pilot program has resulted in cost savings and improved client satisfaction, subject to the approval of the joint budget committee and any necessary federal authorizations, the pilot program may be expanded into other geographic areas of the state.

(7) (a) This section is repealed, effective July 1, 2017, the fifth year following implementation of the pilot program.

(b) The state department shall notify the revisor of statutes of the date that the pilot program is implemented.

Source: L. 2006: Entire section added, p. 1115, § 1, effective May 25.

Editor's note: (1) This section was enacted as 26-4-537 in Senate Bill 06-128 but was relocated due to its harmonization with this article as it appeared in Senate Bill 06-219.

(2) The revisor of statutes received the notice required pursuant to subsection (7)(b) on April 30, 2012.

25.5-6-112. Plan of financial operation - purpose - approval - financial audits - rules - repeal. (1) (a) For the purposes of implementing section 25.5-6-111, the applicants for the pilot program shall submit a proposed plan of financial operation to the insurance commissioner, which plan shall describe the financial operation and solvency of the program.

(b) The plan of financial operation shall be developed after the applicant has given notice to the public that it will accept written comments concerning the contents of the plan from any interested party. The applicant shall consider the comments when it develops the plan. Copies of any written comments received by the applicant shall be transmitted to the insurance commissioner along with the plan of financial operation for the program.

(c) At the time that it submits the proposed plan of financial operation to the insurance commissioner, the applicant shall provide a copy of the proposed plan of financial operation to any party who has requested a copy of the plan, together with a notice that written comments on the proposed plan may be submitted to the insurance commissioner within thirty days.

(d) As part of the insurance commissioner's review of the proposed plan of financial operation, the insurance commissioner shall give due consideration to the written comments specified in paragraphs (b) and (c) of this subsection (1). Within sixty days after his or her receipt of the proposed plan, the insurance commissioner shall approve the plan of financial operation if the insurance commissioner determines that it will accomplish the purpose of ensuring the financial solvency of the pilot program in section 25.5-6-111.

(2) If the plan is not approved by the insurance commissioner, the insurance commissioner shall return the plan to the applicants with comments outlining the reasons for its rejection. The applicant shall have the ability to reorganize and resubmit the plan to the insurance commissioner within a period of time agreed to by the commissioner.

(3) (a) If, at any time after approval of the initial plan of financial operation, the applicant determines that it is necessary to amend the plan of financial operation in order to implement the purposes of this section, the applicant may amend and modify the plan of financial operation utilizing the procedures specified in subsection (1) of this section.

(b) If, at any time after approval of the initial plan of financial operation, the insurance commissioner determines that it is necessary to amend the plan of financial operation in order to implement the purposes of section 25.5-6-111 and the applicant fails to enact such amendment or amendments within a reasonable time after notice from the insurance commissioner that the amendment or amendments are necessary, the insurance commissioner shall promulgate rules necessary to amend the plan so that it implements the purposes of this section after notice and public hearing as provided in section 24-4-105, C.R.S.

(4) Any rules promulgated by the insurance commissioner pursuant to subsection (3) of this section shall continue in full force and effect until modified by the insurance commissioner after notice and public hearing or until superseded by a plan of financial operation or amendment submitted by the applicant and approved by the insurance commissioner pursuant to the provisions of this section.

(5) Not later than July 1, 2008, and July 1 of each succeeding year, the applicant shall submit an audited financial report for the program established in section 25.5-6-111 for the preceding calendar year to the commissioner in a form provided or prescribed by the insurance commissioner.

(6) The financial status of the program shall be subject to examination by the insurance commissioner or the insurance commissioner's designee. Such examination shall be conducted at least once every five years.

(7) In the event of any insolvency or impairment or dissolution of the pilot program by the general assembly, the commissioner shall have those rights and duties specified in parts

4 and 5 of article 3 of title 10, C.R.S., to ensure abatement of any delinquency or the orderly termination of the affairs and obligations of the program.

(8) This section is repealed, effective July 1, 2017, the fifth year following implementation of the pilot program created in section 25.5-6-111.

Source: L. 2007: Entire section added, p. 1352, § 2, effective May 29.

Editor's note: The revisor of statutes received notice from the state department of the date of implementation of the pilot program as referred to in subsection (8) and as required in § 25.5-6-111 (7)(b) on April 30, 2012.

25.5-6-113. Health home - integrated services - legislative declaration - contracting - definitions. (1) (a) The general assembly hereby finds and declares that:

(I) The state demographer office in the department of local affairs estimates that between 2005 and 2015, the portion of Colorado's population that is over sixty-five years of age will increase by more than twenty-three percent;

(II) This drastic increase in the population that is over sixty-five years of age is driven by the aging "baby boomer" generation and will result in a parallel increase in a demand for community long-term care services;

(III) Older adults, persons with disabilities, and their families need quality health care coverage and choice and flexibility in accessing community long-term care services that support their independence and ability to live in the least restrictive environment;

(IV) Research has shown that older adults suffer from higher rates of depression, have a higher risk of suicide, and have an increased misuse of prescription and illicit drugs, making the need for behavioral health care services essential to long-term care services;

(V) Coloradans deserve to have access to the proper level of health care;

(VI) The state needs a long-term care delivery system that addresses the needs of older adults, persons with disabilities, and their families, and health care coverage and coordination should not be fragmented or difficult to access; instead, it should be integrated to meet the needs of older adults, persons with disabilities, and their families;

(VII) A community long-term care system should be integrated, person-centered, and provide maximum service delivery and make efficient use of available public funds; and

(VIII) The system must ensure a comprehensive approach to long-term care that addresses the different demographic and geographic challenges in the state and the various long-term care services and supports that clients need.

(b) Therefore, the general assembly declares that a comprehensive approach to long-term care requires that programs and policies integrating and coordinating care under the medicaid program be flexible and allow for full participation by providers of long-term care services to ensure quality of care for clients and efficient use of limited resources.

(2) As used in this section, unless the context otherwise requires:

(a) "Dually eligible person" means a person who is eligible for assistance or benefits under both medicaid and medicare.

(b) "Health home" means a provider or group of providers that operate in coordination with a team of health care professionals that shall include primary care providers selected by an eligible individual with chronic conditions to provide health home services, as the term is defined in section 2703 of the federal "Patient Protection and Affordable Care Act", 42 U.S.C. sec. 1396w-4.

(3) (a) In determining the structure of health homes for chronic conditions for purposes of the federal "Patient Protection and Affordable Care Act", 42 U.S.C. sec. 1396w-4, and state plan amendments to the medicaid program, the state department shall include, to the extent permitted under federal law, provisions allowing providers of long-term care services and supports to participate as health homes or as part of a health home that provides:

(I) Comprehensive care management;

(II) Care coordination and health promotion;

(III) Comprehensive transitional care;

(IV) Patient and family support;

(V) Referral to community and social support services; and

(VI) The use of health information technology to link services, as is feasible and appropriate.

(b) The health home may consist of a multi-disciplinary team, including primary care management providers, behavioral health care providers, case managers, and providers of long-term care services and supports, including but not limited to single entry point agencies, nursing homes, alternative care facilities, day programs for the elderly, home care agencies, community mental health centers, hospice and palliative care centers, and community centered boards.

(4) To the extent provided under federal law, in integrating dually eligible persons, persons with chronic conditions, or persons needing long-term care services and supports in an organization with which the state department contracts pursuant to part 4 of article 5 of this title, the state department shall permit providers of long-term services and supports to contract as health homes or to provide some or all of the services provided by the organization contracted with the state department, which services may include, but need not be limited to, navigation of primary, specialty, or long-term care supports.

(5) Dually eligible clients may voluntarily elect to participate in a recognized medicare coordinated care system and may voluntarily elect to participate in the state department's medicaid coordinated care system.

Source: L. 2012: Entire section added, (SB 12-127), ch. 132, p. 453, § 1, effective April 23.

25.5-6-114. Alternative care facilities - reimbursement programs - legislative declaration - report - repeal. (1) (a) The general assembly hereby finds and declares that:

(I) The number of Coloradans needing long-term care is increasing;

(II) State general fund expenditures for long-term care already represent a significant portion of the state's medical assistance budget;

(III) Many persons in need of long-term care are often unaware that they may be able to receive long-term care services in a home-like environment, at a lower cost to the medicaid program;

(IV) Studies have been conducted informing the state that an enhanced reimbursement methodology is necessary for the establishment of a strong continuum of care for long-term care;

(V) Other alternatives to nursing home care should be developed and implemented; and

(VI) Unless Colorado implements new methods for financing long-term care, the cost to the state for long-term care services will continue to rise precipitously.

(b) Therefore, the general assembly finds that it is appropriate to establish a program to provide greater financial incentives to alternative care facilities that are able to meet the needs of medicaid clients at a lower cost to the medicaid program.

(2) In order to decrease the number of costly readmissions to nursing facilities, the state department may create an enhanced reimbursement program in which an alternative care facility receives a temporary increase in the medicaid per diem reimbursement rate for a medicaid client discharged from a nursing facility to an alternative care facility. The state department shall develop the criteria for participation in the enhanced reimbursement program.

(3) In order to address the needs of medicaid clients who are at risk of nursing home placement, the state department may also create a program, informed by prior studies, that may include, but need not be limited to, tiered-rate, acuity, and enhanced reimbursements for alternative care facilities and enhanced alternative care services. Any program created by the state department pursuant to this subsection (3) shall be budget-neutral or shall produce cost savings to the state department.

(4) As part of its annual reporting requirement, the state department shall submit a written report to the joint budget committee of the general assembly, the health and human services committee of the senate, or any successor committee, and the health and environ-

ment committee of the house of representatives, or any successor committee, concerning the design, implementation, and outcome of any program created pursuant to subsection (2) or (3) of this section.

(5) This section is repealed, effective July 1, 2015.

Source: L. 2012: Entire section added, (SB 12-128), ch. 275, p. 1452, § 1, effective August 8.

PART 2

NURSING FACILITIES

25.5-6-201. Special definitions relating to nursing facility reimbursement. As used in this part 2, unless the context otherwise requires:

(1) "Acquisition cost" means the actual allowable cost to the owners of a capital-related asset or any improvement thereto as determined in accordance with generally accepted accounting principles.

(2) "Actual cost" or "cost" means the audited cost of providing services.

(3) "Administration and general services costs" means costs in the following categories:

(a) Advertising, recruitment, and public relations, to the extent that such costs are necessary, reasonable, and patient-related;

(b) Travel and training of facility staff, unless the travel includes residents of the facility or the training is for the facility staff described in paragraph (a) of subsection (15) of this section; and

(c) All other costs that are not direct or indirect health care services, raw food costs, or capital-related assets.

(4) "Appraised value" means the determination by a qualified appraiser who is a member of an institute of real estate appraisers, or its equivalent, of the depreciated cost of replacement of a capital-related asset to its current owner. The depreciated replacement appraisal shall be based on the "Boeckh Commercial Underwriter's Valuation System for Nursing Homes". The depreciated cost of replacement appraisal shall be redetermined every four years by new appraisals of the nursing facilities. The new appraisals shall be based upon rules promulgated by the state board.

(5) "Array of facility providers" means a listing in order from lowest per diem cost facility to highest for that category of costs or rates, as may be applicable, of all medicaid-participating nursing facility providers in the state.

(6) (a) "Base value" means:

(I) For the fiscal year 1986-87 and every fourth year thereafter, the appraised value of a capital-related asset;

(II) For each year in which an appraisal is not done pursuant to subparagraph (I) of this paragraph (a), the most recent appraisal together with fifty percent of any increase or decrease each year since the last appraisal, as reflected in the index.

(b) For the fiscal year 1985-86, the base value shall not exceed twenty-five thousand dollars per licensed bed at any participating facility, and, for each succeeding fiscal year, the base value shall not exceed the previous year's limitation adjusted by any increase or decrease in the index.

(c) An improvement to a capital-related asset, which is an addition to that asset, as defined by rules adopted by the state board, shall increase the base value by the acquisition cost of the improvement.

(7) "Capital-related asset" means the land, buildings, and fixed equipment of a participating facility.

(8) "Case-mix" means a relative score or weight assigned for a given group of residents based upon their levels of resources, consumption, and needs.

(9) "Case-mix adjusted direct health care services costs" means those costs comprising the compensation, salaries, bonuses, workers' compensation, employer-contributed taxes, and other employment benefits attributable to a nursing facility provider's direct care

nursing staff whether employed directly or as contract employees, including but not limited to registered nurses, licensed practical nurses, and nurses' aides.

(10) "Case-mix index" means a numeric score assigned to each nursing facility resident based upon a resident's physical and mental condition that reflects the amount of relative resources required to provide care to that resident.

(11) "Case-mix neutral" means the direct health care costs of all facilities adjusted to a common case-mix.

(12) "Case-mix reimbursement" means a payment system that reimburses each facility according to the resource consumption in treating its case-mix of medicaid residents, which case-mix may include such factors as the age, health status, resource utilization, and diagnoses of the facility's medicaid residents as further specified in this section.

(13) "Class I facility" means a private for-profit or not-for-profit nursing facility provider or a facility provider operated by the state of Colorado, a county, a city and county, or special district that provides general skilled nursing facility care to residents who require twenty-four-hour nursing care and services due to their ages, infirmity, or health care conditions, including residents who are behaviorally challenged by virtue of severe mental illness or dementia.

(14) "Direct health care services costs" means those costs subject to case-mix adjusted direct health care services costs.

(15) "Direct or indirect health care services costs" means the costs incurred for patient support services, including the following:

(a) Salaries, payroll taxes, workers' compensation payments, training, and other employee benefits for registered nurses, licensed practical nurses, aides, medical records librarians, social workers, and activity personnel;

(b) Nonprescription drugs ordered by a physician;

(c) Consultant fees for nursing, medical records, patient activities, social workers, pharmacies, physicians, and therapies;

(d) Purchases, rentals, and costs incurred to operate, maintain, or repair health care equipment;

(e) Supplies for nurses, medical records personnel, social workers, activity personnel, and therapy personnel;

(f) Medical director fees;

(g) Therapies and other medically related services, including the following:

(I) Utilization review;

(II) Dental care, when required by federal law;

(III) Audiology;

(IV) Psychology;

(V) Physical therapy;

(VI) Recreational therapy;

(VII) Occupational therapy; and

(VIII) Speech therapy;

(h) Other patient support services determined and defined by the state board pursuant to rule;

(i) Raw food costs that do not include the costs of equipment, staff, or other costs associated with meal preparation;

(j) Malpractice insurance;

(k) Depreciation and interest for major health care equipment, such as equipment purchased for the sole purpose of providing care to facility residents; and

(l) Photocopying related to health care purposes such as medical records of patients.

(16) "Facility population distribution" means the number of Colorado nursing facility residents who are classified into each resource utilization group as of a specific point in time.

(17) "Fair rental allowance" means the product obtained by multiplying the base value of a capital-related asset by the rental rate.

(18) "Improvement" means the addition to a capital-related asset of land, buildings, or fixed equipment.

(19) “Index” means the RSMeans construction systems cost index or an equivalent index that is based upon a survey of prices of common building materials and wage rates for nursing home construction.

(20) “Index maximization” means classifying a resident who could be assigned to more than one category to the category with the highest case-mix index.

(21) “Median per diem cost” means the average daily cost of care and services per patient for the nursing facility provider that represents the middle of all of the arrayed facilities participating as providers or as the number of arrayed facilities may dictate, the mean of the two middle providers.

(22) “Minimum data set” means a set of screening, clinical, and functional status elements that are used in the assessment of a nursing facility provider’s residents under the federal medicare and medicaid programs.

(23) “Normalization ratio” means the statewide average case-mix index divided by the facility’s cost report period case-mix index.

(24) “Normalized” means multiplying the nursing facility provider’s per diem case-mix adjusted direct health care services cost by its case-mix index normalization ratio for the purpose of making the per diem cost comparable among facilities based upon a common case-mix in order to determine the maximum allowable reimbursement limitation.

(25) “Nursing facility provider” means a facility provider that meets the state nursing home licensing standards established pursuant to section 25-1.5-103 (1) (a), C.R.S., and is maintained primarily for the care and treatment of inpatients under the direction of a physician.

(26) “Nursing salary ratios” means the relative difference in hourly wages of registered nurses, licensed practical nurses, and nurses’ aides.

(27) “Nursing weights” means numeric scores assigned to each category of the resource utilization groups that measure the relative amount of resources required to provide nursing care to a nursing facility provider’s residents.

(28) “Occupancy-imputed days” means the use of a predetermined number for patient days rather than actual patients days in computing per diem cost.

(29) “Per diem cost” means the daily cost of care and services per patient for a nursing facility provider.

(30) “Per diem rate” means the daily dollar amount of reimbursement that the state department shall pay a nursing facility provider per patient.

(31) “Provider fee” means a licensing fee, assessment, or other mandatory payment that is related to health care items or services as specified under 42 CFR 433.55.

(32) “Raw food” means the products and substances, including but not limited to nutritional supplements, that are consumed by residents.

(33) “Rental rate” means the average annualized composite rate for United States treasury bonds issued for periods of ten years and longer plus two percent. The rental rate shall not exceed ten and three-quarters percent nor fall below eight and one-quarter percent.

(34) “Resource utilization groups” means the system for grouping a nursing facility’s residents according to their clinical and functional statuses as identified from data supplied by the facility’s minimum data set as published by the United States department of health and human services.

(35) “Statewide average per diem rate” means the average daily dollar amount of the per patient payments to all medicaid-participating facility providers in the state.

(36) “Supplemental medicaid payment” means a lump sum payment that is made in addition to a provider’s per diem rate. A supplemental medicaid payment is calculated on an annual basis using historical data and paid as a fixed monthly amount with no retroactive adjustment.

Source: L. 2006: Entire article added with relocations, p. 1924, § 7, effective July 1. L. 2008: Entire section R&RE, p. 1773, § 2, effective July 1. L. 2009: (36) added, (SB 09-263), ch. 203, p. 914, § 1, effective May 1.

Editor’s note: This section is similar to former § 26-4-502 as it existed prior to 2006.

Cross references: For the legislative declaration contained in the 2008 act repealing and reenacting this section, see section 1 of chapter 383, Session Laws of Colorado 2008.

ANNOTATION

The department's rule assigning 25 of the variables required under the Boeckh system as default variables is consistent with the general assembly's mandate that the Boeckh system be the method used for property assessments. Thus, the administrative law judge did not have

authority to require three of the variables assigned as default variables to be specifically calculated. *State Dept. of Soc. Servs. v. Hillhaven Corp.*, 923 P.2d 129 (Colo. App. 1995) (decided prior to the 2006 amendments relocating article 4 of title 26 to title 25.5).

25.5-6-202. Providers - nursing facility provider reimbursement - rules - repeal.

(1) (a) (I) Subject to available appropriations, for the purpose of reimbursing a medicaid-certified class I nursing facility provider a per diem rate for the cost of direct and indirect health care services and raw food, the state department shall establish an annually readjusted schedule to pay each nursing facility provider the actual amount of the costs. The payment shall not exceed one hundred twenty-five percent of the median cost of direct and indirect health care services and raw food as determined by an array of all facility providers; except that, for state veteran nursing homes, the payment shall not exceed one hundred thirty percent of the median cost.

(II) For the fiscal year commencing July 1, 2009, and for each fiscal year thereafter, any increase in the direct and indirect health care services and raw food costs shall not exceed eight percent per year. The calculation of the eight percent per year limitation for rates effective on July 1, 2009, shall be based on the direct and indirect health care services and raw food costs in the as-filed facility's cost reports up to and including June 30, 2009. For the purposes of calculating the eight-percent limitation for rates effective after July 1, 2009, the limitation shall be determined and indexed from the direct and indirect health care services and raw food costs as reported and audited for the rates effective July 1, 2009.

(b) In computing per diem cost, each nursing facility provider shall annually submit cost reports, and actual days of care shall be counted, not occupancy-imputed days of care. In addition, in determining the median cost, the cost of direct health care shall be case-mix neutral. The cost reports used by the state department to establish the per diem cost shall be those filed with the state department during the period ending December 31 of the prior year following implementation of this subsection (1) and for each succeeding year. The state department shall redetermine the median per diem cost based upon the most recent cost reports filed during the period ending December 31 of the prior year.

(2) The state department shall further adjust and, subject to available appropriations, pay the per diem rate to the nursing facility provider for the cost of direct health care services based upon the acuity or case-mix of the nursing facility provider residents in order to provide for the resource utilization of its residents. The state department shall determine this adjustment in accordance with each resident's status as identified and reported by the nursing facility provider on its federal medicare and medicaid minimum data set assessment. The state department shall establish a case-mix index for each nursing facility provider according to the resource utilization groups system, using only nursing weights. The state department shall calculate nursing weights based upon standard nursing time studies and weighted by facility population distribution and Colorado-specific nursing salary ratios. The state department shall determine an average case-mix index for each nursing facility provider's medicaid residents on a quarterly basis.

(3) (a) Subject to available appropriations, for the purpose of reimbursing a medicaid-certified class I nursing facility provider a per diem rate for the cost of its administrative and general services, the state department shall establish an annually readjusted schedule to pay each nursing facility provider a reasonable price for the costs, which reasonable price shall be a percentage of the median per diem cost of administrative and general services as determined by an array of all nursing facility providers. For facilities of sixty licensed beds or fewer, the reasonable price shall be one hundred ten percent of the median per diem cost for all class I facilities. For facilities of sixty-one licensed beds and more, the reasonable price shall be one hundred five percent of the median per diem cost for all class I facilities.

(b) In computing per diem cost, each nursing facility provider shall annually submit cost reports to the state department, and actual days of care shall be counted, not occupancy-imputed days of care. The cost reports used to establish this median per diem cost shall be those filed during the period ending December 31 of the prior year following implementation of this subsection (3), and, for each succeeding fourth year, the state department shall redetermine the median per diem cost based upon the most recent cost reports filed during the period ending December 31 of the prior year.

(c) (I) For fiscal years commencing on or after July 1, 2008, through the fiscal year commencing July 1, 2014, the state department shall compare a nursing facility provider's administrative and general services per diem rate as determined under this subsection (3) to the nursing facility provider's administrative and general services per diem rate as of June 30, 2008, and the state department shall pay the nursing facility provider the higher per diem amount for each of the fiscal years.

(II) For fiscal years commencing on or after July 1, 2009, through the fiscal year commencing July 1, 2014, if a reallocation of management costs between the administrative and general costs described in paragraph (a) of this subsection (3) and the direct and indirect health care costs described in subsection (1) of this section causes a nursing facility provider's administrative and general costs to exceed the reasonable price established by the state department pursuant to paragraph (a) of this subsection (3), pursuant to rules adopted by the state board, a nursing facility provider may receive a higher per diem payment for administrative and general services than provided for in paragraph (a) of this subsection (3).

(III) This paragraph (c) is repealed, effective July 1, 2015.

(4) In addition to the reimbursement components paid pursuant to subsections (1) to (3) of this section, a per diem rate constituting a fair rental allowance for capital-related assets shall be paid to each nursing facility provider as a rental rate based upon the nursing facility's appraised value.

(5) Subject to available moneys and the priority of the uses of the provider fees as established in section 25.5-6-203 (2) (b), in addition to the reimbursement rate components paid pursuant to subsections (1) to (4) of this section, the state department shall make a supplemental medicaid payment based upon performance to those nursing facility providers that provide services that result in better care and higher quality of life for their residents. This amount shall be determined by the state department based upon performance measures established in rules adopted by the state board in the domains of quality of life, quality of care, and facility management. The payment shall be computed annually as of July 1, 2009, and each July 1 thereafter, and shall not be less than twenty-five hundredths of one percent of the statewide average per diem rate for the combined rate components determined pursuant to subsections (1) to (4) of this section. During each state fiscal year, the state department may discontinue the supplemental medicaid payment established pursuant to this subsection (5) to any nursing facility provider that fails to comply with the established performance measures during the state fiscal year, and the state department may initiate the supplemental medicaid payment established pursuant to this subsection (5) to any provider who comes into compliance with the established performance measures during the state fiscal year.

(6) Subject to available moneys and the priority of the uses of the provider fees as established in section 25.5-6-203 (2) (b), in addition to the reimbursement rate components pursuant to subsections (1) to (5) of this section, the state department shall make a supplemental medicaid payment to nursing facility providers who have residents who have moderately to very severe mental health conditions, cognitive dementia, or acquired brain injury as follows:

(a) A supplemental medicaid payment shall be made to nursing facility providers that serve residents who have severe mental health conditions that are classified at a level II by the medicaid program's preadmission screening and resident review assessment tool. The state department shall compute this payment annually as of July 1, 2009, and each July 1 thereafter, and it shall be not less than two percent of the statewide average per diem rate for the combined rate components determined pursuant to subsections (1) to (4) of this section.

(b) A supplemental medicaid payment shall be made to nursing facility providers who serve residents with severe cognitive dementia or acquired brain injury. The state department shall calculate the payment based upon the resident's cognitive assessment established in rules adopted by the state board. The state department shall compute this payment annually as of July 1, 2009, and each July 1 thereafter, and it shall be not less than one percent of the statewide average per diem rate for the combined rate components determined under subsections (1) to (4) of this section.

(7) Subject to available moneys and the priority of the uses of the provider fees as established in section 25.5-6-203 (2) (b), in addition to the reimbursement rate components paid pursuant to subsections (1) to (6) of this section, the state department shall pay a nursing facility provider a supplemental medicaid payment for care and services rendered to medicaid residents to offset payment of the provider fee assessed under the provisions of section 25.5-6-203. The state department shall compute this payment annually, as of July 1, 2009, and each July 1 thereafter.

(8) (Deleted by amendment, L. 2009, (SB 09-263), ch. 203, p. 912, § 2, effective May 1, 2009.)

(9) (a) The per diem amount paid for direct and indirect health care services and administrative and general services costs shall include an allowance for inflation in the costs for each category using a nationally recognized service that includes the federal government's forecasts for the prospective medicare reimbursement rates recommended to the United States congress. Amounts contained in cost reports used to determine the per diem amount paid for each category shall be adjusted by the percentage change in this allowance measured from the midpoint of the reporting period of each cost report to the midpoint of the payment-setting period.

(b) (I) Except for changes in the number of patient days, the general fund share of the aggregate statewide average of the per diem rate net of patient payment pursuant to subsections (1) to (4) of this section shall be limited to an annual increase of three percent. The state's share of the reimbursement rate components pursuant to subsections (1) to (4) of this section may be funded through the provider fee assessed pursuant to the provisions of section 25.5-6-203 and any associated federal funds. Any provider fee used as the state's share and all federal funds shall be excluded from the calculation of the general fund limitation on the annual increase. For the fiscal year commencing July 1, 2009, and for each fiscal year thereafter, the general fund share of the aggregate statewide average per diem rate net of patient payment pursuant to subsections (1) to (4) of this section shall be calculated using the rates that were effective on July 1 of that fiscal year.

(II) If the aggregate statewide average per diem rate net of patient payment pursuant to subsections (1) to (4) of this section exceeds the general fund share, the amount of the average statewide per diem rate that exceeds the general fund share shall be paid as a supplemental medicaid payment using the provider fee established under section 25.5-6-203. Subject to the priority of the uses of the provider fee established under section 25.5-6-203 (2) (b), if the provider fee is insufficient to fully fund the supplemental medicaid payment, the supplemental medicaid payment shall be reduced to all providers proportionately.

(III) Notwithstanding any other provision of law, commencing March 1, 2010, through June 30, 2010, the general fund portion of the per diem rate pursuant to subsections (1) to (4) of this section shall be reduced by one and one-half percent. Notwithstanding any other provision of law, commencing July 1, 2010, through June 30, 2011, the general fund portion of the per diem rate pursuant to subsections (1) to (4) of this section shall be reduced by two and one-half percent. The state department may, but is not required to, increase the supplemental medicaid payment pursuant to subparagraph (II) of this paragraph (b) due to this reduction; except that the provider fee shall not exceed the amount specified in section 25.5-6-203 (1) (a) (II).

(IV) Notwithstanding any other provision of law, commencing July 1, 2011, through June 30, 2012, the general fund portion of the per diem rate pursuant to subsections (1) to (4) of this section shall be reduced by one and one-half percent. The state department may, but is not required to, increase the supplemental medicaid payment pursuant to subpara-

graph (II) of this paragraph (b) due to this reduction; except that the provider fee shall not exceed the amount specified in section 25.5-6-203 (1) (a) (II).

(V) Notwithstanding any other provision of law, commencing July 1, 2012, through June 30, 2013, the general fund portion of the per diem rate pursuant to subsections (1) to (4) of this section shall be reduced by one and one-half percent. The state department may, but is not required to, increase the supplemental medicaid payment pursuant to subparagraph (II) of this paragraph (b) due to this reduction; except that the provider fee shall not exceed the amount specified in section 25.5-6-203 (1) (a) (II).

(b.3) (I) For the fiscal year commencing July 1, 2009, and for each fiscal year thereafter, if the provider fee established under section 25.5-6-203 is insufficient to fully fund the supplemental medicaid payments established under subsections (5) to (7) of this section, subject to the priority of the uses of the provider fee established pursuant to section 25.5-6-203 (2) (b), the state department may suspend or reduce the supplemental medicaid payment subject to the uses of the provider fee established under section 25.5-6-203.

(II) If it is determined by the state department that the case-mix reimbursement includes a factor for nursing facility providers who serve residents with severe cognitive dementia or acquired brain injury, the state department may eliminate the supplemental medicaid payment to those providers who serve residents with severe cognitive dementia or acquired brain injury.

(b.5) Notwithstanding any other provision of law or any federal law that temporarily increases the federal matching participation rate for any fiscal year, payments to nursing facility providers from the general fund share of the aggregate statewide average of the per diem rate shall be calculated based on a fifty-percent federal match.

(b.7) Repealed.

(c) (I) The general assembly finds that the historical growth in nursing facility provider rates has significantly exceeded the rate of inflation. These increases have been caused in part by the inclusion of medicare costs in medicaid cost reports. The state of Colorado has an interest in limiting these exceptional increases in medicaid nursing facility provider rates by removing medicare part B direct costs from the medicaid nursing facility provider rates and by imposing a ceiling on the medicare part A ancillary costs that are included in calculating medicaid nursing facility rates.

(II) For all rates effective on or after July 1, 1997, for each class I nursing facility provider, only such costs as are reasonable, necessary, and patient-related may be reported for reimbursement purposes. Nursing facility providers may include the level of medicare part A ancillary costs that was included and allowed in the facility's last medicaid cost report filed prior to July 1, 1997. Any subsequent increase in this amount shall be limited to either the increase in the facility's allowable medicare part A ancillary costs or the percentage increase in the cost of medical care reported in the United States department of labor bureau of labor statistics consumer price index for the same time period, whichever is lower. Part B direct costs for medicare shall be excluded from the allowable reimbursement for facilities.

(III) The specific methodology for calculating the limitations and cost-reporting requirements described in this paragraph (c) shall be established by rules promulgated by the state board.

(d) The reimbursement rate components pursuant to subsections (5) to (7) of this section shall be funded entirely through the provider fee assessed pursuant to the provisions of section 25.5-6-203 and any associated federal funds. No general fund moneys shall be used to pay for the reimbursement rate components established pursuant to subsections (5) to (7) of this section.

(10) The state board shall promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., to implement this section, including establishing uniform accounting, reporting, and payment procedures consistent with this section, to determine a nursing facility provider's costs and payments to the provider.

(11) (Deleted by amendment, L. 2009, (SB 09-263), ch. 203, p. 912, § 2, effective May 1, 2009.)

Source: L. 2006: Entire article added with relocations, p. 1925, § 7, effective July 1. L. 2008: Entire section R&RE, p. 1777, § 3, effective July 1. L. 2009: (1)(a), (3), (5), (6),

(7), (8), (9)(b), and (11) amended and (9)(b.3), (9)(b.5), and (9)(b.7) added, (SB 09-263), ch. 203, p. 912, § 2, effective May 1. **L. 2010:** (9)(b)(III) added, (HB 10-1324), ch. 14, p. 69, § 1, effective March 1; (9)(b)(III) and (9)(b.7)(II) amended, (HB 10-1379), ch. 214, p. 930, §§ 1, 2, effective May 6. **L. 2011:** (9)(b)(IV) added, (SB 11-215), ch. 148, p. 514, § 1, effective May 5. **L. 2012:** (9)(b)(V) added, (HB 12-1340), ch. 154, p. 552, § 1, effective May 3.

Editor's note: (1) This section is similar to former § 26-4-502.5 as it existed prior to 2006.

(2) Subsection (9)(b.7)(III) provided for the repeal of subsection (9)(b.7), effective July 1, 2011. (See L. 2009, p. 912.)

Cross references: For the legislative declaration contained in the 2008 act repealing and reenacting this section, see section 1 of chapter 383, Session Laws of Colorado 2008.

25.5-6-203. Nursing facilities - provider fees - federal waiver - fund created - rules.

(1) (a) (I) Beginning with the fiscal year commencing July 1, 2008, and each fiscal year thereafter, the state department shall charge and collect provider fees on health care items or services provided by nursing facility providers for the purpose of obtaining federal financial participation under the state's medical assistance program as described in articles 4 to 6 of this title. As specified by the priority of the uses of the provider fee in paragraph (b) of subsection (2) of this section, the provider fees shall be used to sustain or increase reimbursement for providing medical care under the state's medical assistance program for nursing facility providers.

(II) For the fiscal years commencing July 1, 2009, and July 1, 2010, the provider fee shall not exceed seven dollars and fifty cents per nonmedicare-resident day. For the fiscal year commencing July 1, 2011, and each fiscal year thereafter, the provider fee shall not exceed twelve dollars per nonmedicare-resident day plus inflation based on the national skilled nursing facility market basket index as determined by the secretary of the department of health and human services pursuant to 42 U.S.C. sec. 1395yy (e) (5) or any successor index.

(III) In calculating the amount of the provider fee portion of the supplemental medicaid payments established under section 25.5-6-202 (5), the state department may include an additional amount of up to five percent of the provider fee portion of said supplemental medicaid payments to initiate the payment to any provider who complies with the established performance measures during the state fiscal year.

(b) The provider fees shall be charged on a nonmedicare-resident day basis and shall be based upon the aggregate gross or net revenue, as prescribed by the state department, of all nursing facility providers subject to the provider fee. The state department may exempt revenue categories from the gross or net revenue calculation and the collection of the provider fee from nursing facility providers, as authorized by federal law.

(c) In accordance with the redistributive method set forth in 42 CFR 433.68 (e) (1) and (e) (2), the state department shall seek a waiver from the broad-based provider fees requirement or the uniform provider fees requirement, or both, to exclude nursing facility providers from the provider fee. The state department shall exempt the following nursing facility providers to obtain federal approval and minimize the financial impact on nursing facility providers:

(I) A facility operated as a continuing care retirement community that provides a continuum of services by one operational entity providing independent living services or assisted living residence services, as defined in section 25-27-102 (1.3), C.R.S., or that provides assisted living services on-site, twenty-four hours per day, seven days per week, and skilled nursing care on a single, contiguous campus;

(II) A skilled nursing facility owned and operated by the state;

(III) A nursing facility that is a distinct part of a facility that is licensed as a general acute care hospital; and

(IV) A facility that has forty-five or fewer licensed beds.

(d) The state department may lower the amount of the provider fee charged to certain nursing facility providers to meet the requirements of 42 CFR 433.68 (e) and to obtain federal approval.

(e) The imposition and collection of a provider fee shall be prohibited without the federal government's approval of a state medicaid plan amendment authorizing federal financial participation for the provider fees. The state department may alter the method prescribed in this section to the extent necessary to meet the federal requirements and to obtain federal approval.

(f) If the provider fee required by this subsection (1) is not approved by the federal government, notwithstanding any other provision of this section, the state department shall not implement the assessment or collection of the provider fee from nursing facility providers.

(g) The state department shall establish a schedule to assess the provider fee on a monthly basis and shall collect the fee from nursing facility providers by no later than the end of the next succeeding calendar month. The state board shall establish rules so that provider fee payments from a nursing facility provider and the state department's supplemental medicaid payments to the nursing facility are due as nearly simultaneously as feasible; except that the state department's supplemental medicaid payments to the nursing facility shall be due no more than fifteen days after the provider fee payment is received from the nursing facility. The state department shall require each nursing facility provider to report monthly its total number of days of care provided to nonmedicare residents.

(h) The state department shall not assess or collect the provider fee until state medicaid plan amendments adopting the medicaid reimbursement system for the state's class I nursing facility providers, pursuant to section 25.5-6-202, including the waiver with respect to the provider fees pursuant to this section, have been approved by the federal government.

(i) The state board shall promulgate any rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., necessary for the administration and implementation of this section.

(j) A nursing facility provider shall not include any amount of the provider fee as a separate line item in its billing statements.

(2) (a) All provider fees collected pursuant to this section by the state department shall be transmitted to the state treasurer, who shall credit the same to the medicaid nursing facility cash fund, which fund is hereby created and referred to in this section as the "fund".

(b) (I) All moneys in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the administrative costs of implementing section 25.5-6-202 and this section and to pay the supplemental medicaid payments to offset payment of the provider fee established under section 25.5-6-202 (7).

(II) Following the payment of the amounts described in subparagraph (I) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments for acuity or case-mix of residents established under section 25.5-6-202 (2).

(III) (A) Except as provided in sub-subparagraph (B) of this subparagraph (III), after the payment of the amounts described in subparagraphs (I) and (II) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments for higher quality performance established under section 25.5-6-202 (5).

(B) Notwithstanding any other provision of this paragraph (b), the supplemental medicaid payments established pursuant to section 25.5-6-202 (5) shall not be less than ten percent of the supplemental medicaid payments established under section 25.5-6-202 (7) in the prior state fiscal year.

(IV) Following the payment of the amounts described in subparagraphs (I) to (III) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments for residents who have moderately to very severe mental health conditions, cognitive dementia, or acquired brain injury established under section 25.5-6-202 (6).

(V) Following the payment of the amounts described in subparagraphs (I) to (IV) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments for the amount by which the average statewide per diem rate exceeds the general fund share established under section 25.5-6-202 (9) (b) (II).

(VI) Any moneys in the fund not expended for the purposes specified in this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund but may be appropriated by the general assembly to pay nursing facility providers in future fiscal years.

Source: **L. 2006:** Entire article added with relocations, p. 1926, § 7, effective July 1. **L. 2008:** Entire section R&RE, p. 1781, § 4, effective July 1. **L. 2009:** (1)(a), (1)(g), and (2)(b) amended and (1)(j) added, (SB 09-263), ch. 203, p. 918, § 3, effective May 1; (1)(c)(I) amended, (SB 09-292), ch. 369, p. 1975, § 98, effective August 5. **L. 2010:** (2)(b)(II.7) added, (HB 10-1324), ch. 14, p. 69, § 2, effective March 1. **L. 2011:** (1)(a)(II) and (2) amended, (SB 11-125), ch. 208, p. 900, § 1, effective August 10.

Editor's note: (1) This section is similar to former § 26-4-503 as it existed prior to 2006.

(2) Subsection (2)(b)(II.7)(B) provided for the repeal of subsection (2)(b)(II.7), effective July 1, 2011. (See L. 2010, p. 69.)

Cross references: For the legislative declaration contained in the 2008 act repealing and reenacting this section, see section 1 of chapter 383, Session Laws of Colorado 2008.

25.5-6-204. Providers - reimbursement - intermediate care facility for the mentally retarded - reimbursement - maximum allowable. (1) (a) For the purpose of making payments to intermediate care facilities for the mentally retarded, the state department shall establish a price schedule to be readjusted every twelve months, that shall reimburse, subject to available appropriations, each provider, as nearly as possible, for its actual or reasonable cost of services rendered, whichever is less, its case-mix adjusted direct health care services costs as defined in section 25.5-6-201 (9), and a fair rental allowance for capital-related assets as defined in section 25.5-6-201 (7). The state board shall adopt rules, including uniform accounting or reporting procedures, in order to determine the actual or reasonable cost of services and case-mix adjusted direct health care services costs and the reimbursement therefor. The provisions of this paragraph (a) shall not apply to state-operated intermediate care facilities for the mentally retarded.

(b) State-operated intermediate care facilities for the mentally retarded shall be reimbursed based on the actual costs of administration, property, including capital-related assets, and room and board, and the actual costs of providing health care services, and such costs shall be projected by such facilities and submitted to the state department by July 1 of each year for the ensuing twelve-month period. Reimbursement to state-operated intermediate care facilities for the mentally retarded shall be adjusted retrospectively at the close of each twelve-month period. The state board shall adopt rules to be effective by June 30, 1988, implementing the provisions of this paragraph (b). In the implementation of such rules, the state department shall ensure, by the establishment of classes of facilities, that the reimbursement to private, nonprofit, or proprietary state-operated intermediate care facilities for the mentally retarded or developmentally disabled, as defined in section 27-10.5-102 (11), C.R.S., is not adversely impacted.

(c) (I) Beginning in fiscal year 2003-04, and for each fiscal year thereafter, the department of human services is authorized to charge both privately owned intermediate care facilities for the mentally retarded and state-operated intermediate care facilities for the mentally retarded a service fee for the purposes of maintaining the quality and continuity of services provided by intermediate care facilities for the mentally retarded. The service fee

charged by the department of human services pursuant to this paragraph (c) shall not exceed five percent of the costs incurred by each intermediate care facility for the fiscal year in which the service fee is charged. The state board of human services shall adopt rules consistent with federal law in order to implement the provisions of this paragraph (c).

(II) The moneys collected in each fiscal year pursuant to subparagraph (I) of this paragraph (c) shall be transmitted by the department of human services to the state treasurer, who shall credit the same to the service fee fund, which fund is hereby created and referred to in this paragraph (c) as the “fund”. The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department to be used toward the state match for the federal financial participation to reimburse intermediate care facilities for the mentally retarded pursuant to this section. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and not be credited or transferred to the general fund or any other fund.

(2) (a) In addition to the actual or reasonable costs and the reimbursement therefor, the state department shall, subject to available appropriations, include an allowance equal to the change in the national bureau of labor statistics consumer price index from the preceding year to compensate for fluctuating costs. This amount shall be determined every twelve months when the statewide average cost is determined by adjusting for inflation. The provider’s allowable cost shall be multiplied by the change in the consumer price index measured from the midpoint of the provider’s cost report period to the midpoint of the provider’s rate period. This allowance is applied to all costs, including case-mix adjusted direct health care services costs as defined in section 25.5-6-201 (9), less interest, up to the reasonable cost established and will be allowed to proprietary, nonprofit, and tax-supported homes; except that the allowance shall not be applied to the costs of state-operated intermediate facilities for the mentally retarded.

(b) (I) The state board shall adopt rules to:

(A) Determine and pay to privately owned intermediate care facilities for the mentally retarded a reasonable share of the amount by which the reasonable costs of the categories of administration, property, and room and board, excluding food costs, exceed the actual cost in these categories only. The reasonable share shall be defined as twenty-five percent of the amount in the categories for each facility, not to exceed twelve percent of the reasonable cost.

(B) (Deleted by amendment, L. 2008, p. 1783, § 5, effective July 1, 2008.)

(II) (Deleted by amendment, L. 2008, p. 1783, § 5, effective July 1, 2008.)

(c) to (e) (Deleted by amendment, L. 2008, p. 1783, § 5, effective July 1, 2008.)

(3) to (5) (Deleted by amendment, L. 2008, p. 1783, § 5, effective July 1, 2008.)

(6) and (7) Repealed.

Source: L. 2006: (5)(b) amended and (6) added, p. 1615, §§ 4, 3, effective June 2; entire article added with relocations, p. 1927, § 7, effective July 1. L. 2007: (7) added, p. 1802, § 2, effective July 1. L. 2008: (1)(a) and (2) to (5) amended, p. 1783, § 5, effective July 1.

Editor’s note: (1) This section is similar to former § 26-4-410 as it existed prior to 2006.

(2) (a) Amendments to section 26-4-410 (5)(b) by Senate Bill 06-131 were harmonized with subsection (5)(b) as it appeared in Senate Bill 06-219.

(b) Subsection (6) was enacted as § 26-4-410 (6) in Senate Bill 06-131 but was relocated due to its harmonization with this section as it appeared in Senate Bill 06-219.

(3) Subsection (6)(c) provided for the repeal of subsection (6), effective July 1, 2007. (See L. 2006, p. 1615.)

(4) Subsection (7)(c) provided for the repeal of subsection (7), effective July 1, 2008. (See L. 2007, p. 1802.)

Cross references: For the legislative declaration contained in the 2006 act amending subsection (5)(b) and enacting subsection (6), see section 1 of chapter 324, Session Laws of Colorado 2006. For the legislative declaration contained in the 2008 act amending subsections (1)(a) and (2) to (5), see section 1 of chapter 383, Session Laws of Colorado 2008.

ANNOTATION

Annotator's note. Since § 25.5-6-204 is similar to § 26-4-410 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-410 is similar to § 26-4-110 (5) as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, relevant cases construing those provisions have been included in the annotations to this section.

Department of social services regulation which prohibits a nursing home from charging more for medicaid patients than private-pay patients is valid because it confirms the legislative intent to pay nursing homes the reasonable cost of rendering services. *Smith, Harst & Assocs., Inc. v. Dept. of Soc. Servs.*, 780 P.2d 20 (Colo. App. 1989).

Colorado rate structure and classification system is not arbitrarily or capriciously established or applied where the reimbursement rate was based upon and took into consideration plaintiff's actual costs in providing services needed by all of its patients, including intensive management patients, and where there was no evidence that necessary services cannot be provided to intensive management patients by other available and qualified providers if plaintiffs are unable to continue their present patient mix. *Bethesda Found. v. Dept. of Health*, 902 P.2d 863 (Colo. App. 1995).

25.5-6-205. Collection of penalties assessed against nursing facilities - creation of cash fund. (1) (a) The state department shall assess, enforce, and collect any civil penalties that are recommended by the department of public health and environment pursuant to the authority granted under section 25-1-107.5, C.R.S.

(b) Prior to the denial of medicaid payments or the assessment of a civil money penalty against a nursing facility, the nursing facility shall be offered by the state department an opportunity for a hearing in accordance with the provisions of section 24-4-105, C.R.S. Enforcement and collection of the denial of medicaid payments or civil money penalty shall occur following the decision reached at such hearing.

(2) In conjunction with the authority granted under subsection (1) of this section, the state board shall promulgate rules that:

(a) Provide any nursing facility assessed a civil penalty the opportunity to appeal such assessment;

(b) Govern the procedures for such appeals, including the right of a nursing facility to thirty days' notice prior to the collection of any civil money penalty; and

(c) Are otherwise necessary to implement this section.

(3) (a) Any civil penalties collected by the state department pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the nursing home penalty cash fund, which fund is hereby created.

(b) (I) The moneys in the fund are subject to annual appropriation by the general assembly to the state department for the purposes set forth in section 25-1-107.5, C.R.S.

(II) Such moneys shall be used in the manner prescribed in section 25-1-107.5, C.R.S., and the rules promulgated thereunder.

(c) All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(d) At the end of any fiscal year, all unexpended and unencumbered moneys remaining in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

Source: L. 2006: Entire article added with relocations, p. 1933, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-505 as it existed prior to 2006.

25.5-6-206. Personal needs benefits - amount - patient personal needs trust fund required - funeral and burial expenses - penalty for illegal retention and use. (1) The state department, pursuant to its rules, shall have the authority to include in medical care benefits provided under this article and articles 4 and 5 of this title reasonable amounts for the personal needs of any recipient receiving nursing facility services or intermediate care facilities for the mentally retarded, if the recipient is not otherwise eligible for such amounts

from other categories of public assistance, but such amounts for personal needs shall not be less than the minimum amount provided for in subsection (2) of this section. Payments for funeral and burial expenses upon the death of a recipient may be provided under rules of the state department in the same manner as provided to recipients of public assistance as defined by section 26-2-103 (8), C.R.S.

(2) (a) The basic minimum amount payable pursuant to subsection (1) of this section for personal needs to any recipient admitted to a nursing facility or intermediate care facility for the mentally retarded shall be fifty dollars monthly.

(b) On and after October 1, 1992, the basic minimum amount payable pursuant to subsection (1) of this section for personal needs shall be ninety dollars for the following persons:

(I) A medical assistance recipient who receives a non-service connected disability pension from the United States veterans administration, has no spouse or dependent child, and is admitted to or is residing in a nursing facility; and

(II) A medical assistance recipient who is a surviving spouse of a person who received a non-service connected disability pension from the United States veterans administration, has no dependent child, and is admitted to or is residing in a nursing facility.

(3) (a) All personal needs funds shall be held in trust by the nursing facility or intermediate care facility for the mentally retarded, or its designated trustee, separate and apart from any other funds of the facility. The facility shall deposit any personal needs funds of a resident in an amount of fifty or more dollars in an interest-bearing checking account or accounts or savings account or any combination thereof established to protect and separate the personal needs funds of the patients. Any interest earned on a resident's personal needs funds shall be credited to such account or accounts. In the event residents' personal needs funds are maintained in a pooled account, separate accountings shall be made for each resident's share of the pooled account. Any personal needs funds of a resident in an amount less than fifty dollars shall be maintained in a non-interest-bearing account, an interest-bearing account, or a petty cash fund.

(b) At all times, the principal and all income derived from said principal in the patient personal needs trust fund shall remain the property of the participating patients, and the facility or its designated trustee is bound by all of the duties imposed by law upon fiduciaries in the handling of such fund. Those duties include but are not limited to providing notice to a resident when the resident's personal needs account accumulates two hundred dollars less than the federal supplemental security income resource limit for one person.

(c) The facility or its designated trustee shall post a surety bond in an amount to assure the security of all personal needs funds deposited in the patient personal needs trust fund or shall otherwise demonstrate to the satisfaction of the state department that the security of residents' personal needs funds is assured.

(d) Within sixty days after a resident's death, the facility shall transfer the resident's personal needs funds and a final accounting of the funds to the person responsible for settling the resident's estate or, if there is none, to the resident's heirs in accordance with the provisions of title 15, C.R.S. Within fifteen days after receiving the funds, the executor, administrator, or other appropriate representative of the resident's estate shall provide written notice to the state department regarding the receipt of the funds. Upon receipt of the notice, the state department may bring an action to recover the funds pursuant to the provisions of this article and articles 4 and 5 of this title.

(4) The state department shall establish rules concerning the establishment of a patient personal needs trust fund and procedures for the maintenance of a system of accounting for expenditures of each patient's personal needs funds. The facility shall use an accounting system that assures a complete and separate accounting of residents' personal needs funds based on generally accepted accounting principles and that precludes the commingling of a resident's personal needs funds with the facility's funds or the funds of any other person other than the personal needs funds of another resident. These rules shall provide that the nursing facility or intermediate care facility for the mentally retarded shall maintain complete records of all receipts and expenditures involving the patient personal needs trust fund, that all expenditures shall be approved by the patient, legal custodian, guardian, or

conservator prior to an expenditure, and that each patient or such patient's legal custodian, guardian, or conservator shall be given at least a quarterly accounting of the receipts and expenditures of such funds. In addition, the rules shall require that the person who maintains the patient personal needs trust fund for the facility and who is responsible for the deposit of moneys into such trust fund shall deposit any personal needs funds received from a patient or from the state department no later than sixty days after the receipt of such moneys.

(5) All patient personal needs trust funds shall be subject to audit by the state department. A record of a patient's personal needs trust fund shall be kept by the facility for a period of three years from the date of the patient's discharge from the facility or until such records have been audited by the state department, whichever occurs later.

(6) Any overpayment of personal needs funds to a nursing facility or an intermediate care facility for the mentally retarded by the state department due to the omission, error, fraud, or defalcation of the nursing facility or intermediate care facility for the mentally retarded or any shortage in an audited patient personal needs trust fund shall be recoverable by the state on behalf of the recipient in the same manner and following the same procedures as specified in section 25.5-4-301 (2) for an overpayment to a provider.

(7) Nothing in this section shall prevent a nursing facility or intermediate care facility for the mentally retarded patient from excluding himself or herself from participation in the patient personal needs trust fund.

(8) (a) It is unlawful for any person to knowingly fail to deposit personal needs funds received from a patient or from the state department for a patient's personal needs into the patients' personal needs trust fund within sixty days after the receipt of such moneys or to knowingly apply, spend, commit, pledge, or otherwise use a patient personal needs trust fund, or any other moneys paid by a patient or the state department for patient personal needs, for any purpose other than the personal needs of the patient to purchase necessary clothing, incidentals, or other items of personal needs that are not reimbursed by any federal or state program. Deposit or use of personal needs funds, including the use of a petty cash fund for personal needs purposes, is not a violation of this section if such deposit or use is in substantial compliance with applicable rules of the state department. Sums later ordered repaid to the patients' personal needs trust fund as a result of an audit adjustment related to simple accounting errors such as data entry errors, mathematical errors, or posting errors or a dispute related to a proration of patient payment is not a violation of this section.

(b) Any person who knowingly violates any of the provisions of this subsection (8) by failing to deposit personal needs funds within sixty days after the receipt of such moneys commits the crime of unlawful retention of patient personal needs funds. Any person who violates any of the provisions of this subsection (8) by applying, spending, committing, pledging, or otherwise using a patient personal needs trust fund for any purpose other than the purposes permitted by this subsection (8) commits the crime of unlawful use of a patient personal needs trust fund.

(c) Unlawful retention of patient personal needs funds is a class 3 misdemeanor. When a person commits unlawful retention of patient personal needs funds twice or more within a period of six months without having been placed in jeopardy for the prior offense or offenses, unlawful retention of patient personal needs funds is a class 1 misdemeanor.

(d) Unlawful use of a patient personal needs trust fund is:

(I) A class 2 misdemeanor, if the amount involved is less than five hundred dollars;

(II) A class 1 misdemeanor, if the amount involved is five hundred dollars or more but less than one thousand dollars;

(III) A class 4 felony, if the amount involved is one thousand dollars or more but less than twenty thousand dollars;

(IV) A class 3 felony, if the amount involved is twenty thousand dollars or more.

(e) Any person who is convicted of violating this subsection (8) may not own or operate a nursing facility that receives medical assistance pursuant to this article or article 4 or 5 of this title. For the purposes of this paragraph (e), "convicted" means the entry of a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section 18-1.3-102, C.R.S., the entry of a plea of no contest accepted by the court, or the entry of a verdict of guilty by a judge or jury.

Source: **L. 2006:** Entire article added with relocations, p. 1934, § 7, effective July 1. **L. 2012:** (8)(a) and (8)(d) amended, (HB 12-1310), ch. 20, p. 1400, § 20, effective June 7.

Editor's note: This section is similar to former § 26-4-504 as it existed prior to 2006.

ANNOTATION

Law reviews. For article, "Trust Protection of Personal Injury Recoveries from Public Creditors", see 19 Colo. Law. 2187 (1990).

Annotator's note. Since § 25.5-6-206 is similar to § 26-4-504 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-504 is similar to § 26-4-116 as it existed prior to the 1991 repeal and reenactment of article 4 of title 26, a relevant case construing that provision has been included in the annotations to this section.

Subsection (3.5) is remedial in nature and does not remove or impair any vested rights

acquired under existing law, does not create a new obligation, impose a new duty, or attach a new disability with respect to transactions or considerations already past. This subsection gives the department of social services the power to recover by setoff monies improperly withdrawn by a nursing home from patient personal needs trust fund accounts. *Dept. of Soc. Serv. v. Smith, Harst & Assoc.*, 803 P.2d 964 (Colo. 1991).

25.5-6-207. Class I nursing facility reimbursement rates - study - report - repeal. (Repealed)

Source: **L. 2006:** Entire section added, p. 1614, § 2, effective June 2. **L. 2007:** (1) and (3) amended, p. 1802, § 1, effective June 1. **L. 2008:** Entire section repealed, p. 1788, § 6, effective July 1.

Editor's note: This section was enacted as § 26-4-410.1 in Senate Bill 06-131. Section 6 of the bill provided for the renumbering of that section. (See L. 2006, p. 1616.)

Cross references: For the legislative declaration contained in the 2008 act repealing this section, see section 1 of chapter 383, Session Laws of Colorado 2008.

PART 3

HOME- AND COMMUNITY-BASED SERVICES FOR THE ELDERLY, BLIND, AND DISABLED

25.5-6-301. Short title. This part 3 shall be known and may be cited as the "Home- and Community-based Services for the Elderly, Blind, and Disabled Act".

Source: **L. 2006:** Entire article added with relocations, p. 1937, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-601 as it existed prior to 2006.

25.5-6-302. Legislative declaration. The general assembly hereby finds and declares that it is the purpose of this part 3 to provide, under a federal waiver of statutory requirements, for an array of home- and community-based services to eligible elderly, blind, and disabled individuals as an alternative to nursing facility placement.

Source: **L. 2006:** Entire article added with relocations, p. 1937, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-602 as it existed prior to 2006.

25.5-6-303. Definitions. As used in this part 3 and part 5 of this article, unless the context otherwise requires:

(1) "Adult day care facility" means a facility which meets all applicable state and federal requirements and is certified by the state to provide adult day care services to eligible persons.

(2) "Adult day care services" means health and social services provided on a less than twenty-four-hour basis to eligible persons in state-certified adult day care facilities.

(3) "Alternative care facility" means a residential facility which provides alternative care services and protective oversight to eligible persons, which meets applicable state and federal requirements, and which is state-certified.

(4) "Alternative care services" means a package of personal care and homemaker services provided in a state-certified alternative care facility.

(5) (a) "Case management agency" means agencies providing services on and before July 1, 1995, for home- and community-based programs for the elderly, blind, and disabled and for persons living with AIDS shall be terminated July 1, 1995, and case management functions shall thereafter be performed in accordance with this article.

(b) "Case management agency", for counties participating in the single entry point system pursuant to this article before July 1, 1995, and for all counties on and after said date, means a public or private, nonprofit or for profit agency that meets all applicable state and federal requirements and is certified by the state department to provide case management functions reimbursable under this article and articles 4 and 5 of this title, within a geographic area of the state consisting of one or more counties. Such functions shall be provided by the agency under a contract executed with the state department or other state designated agency. The state department shall establish procedures for the designation, certification, and decertification of case management agencies and requirements for performance and staffing of the agencies. Such procedures and requirements shall be set forth in rules promulgated by the state board or shall be included in the contracts executed by the state department.

(6) "Case management services" means functions performed by a case management agency, including: The assessment of a client's needs, the development and implementation of a case plan for the client, the coordination and monitoring of service delivery, the direct delivery of services as provided by parts 3 to 12 of this article or by rules adopted by the state board, the evaluation of service effectiveness, and the reassessment of the client's needs. Case management services shall be reimbursed as an administrative expense.

(7) "Case plan" means a coordinated plan for the provision of long-term-care services in a setting other than a nursing home, developed and managed by a case management agency, in coordination with the client, his family or guardian and physician, and other providers of care.

(8) "Electronic monitoring provider" means an entity that meets applicable state, federal, and local requirements and is certified to provide electronic monitoring services.

(9) "Electronic monitoring services" means electronic equipment or adaptations that are related to an eligible person's physical impairment and enable the person to remain at home.

(10) "Homemaker agency" means any agency that meets applicable state and federal requirements and is state-certified to provide homemaker services.

(11) "Homemaker services" means general household activities that are provided by state-certified agencies to maintain a healthy and safe home environment for eligible persons.

(12) "Home modification provider" means an entity that meets applicable state, federal, and local requirements and is certified to provide home modification services.

(13) "Home modification services" means home installations or adaptations that are related to the eligible person's physical impairment and enable the person to remain at home.

(14) "Medications administration" means the administration or monitoring of medications provided in a manner consistent with part 3 of article 1.5 of title 25, C.R.S., under the authority and direction of the state department, as part of the "alternative care services", as defined in subsection (4) of this section, as provided in an "alternative care facility", as defined in subsection (3) of this section.

(15) “Nonmedical transportation provider” means an entity that meets applicable state and federal requirements and is certified to provide nonmedical transportation services.

(16) “Nonmedical transportation services” means transportation of eligible persons to services such as, but not limited to, adult day care services, which enable the person to remain at home.

(17) “Personal care agency” means any agency that meets state and federal requirements and is state-certified to provide personal care services.

(18) “Personal care services” means services to meet an eligible person’s physical requirements and functional needs, when such services do not require the supervision of a nurse.

(19) “Respite care provider” means a facility or agency that meets all applicable state and federal requirements and is state-certified to provide respite care services.

(20) “Respite care services” means services of a short-term nature provided to a client, in the home or in a facility approved by the state department, in order to temporarily relieve the family or other home providers from the care and maintenance of such client, including room and board, maintenance, personal care, and other related services.

(21) “Transition coordination service agency” means an agency that is certified by the state department, as specified in rule by the state board, and provides independent living core services as defined in section 26-8.1-102 (3), C.R.S., and community transition services.

Source: L. 2006: Entire article added with relocations, p. 1938, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-603 as it existed prior to 2006.

ANNOTATION

Annotator’s note. Since § 25.5-6-303 is similar to § 26-4-603 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-603 is similar to § 26-4.5-103 as it existed prior to the 1991 repeal of article 4.5 of title 26, a relevant case construing that provision has been included in the annotations to this section.

The establishment of procedures and requirements for certification of case management agencies does not result in a plan to provide

medical assistance “in effect” statewide, when the state declined to create a management agency in a county or to otherwise fill the void thereby created. *Christy v. Ibarra*, 826 P.2d 361 (Colo. App. 1991).

The state need not provide all services to all eligible recipients but must provide services to the extent they are available to the general population in the geographic area. *Christy v. Ibarra*, 826 P.2d 361 (Colo. App. 1991).

25.5-6-304. Administration. The provisions of this part 3 shall be administered by the state department.

Source: L. 2006: Entire article added with relocations, p. 1940, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-604 as it existed prior to 2006.

25.5-6-305. Provision of services for elderly, blind, and disabled persons. The provision of the services set forth in this part 3 shall be subject to the availability of federal matching medicaid funds, pursuant to Title XIX of the federal “Social Security Act”, as amended, for payment of the costs for administration and costs for the provision of such services.

Source: L. 2006: Entire article added with relocations, p. 1940, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-605 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-6-305 is similar to § 26-4-605 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-605 is similar to § 26-4.5-104.5 as it existed prior to the 1991 repeal of article 4.5 of title 26, a relevant case construing that provision has been included in the annotations to this section.

Once person was initially determined to be eligible for HCBS benefits, his right to continued receipt of the same was similar to "property" right for purposes of the application of the due process clause of the Fourteenth Amendment. Thus, he could be deprived of those continued benefits only by means of a procedure that complied with the tenets of due process of law. *Weaver v. Dept. of Soc. Servs.*, 791 P.2d 1230 (Colo. App. 1990).

The principle that due process prevents a termination of benefits absent a demonstration of a change in circumstances, or other good cause, and that, if the termination of benefits is not to be deemed arbitrary, a showing of some change in circumstances is required applies to the benefits under this section. *Weaver v. Dept. of Soc. Servs.*, 791 P.2d 1230 (Colo. App. 1990).

In the absence of a waiver of any defect in the form of the notice, a notice of adverse action that does not substantially comply with the federal and state requirements cannot provide the basis for a deprivation of benefits. *Weaver v. Dept. of Soc. Servs.*, 791 P.2d 1230 (Colo. App. 1990).

25.5-6-306. Eligible groups. (1) Home- and community-based services under this part 3 shall be offered only to persons:

(a) Who are elderly, blind, or physically disabled; and
(b) Who are in need of the level of care available in a nursing home; and
(c) Who are categorically eligible for medical assistance, or whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, and whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of supplemental security income benefits or, in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101.

(2) A long-term-care eligible person receiving home- and community-based services shall remain eligible for the services specified in sections 25.5-5-102, 25.5-5-103, 25.5-5-202, and 25.5-5-203, as applicable.

Source: L. 2006: Entire article added with relocations, p. 1940, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-606 as it existed prior to 2006.

ANNOTATION

Annotator's note. Since § 25.5-6-306 is similar to § 26-4-606 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5, a relevant case construing that provision has been included in the annotations to this section.

Department's decision reversing the determination by the administrative law judge (ALJ) that applicant was eligible for home- and community-based services had no reasonable basis in fact or law and district court

erred in upholding department's decision. *Moczygemba v. Colo. Dept. of Health Care Policy & Fin.*, 51 P.3d 1083 (Colo. App. 2002).

In determining eligibility, the ALJ is not limited to evidence that the case manager heard on the day of assessment. The ALJ may properly consider any testimony introduced at the hearing concerning the individual's condition as of the date of the level of care assessment. *Reiff v. Colo. Dept. of Health Care Policy & Fin.*, 148 P.3d 355 (Colo. App. 2006).

25.5-6-307. Services for the elderly, blind, and disabled. (1) Subject to the provisions of this part 3, home- and community-based services for the elderly, blind, and disabled shall include only the following services:

- (a) Adult day care;
- (b) Alternative care services;
- (c) Electronic monitoring services;

- (d) Home modification services;
 - (e) Homemaker services;
 - (f) Nonmedical transportation services;
 - (g) Personal care services;
 - (h) Respite care services;
 - (i) Community transition services not to exceed two thousand dollars per eligible person, unless otherwise authorized by the state department, which shall be administered by a transition coordination service agency;
 - (j) Services provided under the consumer-directed care service model, part 11 of this article.
- (2) All providers of home- and community-based services for the elderly, blind, and disabled may be separately certified to provide other services, if otherwise qualified.
- (3) A case management agency may be certified to provide the services described in subsection (1) of this section, if otherwise qualified as a provider under the state medical assistance program.
- (4) (a) The case management agency, in coordination with the eligible person, the person's family or guardian, and the person's physician, shall include in each case plan a process by which the eligible person may receive necessary care, which may include respite care, if the eligible person's family or service provider is unavailable due to an emergency situation or to unforeseen circumstances. The eligible person and the person's family or guardian shall be duly informed by the case management agency of these alternative care provisions at the time the case plan is initiated.
- (b) The requirements of this subsection (4) shall not apply if the eligible person is residing in an alternative care facility.

Source: L. 2006: Entire article added with relocations, p. 1940, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-607 as it existed prior to 2006.

25.5-6-308. Cost of services. Home- and community-based services for the elderly, blind, and disabled shall meet aggregate federal waiver budget neutrality requirements.

Source: L. 2006: Entire article added with relocations, p. 1941, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-607.5 as it existed prior to 2006.

25.5-6-309. Special provisions - post-eligibility treatment of income. Persons who receive services under this part 3 shall pay to the state department, or designated agent or provider, all income remaining after application of federally allowed maintenance and medical deductions or shall pay the cost of home- and community-based services rendered, whichever is less.

Source: L. 2006: Entire article added with relocations, p. 1941, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-608 as it existed prior to 2006.

25.5-6-310. Special provisions - personal care services provided by a family.

(1) A member of an eligible person's family, other than the person's spouse, may be employed to provide personal care services to such person.

(2) The maximum reimbursement for the services provided by a member of the person's family per year for each client shall not exceed the equivalent of four hundred forty-four service units per year for a member of the eligible person's family.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-609 as it existed prior to 2006.

25.5-6-311. Duties of state department. (1) The state department shall:

(a) Seek and utilize any available federal, state, or private funds which are available for carrying out the purposes of this part 3, including but not limited to medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended;

(b) Provide a system for reimbursement for services provided pursuant to this part 3, which system shall encourage cost containment.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-610 as it existed prior to 2006.

25.5-6-312. Gifts - grants. The state department, acting for and on behalf of the state, may receive and accept title to any grant or gift from any source, including the federal government, and all grants, grants-in-aid, and gifts shall be deposited with the state treasurer, who shall credit the same to the general fund, and such moneys shall be appropriated to the state department to carry out the purposes of this article and articles 4 and 5 of this title.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-611 as it existed prior to 2006.

25.5-6-313. Rules - federal authorization. (1) Pursuant to article 4 of title 24, C.R.S., the state board shall adopt rules for the administration of this part 3.

(1.5) The rules adopted by the state board pursuant to subsection (1) of this section shall include the following provisions concerning adult day care facilities:

(a) A definition of a restricted environment and a restrictive egress alert device;

(b) Parameters governing how the restrictive egress alert device shall be used and tested and the staff roles regarding the use and oversight of the device; and

(c) Parameters governing a restricted environment, including but not limited to staffing and training requirements; appropriateness of placement; assessment; participant's rights; records and reporting requirements; building requirements including grounds and fire safety; restrictive egress alert systems and devices; fencing or other enclosures; and the application process to offer a restricted environment.

(2) The state department is authorized to seek any necessary federal authorization to implement the provisions of this part 3.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

L. 2010: (1.5) added, (HB 10-1053), ch. 276, p. 1267, § 4, effective May 26.

Editor's note: This section is similar to former § 26-4-612 as it existed prior to 2006.

Cross references: For the legislative declaration in the 2010 act adding subsection (1.5), see section 1 of chapter 1267, Session Laws of Colorado 2010.

ANNOTATION

Annotator's note. Since § 25.5-6-313 is similar to § 26-4-612 as it existed prior to the 2006 amendments relocating article 4 of title 26 to title 25.5 and § 26-4-612 is similar to § 26-4.5-115 as it existed prior to the 1991 repeal of article 4.5 of title 26, a relevant case construing that provision has been included in the annotations to this section.

In the absence of a waiver of any defect in the form of the notice, a notice of adverse action that does not substantially comply

with the federal and state requirements cannot provide the basis for a deprivation of benefits. Weaver v. Dept. of Soc. Servs., 791 P.2d 1230 (Colo. App. 1990).

Reliance on the numerical point system formulated by the Department of Social Services as the sole criterion upon which to determine petitioner's continuing eligibility for benefits was in error when the system had never been made the subject of a formally adopted rule or regulation nor had claimant been given proper notice of its

preeminent significance in determining benefit eligibility. *Weaver v. Dept. of Soc. Servs.*, 791 P.2d 1230 (Colo. App. 1990).

PART 4

HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

25.5-6-401. Short title. This part 4 shall be known and may be cited as the “Home- and Community-based Services for Persons with Developmental Disabilities Act”.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-621 as it existed prior to 2006.

25.5-6-402. Legislative declaration. (1) The general assembly hereby finds and declares that it is the purpose of this part 4 to provide services for persons with developmental disabilities which would foster the following goals:

(a) To maintain eligible persons in the most appropriate settings possible and to minimize admissions to institutions;

(b) To recognize the unique services requirements of persons with developmental disabilities;

(c) To provide optimum accessibility to various important social, habilitative, remedial, residential, and health services that are available to assist in maintaining eligible persons in the least restrictive settings;

(d) To provide eligible persons who have the capacity to remain outside an institutional setting access to appropriate social, habilitative, remedial, residential, and health services, without which institutionalization would be necessary;

(e) To provide the most efficient and effective use of funds in the delivery of these social, habilitative, remedial, residential, and health services to eligible persons;

(f) To coordinate, integrate, and link these social, habilitative, remedial, residential, and health services into existing community-based service delivery systems for persons with developmental disabilities, to avoid unnecessary and expensive duplication of services;

(g) To allow the state substantial flexibility in organizing and administering the delivery of social, habilitative, remedial, residential, and health services to eligible citizens.

(2) The general assembly intends that the state department and the department of human services shall cooperate to the maximum extent possible in designing, implementing, and administering the programs authorized under this part 4.

(3) Nothing in this part 4 shall be construed to disqualify persons from receiving any benefits to which they would otherwise be eligible under parts 1 and 2 of article 5 of this title, or under Title XIX of the federal “Social Security Act”, as amended, by reason of being designated as a person with developmental disabilities.

Source: L. 2006: Entire article added with relocations, p. 1942, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-622 as it existed prior to 2006.

25.5-6-403. Definitions. As used in this part 4, unless the context otherwise requires: (1) “Developmentally disabled person” means a person with a developmental disability as defined in section 27-10.5-102, C.R.S.

(2) (a) “Eligible person” means a person with developmental disabilities:

(I) Who meets the definition of categorically needy as defined in section 25.5-4-103 (4);

(II) Who is in need of the level of care available in an intermediate care facility for the mentally retarded;

(III) Whose gross income does not exceed three hundred percent of the current federal supplemental security income benefits level or other applicable standard provided in federal regulations construing the federal "Social Security Act", as amended, and whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of supplemental security income benefits or, in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101; and

(IV) For whom it is determined that provision of such services is necessary to avoid placement in an intermediate care facility for the mentally retarded.

(b) The amount of parental income and resources that shall be attributable to a child's gross income for purposes of eligibility under paragraph (a) of this subsection (2) shall be set forth in rules promulgated by the state board of human services created in section 26-1-107, C.R.S.

(3) "In-home services" means those services described in section 27-10.5-406, C.R.S., provided to support individuals living with their family.

(4) "Plan of care" means a coordinated plan of care for provision of services in other than a nursing facility or institutional setting, developed and managed, subject to review and approval pursuant to section 25.5-6-404, by a community centered board for persons with developmental disabilities. This plan of care shall fully identify the services to be provided to eligible persons. Prior to the provision of those services, a physician may be required to review an assessment document to insure that it adequately describes the medical needs of the eligible person.

(5) (a) "Services for persons with developmental disabilities" means those services:

(I) Approved for reimbursement by the federal government; and

(II) Necessary to prevent a person, eligible for services under subsection (2) of this section, from being subjected to placement in an intermediate care facility for the mentally retarded.

(b) "Services for the developmentally disabled" includes, but is not limited to: Social, habilitative, remedial, residential, health services, and services provided under the consumer-directed care service model, part 11 of this article, which shall include the selection, from a list of qualified entities, of an organization of the eligible person's choice to provide financial management services for the eligible person.

Source: L. 2006: Entire article added with relocations, p. 1943, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-623 as it existed prior to 2006.

25.5-6-404. Duties of the department of health care policy and financing and the department of human services. (1) The state department and the department of human services shall provide a system of reimbursement for services provided pursuant to this part 4 that encourages the most cost-effective provision of services.

(2) The state department and the department of human services shall, subject to appropriation, utilize any available federal, state, local, or private funds, including but not limited to, medicaid funds available under Title XIX of the federal "Social Security Act", as amended, such as medicaid home- and community-based waivers, to carry out the purposes of this part 4.

(3) The state department may contract with the department of human services to certify agencies providing services under this part 4 as eligible medicaid providers, to adopt fiscal and administrative procedures, to review plans of care, to set rates, and to make and implement recommendations regarding the scope, duration, and content of programs and the eligibility of persons for specific services provided pursuant to this part 4, and to fulfill any other responsibilities necessary to implement this part 4 that are consistent with the single state agency designation set out in section 25.5-4-104.

(4) The executive director and the state board shall promulgate such rules regarding this part 4 as are necessary to fulfill the obligations of the state department as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended. Such rules may include, but shall not be limited to, determination of the level of care requirements for long-term care, patient payment

requirements, clients' rights, medicaid eligibility, and appeal rights associated with these requirements.

(5) The state board of human services, created in section 26-1-107, C.R.S., shall promulgate such rules as are necessary to implement the provisions of this part 4 and to fulfill the responsibilities and duties set out in article 10.5 of title 27, C.R.S. Such rules shall be promulgated pursuant to section 24-4-103, C.R.S.

(6) In the event that a direct conflict arises between the rules of the state department promulgated pursuant to subsection (4) of this section and the rules of the department of human services promulgated pursuant to subsection (5) of this section, regarding implementation of this part 4, the rules of the state department shall control.

Source: L. 2006: Entire article added with relocations, p. 1944, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-624 as it existed prior to 2006.

25.5-6-405. Relationship to other programs. The provisions of part 3 of this article are separate and distinct from the provisions of this part 4. Therefore, the definitions and restrictions embodied in part 3 of this article shall not apply to services and programs provided pursuant to this part 4.

Source: L. 2006: Entire article added with relocations, p. 1945, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-625 as it existed prior to 2006.

25.5-6-406. Appropriations. To carry out duties and obligations pursuant to this part 4 and for the administration and provision of services to eligible persons, all medicaid funds appropriated pursuant to Title XIX of the federal "Social Security Act", as amended, for the provision of care for persons with developmental disabilities and all other funds otherwise appropriated by the general assembly as additional sources of program funding shall be available for the placement of eligible individuals either in intermediate care facilities for the mentally retarded or alternatives to such placements.

Source: L. 2006: Entire article added with relocations, p. 1945, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-626 as it existed prior to 2006.

25.5-6-407. Gifts - grants. The state department and the department of human services, acting on behalf of the state, may receive and accept title to gifts or grants from any source, including the federal government. Both departments shall deposit all grants, grants-in-aid, and gifts with the state treasurer, who shall credit them to the general fund. These moneys shall remain available for appropriation to either department to carry out the purposes of this part 4.

Source: L. 2006: Entire article added with relocations, p. 1946, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-627 as it existed prior to 2006.

25.5-6-408. Eligibility - fees. (1) Subject to the availability of federal financial participation, services shall be provided to eligible persons pursuant to this part 4.

(2) Any eligible person who accepts and receives services pursuant to this part 4 shall pay to the state department, or to an agent designated by the state department, an amount determined pursuant to federal regulations constraining the federal "Social Security Act", as amended, concerning the application of patient income to the cost of services.

Source: L. 2006: Entire article added with relocations, p. 1946, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-628 as it existed prior to 2006.

25.5-6-409. Services for persons with developmental disabilities. (1) A program to provide home- and community-based services to persons with developmental disabilities who are in need of the level of care available in an intermediate care facility for the mentally retarded is hereby established pursuant to the federal "Social Security Act", as amended. This program shall provide for the social, habilitative, remedial, residential, health, and other needs of persons with developmental disabilities to avoid placement in an intermediate care facility for the mentally retarded.

(2) Services for persons with developmental disabilities provided through this program shall be delivered under the provisions of a statewide services plan, in the form of home- and community-based services waivers or model waivers, developed by the state department and the department of human services and approved by the federal centers for medicare and medicaid services, or any successor agency. This plan shall include the specific services to be offered, a plan for the delivery of such services through community centered boards or other service agencies approved pursuant to article 10.5 of title 27, C.R.S., utilizing where appropriate the provision of in-home services, the expected costs of such services, the expected benefits of providing those services, and the administrative provisions which shall govern the implementation of the plan. The plan shall provide for all necessary safeguards to ensure the health and welfare of any eligible persons. The average per capita expenditure for services under this plan shall not exceed the average per capita expenditure the department of human services or the state department would have made for services otherwise available without this plan.

(3) The plan shall utilize existing community-based services programs to the maximum extent possible and shall coordinate all available forms of assistance for the eligible person.

(4) Any services for the developmentally disabled provided through this program shall be set forth in a plan of care developed and managed by a community centered board and subject to review and approval pursuant to section 25.5-6-404. The plan of care shall:

(a) Be based on the particular services needs of the eligible person;
(b) Describe the services necessary to avoid institutionalization; and
(c) (I) Include a process by which the person who is receiving services may receive necessary care for medical purposes, which may include respite care, if the person's service provider is unavailable due to an emergency situation or to unforeseen circumstances. The person who is receiving services and the person's family or guardian shall be duly informed by the community centered board of these alternative care provisions at the time the plan of care is initiated.

(II) Nothing in this paragraph (c) requires a community centered board to provide services set forth in a plan of care that the community centered board is not otherwise required to provide to the person receiving services, only that the plan of care include a contingency for such services.

Source: L. 2006: Entire article added with relocations, p. 1946, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-629 as it existed prior to 2006.

25.5-6-410. Qualification for federal funding. Nothing in this part 4 shall prevent the state department or the department of human services from complying with federal requirements in order for the state of Colorado to qualify for federal funds under Title XIX of the federal "Social Security Act", as amended.

Source: L. 2006: Entire article added with relocations, p. 1947, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-630 as it existed prior to 2006.

25.5-6-411. Personal needs trust fund required. All personal needs funds shall be held in trust by a residential facility authorized to provide services pursuant to this part 4, or its designated trustee, separate and apart from any other funds of the facility, in a checking account or savings account or any combination thereof established to protect and

separate the personal needs funds of the clients. At all times, the principal and all income derived from said principal in the personal needs trust fund shall remain the property of the participating clients, and the facility or its designated trustee is bound by all of the duties imposed by law upon fiduciaries in the handling of such fund including accounting for all expenditures from the fund.

Source: L. 2006: Entire article added with relocations, p. 1947, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-631 as it existed prior to 2006.

PART 5

HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH HEALTH COMPLEXES RELATED TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

25.5-6-501. Short title. This part 5 shall be known and may be cited as the "Home- and Community-based Services for Persons with Health Complexes Related to Acquired Immune Deficiency Syndrome Act".

Source: L. 2006: Entire article added with relocations, p. 1947, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-641 as it existed prior to 2006.

25.5-6-502. Definitions. In addition to the definitions in section 25.5-6-303, as used in this part 5, unless the context otherwise requires:

- (1) "AIDS" means acquired immune deficiency syndrome.
- (2) "Continuum of long-term care" shall include all the services listed in section 25.5-6-505 and may include brief inpatient stays in a hospital or a nursing facility.
- (3) "HIV" means the human immunodeficiency virus.
- (4) "HIV/AIDS" means:
 - (a) A symptomatic HIV infection, as defined by the centers for disease control of the United States public health service; or
 - (b) AIDS.
- (5) "Long-term-care eligible person" means a person who is determined to be:
 - (a) Eligible to receive services under sections 25.5-5-102, 25.5-5-103, 25.5-5-202, and 25.5-5-203; and
 - (b) In need of the level of care available in a nursing facility or in need of the level of care available in a hospital.

Source: L. 2006: Entire article added with relocations, p. 1948, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-642 as it existed prior to 2006.

25.5-6-503. Administration. The provisions of this part 5 shall be administered by the state department.

Source: L. 2006: Entire article added with relocations, p. 1948, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-643 as it existed prior to 2006.

25.5-6-504. Program established - financial eligibility. (1) In recognition of the social and economic benefits accruing from the maintenance of persons with HIV/AIDS in their own homes, the general assembly hereby finds and declares that a program shall be implemented by the state department to provide the services set forth in section 25.5-6-505 to those persons with HIV/AIDS whose gross income does not exceed three hundred

percent of the current federal supplemental security income benefit level, whose resources do not exceed the limit established by the state department for individuals receiving a mandatory minimum state supplementation of SSI benefits pursuant to section 26-2-204, C.R.S., or, in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101, and for whom a licensed physician or advanced practice nurse certifies that such program provides an appropriate alternative to institutionalized care.

(2) Any person who accepts and receives services authorized under this part 5 shall pay to the state department, or to an agent or provider designated by the state department, an amount that shall be the lesser of the person's gross income, minus federally allowed maintenance and medical deductions, or the projected cost of services to be rendered to the person under the case plan. Such amount shall be reviewed and revised as necessary each time the case plan is reviewed.

Source: L. 2006: Entire article added with relocations, p. 1948, § 7, effective July 1.
L. 2008: (1) amended, p. 133, § 21, effective January 1, 2009.

Editor's note: This section is similar to former § 26-4-644 as it existed prior to 2006.

25.5-6-505. Services for long-term-care eligible persons. (1) Subject to the provisions of this part 5, the home- and community-based services program for persons with HIV/AIDS shall include the following continuum of long-term care services:

- (a) Personal care and homemaker services;
 - (b) Adult day care services;
 - (c) Private duty nursing services;
 - (d) Electronic monitoring services as such term is defined in section 25.5-6-303 (9);
 - (e) Nonmedical transportation services as such term is defined in section 25.5-6-303 (16);
 - (f) Services provided under the consumer-directed care model, part 11 of this article.
- (2) A long-term-care eligible person receiving home- and community-based services shall remain eligible for the services specified in sections 25.5-5-102, 25.5-5-103, 25.5-5-202, and 25.5-5-203, as applicable.

(3) The provision of the services set forth in subsection (1) of this section shall be subject to the availability of federal matching medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended, for payment of the costs for administration and costs for the provision of such services. Case management services shall be reimbursed as an administrative cost.

(4) If the state department or the case management agency makes a determination that the cost for the provision of home- and community-based services necessary to allow an HIV/AIDS client to avoid institutionalization exceeds or would exceed either the average individual medicaid payment for like services for hospital care for clients needing a hospital level of care or the average individual medicaid payment for like services for nursing facility care for clients needing a nursing facility level of care, such client shall not be considered eligible for home- and community-based services.

(5) The location for the provision of home- and community-based services shall be agreed upon by the HIV/AIDS client and the case management agency.

(6) The state department shall implement the provisions of subsection (1) of this section on a case-by-case basis as each service becomes available through approved providers.

(7) No service listed in subsection (1) of this section may be provided to an eligible person unless authorized pursuant to a case plan.

(8) (a) The case management agency, in coordination with the eligible person and the person's family or guardian, shall include in each case plan a process by which the eligible person may receive necessary care, which may include respite care, if the eligible person's family or service provider is unavailable due to an emergency situation or to unforeseen circumstances. The eligible person and the person's family or guardian shall be duly informed by the case management agency of these alternative care provisions at the time the case plan is initiated.

(b) The requirements of this subsection (8) shall not apply if the eligible person is residing in a nursing facility or an alternative care facility.

Source: L. 2006: Entire article added with relocations, p. 1949, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-645 as it existed prior to 2006.

25.5-6-506. Special provisions - personal care services provided by a family.

(1) A member of an eligible person's family, other than the person's spouse, may be employed to provide personal care services to such person.

(2) The maximum reimbursement for the services provided by a member of the person's family per year for each client shall not exceed the equivalent of four hundred forty-four service units per year for a member of the eligible person's family.

Source: L. 2006: Entire article added with relocations, p. 1950, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-645.5 as it existed prior to 2006.

25.5-6-507. Duties of state department. (1) In addition to the duties set forth in section 25.5-6-311, the state department shall:

(a) Seek and utilize any available federal, state, or private funds which are available for carrying out the purposes of this part 5, including but not limited to medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended;

(b) Provide a system for reimbursement for services provided pursuant to this part 5 that encourages cost containment;

(c) Conduct feasibility studies and pilot programs as the general assembly may from time to time direct to lessen medical costs, including medicaid moneys, associated with persons with HIV/AIDS.

(2) Prior to the submittal of the home- and community-based services medicaid waiver application for this part 5, the state department shall consult with the joint budget committee of the general assembly concerning the proposed number of clients to be served, the savings anticipated, and the costs associated with the implementation of this program.

Source: L. 2006: Entire article added with relocations, p. 1950, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-646 as it existed prior to 2006.

25.5-6-508. Rules. The executive director and the state board shall promulgate such rules, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this part 5.

Source: L. 2006: Entire article added with relocations, p. 1951, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-648 as it existed prior to 2006.

PART 6

HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL ILLNESSES

25.5-6-601. Short title. This part 6 shall be known and may be cited as the "Home- and Community-based Services for Persons with Major Mental Illnesses Act".

Source: L. 2006: Entire article added with relocations, p. 1951, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-671 as it existed prior to 2006.

25.5-6-602. Legislative declaration - no entitlement created. (1) The general assembly hereby finds and declares that the purpose of this part 6 is to provide, under federal authorization and subject to available appropriations, home- and community-based services for persons with major mental illnesses.

(2) Nothing in this part 6 shall be construed to establish that eligible persons as defined in section 25.5-6-603 (1) are entitled to receive services from the state department or the department of human services. The provision of any services pursuant to this part 6 shall be subject to federal waiver authorization and available appropriations.

Source: L. 2006: Entire article added with relocations, p. 1951, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-672 as it existed prior to 2006.

25.5-6-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Eligible person" means a person:

(a) Who has a primary diagnosis of major mental illness, as such term is defined in the diagnostic and statistical manual of mental disorders used by the mental health profession, and includes schizophrenic, paranoid, major affective, and schizoaffective disorders, and atypical psychosis, but does not include dementia, including alzheimer's disease or related disorders;

(b) Who is in need of the level of care available in a nursing facility;

(c) Who is categorically eligible for medical assistance, or whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, and whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of supplemental security income benefits or, in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101.

Source: L. 2006: Entire article added with relocations, p. 1951, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-673 as it existed prior to 2006.

25.5-6-604. Cost of services. Home- and community-based services for persons with major mental illnesses shall meet aggregate federal waiver budget neutrality requirements.

Source: L. 2006: Entire article added with relocations, p. 1952, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-673.5 as it existed prior to 2006.

25.5-6-605. Relationship to single entry point for long-term care. The home- and community-based services program for persons with major mental illnesses shall not be considered a publicly funded long-term care program for the purposes of sections 25.5-6-105 to 25.5-6-107, concerning the single entry point system, unless and until the departments of health care policy and financing and human services provide in the memorandum of understanding between the departments for the inclusion of the program in the single entry point system.

Source: L. 2006: Entire article added with relocations, p. 1952, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-674 as it existed prior to 2006.

25.5-6-606. Implementation of program for mentally ill authorized - federal waiver - duties of the department of health care policy and financing and the department of human services. (1) The state department is hereby authorized to seek any necessary waiver from the federal government to develop and implement a home- and

community-based services program for persons with major mental illnesses. The program shall be designed to provide home- and community-based services to eligible persons. Eligibility may be limited to persons who meet the level of services provided in a nursing facility, and services for eligible persons may be established in state board rules to the extent such eligibility criteria and services are authorized or required by federal waiver. The program shall include services provided under the consumer-directed care service model, part 11 of this article.

(2) The state department and the department of human services shall provide a system of reimbursement for services provided pursuant to this part 6 that encourages the most cost-effective provision of services.

(3) The state department and the department of human services shall, subject to appropriation, use available federal, state, local, or private funds, including but not limited to medicaid funds available under Title XIX of the federal "Social Security Act", as amended, to carry out the purposes of this part 6.

(4) The state department may include in the memorandum of understanding with the department of human services provisions that allow the department of human services to certify agencies as medicaid providers for the purposes of this part 6, to adopt fiscal and administrative procedures, to review plans of care, to recommend reimbursement rates, to make recommendations regarding the scope, duration, and content of programs and the eligibility of persons for specific services provided pursuant to this part 6, and to fulfill any other responsibilities necessary to implement this part 6. However, the provisions shall be consistent with the designation of the state department as the single state agency in section 25.5-4-104.

(5) The executive director and the state board shall promulgate such rules regarding this part 6 as are necessary to fulfill the obligations of the state department as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended.

(6) The department of human services shall promulgate such rules as are necessary to perform its function pursuant to this part 6. Such rules shall be promulgated in accordance with section 24-4-103, C.R.S., and shall be consistent with the rules of the executive director and the state board.

(7) In the event a direct conflict arises between the rules of the state department promulgated pursuant to subsection (5) of this section and the rules of the department of human services promulgated pursuant to subsection (6) of this section, regarding implementation of this part 6, the rules of the state department shall control.

Source: L. 2006: Entire article added with relocations, p. 1952, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-675 as it existed prior to 2006.

25.5-6-607. Implementation of part contingent upon receipt of federal waiver - repeal of part. (1) The implementation of this part 6 is conditioned upon the issuance of necessary waivers by the federal government and available appropriations. The provisions of this part 6 shall be implemented to the extent authorized by federal waiver. The state department shall propose legislation that conforms with the waiver provisions no later than the next regular legislative session following the issuance of the waiver.

(2) Provisions of this part 6 that are approved by the federal government and are authorized by federal waiver shall remain in effect only for so long as specified in the federal waiver, unless otherwise extended by the federal government. The state department shall provide written notice to the revisor of statutes of the final termination date of the waiver, and this part 6 shall be repealed, effective July 1 of the year in which the waiver is terminated.

Source: L. 2006: Entire article added with relocations, p. 1953, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-676 as it existed prior to 2006.

PART 7

HOME- AND COMMUNITY-BASED SERVICES
FOR PERSONS WITH BRAIN INJURY

25.5-6-701. Short title. This part 7 shall be known and may be cited as the “Home- and Community-based Services for Persons with Brain Injury Act”.

Source: L. 2006: Entire article added with relocations, p. 1953, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-681 as it existed prior to 2006.

25.5-6-702. Legislative declaration - no entitlement created. (1) The general assembly hereby finds and declares that the purpose of this part 7 is to provide, under federal authorization and subject to available appropriations, home- and community-based services for persons with brain injury.

(2) Nothing in this part 7 shall be construed to establish that eligible persons as defined in section 25.5-6-703 (4) are entitled to receive services from the state department. The provision of any services pursuant to this part 7 shall be subject to federal waiver authorization and available appropriations.

Source: L. 2006: Entire article added with relocations, p. 1953, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-682 as it existed prior to 2006.

25.5-6-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) “Adult day care” means health and social services furnished two or more hours per day on a regularly scheduled basis for one or more days per week in an outpatient setting and for the purpose of ensuring the optimal functioning of the recipient.

(2) “Behavioral programming” means an individualized plan that sets forth strategies to decrease a recipient’s maladaptive behaviors that interfere with the recipient’s ability to remain in the community. Behavioral programming includes a complete assessment of maladaptive behaviors of the recipient, the development and implementation of a structured behavioral intervention plan, continuous training and supervision of caregivers and behavioral aides, and periodic reassessment of the individualized plan.

(3) “Brain injury” means an injury to the brain arising from external forces including, but not limited to, toxic chemical reactions, anoxia, near drownings, closed or open head injuries, and focal brain injuries.

(4) “Eligible person” means a person:

(a) Who has a diagnosis of brain injury, as such term is defined in subsection (3) of this section;

(b) Who is in need of the level of care available in a hospital, rehabilitation hospital, hospital in lieu of a nursing facility, or is in need of specialized care provided in a nursing facility in lieu of a hospital;

(c) Who is categorically eligible for medical assistance, or has a gross income that does not exceed three hundred percent of the current federal supplemental security income benefit level and resources that do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of supplemental security income benefits or, in the case of a person who is married, do not exceed the amount authorized in section 25.5-6-101; and

(d) For whom the cost of services would not exceed the average cost of hospital care.

(5) “Independent living skills training” means skills and therapies that are directed at the development and maintenance of community living skills and community integration. Independent living skills include supervision or training with respect to or assistance with self-care, communication skills, socialization, sensory and motor development, reducing maladaptive behavior, community living and mobility, and therapeutic recreation.

(6) “Personal care services” means assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. Personal care services include assistance with the preparation of meals, but not the cost of the meals, and homemaker services that are necessary for the health and safety of the recipient.

(7) “Structured day treatment” means structured, nonresidential therapeutic treatment services that are directed at the development and maintenance of community living skills and are provided two or more hours per day on a regularly scheduled basis for one or more days per week. Day treatment services include supervision and specific training that allows a recipient to function at the recipient’s maximum potential. The services include, but are not limited to, social skills training that allows for reintegration into the community, sensory and motor development services, and services aimed at reducing maladaptive behavior.

(8) “Supported living” means assistance or support designed to maximize or maintain independence and self-direction on a supportive care campus. Supported living services consist of structured interventions designed to provide:

- (a) Protective oversight and supervision;
- (b) Behavioral management and cognitive supports;
- (c) Interpersonal and social skills development;
- (d) Improved household management skills to support independence and community integration; and
- (e) Medical management.

(9) “Supportive care campus” means a residential campus that provides supported living services.

(10) “Transitional living” means a nonmedical residential program that provides training and twenty-four-hour supervision to a recipient over a six-to-twelve-month period that will enhance the recipient’s ability to live more independently.

Source: L. 2006: Entire article added with relocations, p. 1954, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-4-683 as it existed prior to 2006.

25.5-6-704. Implementation of home- and community-based services program for persons with brain injury authorized - federal waiver - duties of the department.

(1) (a) The state department is hereby authorized to seek any necessary waiver from the federal government to develop and implement a home- and community-based services program for persons with brain injury. The state department shall design the program to provide home- and community-based services to eligible persons. Eligibility shall be limited to persons who meet the level of services provided in a hospital, rehabilitation hospital, hospital in lieu of nursing facility care, or who are in need of specialized care provided in a nursing facility in lieu of a hospital.

(b) The state department shall seek any necessary amendments to the current federal waiver for the home- and community-based services program for persons with brain injury to allow supported living, as defined in section 25.5-6-703 (8), to be provided to eligible persons on a supportive care campus.

(2) Services for eligible persons may be established in department rules to the extent authorized or required by federal waiver, but shall include at least the following:

(a) Independent living skills training, as indicated in the eligible person’s plan of care, and provided by local agencies determined by the department to be qualified to provide the services;

- (b) Residential care including, but not limited to:
 - (I) Transitional living;
 - (II) Respite care;
 - (III) Supported living;
- (c) Personal care services;
- (d) Assisted transportation;
- (e) Counseling and training including substance abuse treatment and family counseling;
- (f) Environmental modification services;

(g) Day care, which may include physical, occupational, and speech therapies as indicated in the eligible person's plan of care;

(h) Structured day treatment, which may include physical, occupational, speech, and cognitive therapies if deemed necessary by the eligible person's case manager and as indicated in the person's plan of care. Structured day treatment services are for individuals who may benefit from continued rehabilitation and reintegration into the community.

(i) Behavioral programming that may be provided in or outside an eligible person's residence;

(j) Assistive technology;

(k) Services provided under the consumer-directed care service model, part 11 of this article.

(3) The case manager, in coordination with the eligible person and the person's family or guardian, shall include in each plan of care a process by which the eligible person may receive necessary care, which may include respite care, if the eligible person's family or service provider is unavailable due to an emergency situation or to unforeseen circumstances. The eligible person and the person's family or guardian shall be duly informed by the case manager of these alternative care provisions at the time the plan of care is initiated.

(4) (a) The department shall provide a system of reimbursement for services provided pursuant to this part 7 that encourages the most cost-effective provision of services.

(b) A member of an eligible person's family, other than the person's spouse or a parent of a minor, may be employed to provide personal care services to such person. The maximum reimbursement for the services provided by a member of the person's family per year for an eligible person shall not exceed the equivalent of four hundred forty-four service units per year for a member of the eligible person's family. Standards that apply to other providers who provide personal care services apply to a family member who provides these services. In addition, a registered nurse shall supervise a family member in providing services to the extent indicated in the eligible person's plan of care.

(5) The state department shall, subject to appropriation, use available federal, state, local, or private funds including, but not limited to, medicaid funds available under Title XIX of the federal "Social Security Act", as amended, to carry out the purposes of this part 7.

(6) The state board shall adopt rules concerning the certification of agencies as medicaid providers for the purposes of this part 7, fiscal and administrative procedures, procedures for reviewing plans of care, reimbursement rates, and the scope, duration, and content of programs and the eligibility for specific services provided pursuant to this part 7. The state board shall adopt such rules as are necessary to fulfill the obligations of the state department as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended.

Source: L. 2006: Entire article added with relocations, p. 1955, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-684 as it existed prior to 2006.

25.5-6-705. Implementation of part contingent upon receipt of federal waiver - repeal of part. (1) (a) The implementation of this part 7 is conditioned upon the issuance of necessary waivers by the federal government and available appropriations. The provisions of this part 7 shall be implemented to the extent authorized by federal waiver. The state department shall propose legislation that conforms with the waiver provisions no later than the next regular legislative session following the issuance of the waiver.

(b) The implementation of the provisions of this part 7 relating to services provided on a supportive care campus are conditioned upon the approval of necessary waiver amendments by the federal government. The provisions of this part 7 relating to supported living shall be implemented to the extent authorized by federal waiver and in accordance with applicable federal requirements.

(2) Provisions of this part 7 that are approved by the federal government and are authorized by federal waiver shall remain in effect only for so long as specified in the federal waiver, unless otherwise extended by the federal government. The state department

shall provide written notice to the revisor of statutes of the final termination date of the waiver, and this part 7 shall be repealed, effective July 1 of the year in which the waiver is terminated.

Source: L. 2006: Entire article added with relocations, p. 1957, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-685 as it existed prior to 2006.

25.5-6-706. Rate structure - rules - quality assurance. (1) (a) The state board, by rule, shall set tiered per diem rates for services provided on a supportive care campus under this part 7. When structuring the tiered per diem rates, the state board shall consider the medical and cognitive needs of eligible persons being served on the supportive care campus.

(b) The maximum per diem rate for the services provided on a supportive care campus shall not exceed the total per diem cost of comparable populations either in institutions or in other community-based settings.

(2) The state board shall adopt rules necessary for quality assurance, which shall include certification of supportive care campuses.

Source: L. 2006: Entire article added with relocations, p. 1958, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-686 as it existed prior to 2006.

PART 8

HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM

25.5-6-801. Short title. This part 8 shall be known and may be cited as the "Home- and Community-based Services for Children with Autism Act".

Source: L. 2006: Entire article added with relocations, p. 1958, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-691 as it existed prior to 2006.

25.5-6-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Eligible child" means a child who:

(a) Is eligible for the state's medicaid program pursuant to section 25.5-5-101, 25.5-5-201, or 25.5-5-203;

(b) Is age birth to six years;

(c) Has a diagnosis of autism;

(d) Is at risk of institutionalization in either an intermediate care facility for the mentally retarded, a hospital, or a nursing facility; and

(e) Is not receiving services from any of the alternatives to long-term care waiver programs established in this title.

(2) "Lead provider" means the credentialed, certified, or licensed professional who is the eligible child's primary provider and who is responsible for supervision of the eligible child's care plan.

(3) "Services" means the home- and community-based services provided pursuant to this part 8.

Source: L. 2006: Entire article added with relocations, p. 1958, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-692 as it existed prior to 2006.

25.5-6-803. Federal authorization - budget neutrality - available appropriations.

(1) The state department shall seek the federal authorization necessary to implement the provisions of this part 8.

(2) Home- and community-based services for children with autism shall meet aggregate federal waiver budget neutrality requirements.

(3) (a) The provision of services pursuant to this part 8 is subject to available appropriations from the Colorado autism treatment fund established in section 25.5-6-805.

(b) The provision of home- and community-based services pursuant to this part 8 shall be subject to the availability of federal matching medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended, for payment of the costs for administration and the costs for the provision of such services.

(4) The state department shall:

(a) Seek and utilize any available federal, state, or private funds which are available for carrying out the purposes of this part 8, including but not limited to medicaid funds pursuant to Title XIX of the federal "Social Security Act", as amended;

(b) Provide a system of reimbursement for services that encourages the most cost-effective provision of services.

Source: L. 2006: Entire article added with relocations, p. 1958, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-693 as it existed prior to 2006.

25.5-6-804. Services - duties of the state department - rules. (1) Subject to the provisions of this part 8, home- and community-based services for children with autism shall include only the following services, as specified in the eligible child's care plan:

- (a) Occupational therapy;
- (b) Speech therapy;
- (c) Psychological and psychiatric services;
- (d) Physical therapy;
- (e) Behavioral therapy; and
- (f) Services provided under the consumer-directed care service model, part 11 of this article.

(2) No eligible child may receive services in an amount in excess of twenty-five thousand dollars annually.

(3) The state department shall utilize the services of existing service provider agencies to provide services pursuant to this part 8. A service provider agency shall retain no more than fifteen percent of the established service reimbursement rate for administrative costs.

(4) A care planning agency may be certified to provide the services described in subsection (1) of this section if otherwise qualified as a provider under the state medical assistance program.

(5) The state department shall contract with a community centered board for persons with developmental disabilities to serve as the single entry point agency for services and as the care planning agency for eligible children. If a community centered board is unwilling or unable to enter into the contract with the state department, the state department may contract with a single entry point agency identified pursuant to section 25.5-6-106 or a state-department-approved case management agency to serve as the entry point agency and as the care planning agency. The care planning process shall include the eligible child's family or guardian, the eligible child's lead provider, and the eligible child's case manager. For the purpose of implementing this part 8 the care planning process shall be coordinated with any other care plan or case manager the eligible child may have.

(6) A member of an eligible child's family may be employed to provide services to the child. The reimbursement limitation in section 25.5-6-310 shall not apply to services provided pursuant to this part 8 by a family member.

(7) The state department shall develop the service provisions, which shall include provisions for the supervision of direct care providers, and the care planning process under this part 8 in consultation with parents of children with autism and medical professionals who have expertise in treating children with autism.

(8) (a) The state board shall adopt rules necessary to implement and administer the provisions of this part 8, including but not limited to requiring an ongoing evaluation

process for each eligible child and the use of an external evaluation contractor for this purpose.

(b) An eligible child participating in services pursuant to this part 8 shall be evaluated at entry into the program, at least every six months during the course of services, and at the termination of services pursuant to this part 8. The evaluations shall include, but need not be limited to:

(I) An assessment of the eligible child's expressive and receptive communication through the use of a standardized and norm-referenced assessment as determined by the state department through rule;

(II) An assessment of the eligible child's adaptive skills including self-help skills through the use of a norm-referenced and standardized assessment as determined by the state department through rule; and

(III) An assessment of the severity of the eligible child's maladaptive behavior, including self-injurious or aggressive behaviors or tantrums, through the use of a norm-referenced and standardized assessment as determined by the state department through rule.

(c) The evaluations shall be conducted pursuant to the provisions of paragraph (b) of this subsection (8) by the child's lead therapist or other trained professionals as designated by the department.

(d) The evaluator shall provide a copy of the evaluation, including any supporting data, to the eligible child's parent or legal guardian and to the agency responsible for the eligible child's care planning. The agency responsible for the eligible child's care planning shall retain a copy of the eligible child's evaluation and supporting data.

(e) Any costs associated with the evaluations required pursuant to this subsection (8) shall be included within the annual cost limitation on services set forth in subsection (2) of this section. Evaluations of an eligible child may be conducted through the eligible child's school or with other resources that are not part of the services provided pursuant to this part 8, so long as the evaluations are consistent with the provisions of paragraph (b) of this subsection (8).

(f) The ongoing evaluation of children receiving services under the program pursuant to this subsection (8) shall not be used to alter a child's eligibility to participate in the program.

(9) The state department shall annually review the available balance in the Colorado autism treatment fund, created pursuant to section 25.5-6-805, to determine whether additional eligible children may be provided services pursuant to this part 8 consistent with existing federal authorization.

(10) So long as children who are determined eligible for the autism waiver program are on a wait list to receive services, the state department's priority shall be to move off of the wait list and into the autism waiver program those children who are determined to have an imminent need for services as determined through an objective assessment process. The state department's objective assessment process for determining imminent need for services under the autism waiver program shall incorporate norm-referenced autism assessment findings and prioritize children based on the severity of the child's assessed condition. This subsection (10) shall apply only upon the approval by the centers for medicare and medicaid services that it is consistent with federal law.

Source: L. 2006: Entire article added with relocations, p. 1959, § 7, effective July 1. L. 2010: (5) amended, (SB 10-129), ch. 105, p. 354, § 1, effective April 15. L. 2012: (8) amended and (9) and (10) added, (SB 12-159), ch. 203, p. 808, § 2, effective July 1.

Editor's note: This section is similar to former § 26-4-694 as it existed prior to 2006.

Cross references: For the legislative declaration in the 2012 act amending subsection (8) and adding subsections (9) and (10), see section 1 of chapter 203, Session Laws of Colorado 2012.

25.5-6-805. Colorado autism treatment fund. (1) The Colorado autism treatment fund is hereby created and established in the state treasury for the purpose of paying for services provided to eligible children and for participant and program evaluations pursuant

to this part 8. Such fund shall be comprised of tobacco settlement moneys allocated to such fund. Moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes of this part 8. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. Any moneys in the fund not expended for the purpose of this part 8 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund.

(2) Pursuant to section 24-75-1104.5 (1) (I), C.R.S., beginning in the 2008-09 fiscal year and in each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall annually transfer to the fund the amount of moneys to be received by the fund pursuant to section 24-75-1104.5 (1) (I), C.R.S. The state treasurer shall transfer the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

Source: **L. 2006:** Entire article added with relocations, p. 1960, § 7, effective July 1.
L. 2009: Entire section amended, (SB 09-210), ch. 124, p. 531, § 4, effective April 16.
L. 2012: (1) amended, (SB 12-159), ch. 203, p. 809, § 3, effective July 1.

Editor's note: This section is similar to former § 26-4-695 as it existed prior to 2006.

Cross references: For the legislative declaration in the 2012 act amending subsection (1), see section 1 of chapter 203, Session Laws of Colorado 2012.

25.5-6-806. Autism waiver - program evaluation. (1) As provided in subsection (2) of this section, the state department shall submit written program evaluations to the health and environment committee of the house of representatives, or any successor committee, and to the health and human services committee of the senate, or any successor committee, concerning home- and community-based services provided to children with autism pursuant to this part 8. The state department shall determine the appropriate process and procedures for conducting the evaluation, including procedures to protect a program participant's individually identifying information.

(2) (a) On or before June 1, 2013, the state department's evaluation shall include, at a minimum, information concerning:

(I) The number of eligible children receiving services or who have received services under the waiver program;

(II) The average and median age of eligible children when they begin receiving services and the average length of time that children receive services; and

(III) The average cost of services provided to an eligible child.

(b) On or before June 1, 2014, the state department's evaluation shall include, at a minimum, information concerning the design and implementation of the ongoing evaluation process pursuant to section 25.5-6-804 (8).

(c) (I) On or before June 1, 2015, the state department's evaluation shall include an evaluation of eligible children's care plans and evaluations conducted at the beginning and ending of services, as well as ongoing evaluations during the course of services, to determine whether home- and community-based services provided pursuant to this part 8 are effective in meeting the goals of the waiver program, which goals include, but are not limited to:

(A) Serving the children most vulnerable to institutionalization without the services provided pursuant to this part 8;

(B) Keeping children out of institutions; and

(C) Demonstrating improvement in the child's expressive and receptive communication, adaptive skills, such as dressing and toileting, and a reduction in the severity of the child's maladaptive behavior, including self-injurious or aggressive behavior and tantrums, through the use of standardized and norm-referenced assessments.

(II) The state department may contract with an independent program evaluator with expertise in reviewing treatment progress reports, individual evaluations, and medical records for purposes of conducting the evaluation pursuant to this paragraph (c) concerning the effectiveness of the home- and community-based services provided pursuant to this part 8.

Source: L. 2012: Entire section added, (SB 12-159), ch. 203, p. 809, § 4, effective July 1.

Cross references: For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 203, Session Laws of Colorado 2012.

PART 9

HOME- AND COMMUNITY-BASED SERVICE PROGRAMS FOR CHILDREN

25.5-6-901. Disabled children care program - eligibility criteria - documentation requirements - report to the general assembly. (1) The general assembly hereby finds and declares that a program shall be established by the state department to provide services not otherwise available to eligible disabled children outside the confines of an acute care hospital or nursing facility. Such program shall be known as the “disabled children care program” and shall be designed to safely provide services to eligible disabled children in a home- or community-based setting at a cost to the medicaid program equal to or less than the medicaid cost of inpatient hospital or nursing facility care.

(2) (a) The state department is authorized to seek a waiver from the federal department of health and human services to qualify for federal financial participation in the disabled children care program. Application for such waiver is contingent upon a finding that continuation of the disabled children care program results in less expenditures from the general fund than if such program were terminated.

(b) If federal financial participation is secured, eligibility for participation in the program and the number of children to be served under the program shall be in accordance with federal regulations.

(3) (a) “Eligible disabled children” means any children eighteen years of age and under who:

(I) Have medical needs which would qualify them, pursuant to state department criteria, for institutionalization or place them at risk for institutionalization in any one of the following: An acute care hospital or a nursing facility; and

(II) Have gross incomes which do not exceed three hundred percent of the current federal supplemental security income benefit level. The amount of parental or spousal income and resources which shall be attributable to a child’s gross income for purposes of eligibility shall be set forth in rules promulgated by the state board and shall be in relation to the parent’s or spouse’s financial responsibility for such child; and

(III) Are not receiving services from any of the alternatives to long-term care waiver programs established under this title.

(b) “Home care services” means all services available under sections 25.5-5-102, 25.5-5-103, 25.5-5-202, and 25.5-5-203 that may be received in a noninstitutional setting.

(4) (a) The state department shall require the following documentation on each applicant for the program:

(I) An assessment by the disabled child’s attending physician of the child’s medical, functional, and social status and a determination by such physician that the quality of care which can be provided in the noninstitutional setting is equal to or exceeds the quality of care the child could receive in an acute care hospital or nursing facility;

(II) An analysis of the cost of services for the disabled child in an institutional setting as compared to the cost of such services in a noninstitutional setting;

(III) An assessment of the caregiver's ability to provide the needed services to the disabled child in a noninstitutional setting and an assessment of such caregiver's social history.

(b) The information required under paragraph (a) of this subsection (4) shall be collected and reviewed by the state department at least every six months for disabled children who enter the disabled children care program in order to ensure that the quality of noninstitutional care continues to equal or exceed such care in an institutional setting and that the costs for care under the program are less than the costs for such care in an institution. When the disabled child is found to no longer qualify for institutionalization or be at risk for institutionalization pursuant to state department criteria, the child shall no longer be eligible for the disabled children care program.

Source: L. 2006: Entire article added with relocations, p. 1960, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-509 as it existed prior to 2006.

25.5-6-902. Children's personal assistance services and family support program.

(1) The general assembly finds that many families who attempt to care for severely disabled or terminally ill children at home often are burdened with the excessive financial and personal costs of providing continuous care. Private insurance companies rarely support essential, long-term custodial services and often establish monetary limits that are well below the levels required by these disabled children. When coverage is available, care is frequently provided in a medical model that is marginally appropriate to the needs of the children and the family and usually more expensive to the payor. The resulting pressures often contribute to family disintegration and increased dependency on public programs. The general assembly finds that it is in the best interests of the citizens of the state to encourage the preservation of families with children with disabilities.

(2) As used in this section, unless the context otherwise requires, "eligible disabled children" means children eighteen years of age or younger:

(a) Who have medical needs that, pursuant to state department rules, would qualify them for institutionalization or place them at risk of institutionalization in an acute care hospital or nursing facility;

(b) Who have gross incomes, including the amount of parental income and resources to be attributed to the child's gross income according to rules to be promulgated by the state board, that do not exceed three hundred percent of the current federal supplemental security income benefit level;

(c) Who are not receiving long-term services from any alternative waiver program established under this title;

(d) For whom a licensed physician or an advanced practice nurse has certified that in-home care is an appropriate way to meet the child's needs; and

(e) For whom the cost of care outside of the institution is no higher than the estimated medicaid cost of appropriate institutional care.

(3) There is hereby established in the state department the children's personal assistance services and family support waiver program, referred to in this section as the "program", to provide services to eligible disabled children in their homes rather than in the confines of an acute care hospital or nursing facility. The number of children enrolled in this program or any other model 200 program shall not exceed the state department's ability to cover the costs of the programs within the annual appropriations for this program and any other model 200 program.

(4) Priority for participation in the program shall be given first to children who are on the waiting list for other model 200 programs and secondly to children whose parents will return to work if appropriate care for their disabled child is provided under the program. Spaces in the program shall also be available to children who were already covered by medicaid but who were rendered temporarily ineligible for a period of not more than three months due to a periodic or cyclical peak in their parents' income.

(5) The state board shall adopt rules to govern the program consistent with any federal waivers including, but not limited to, rules concerning:

- (a) Services that are reimbursable under this section including, but not limited to:
- (I) Respite care, to the degree its additional cost is offset by collection of a parental copayment;
 - (II) Case management; and
 - (III) Medically necessary professional or community services beyond those specified in section 25.5-5-102 or 25.5-5-202, to the degree that they provide a cost-effective and medically appropriate alternative to covered services;
- (b) Provider selection and certification;
 - (c) Documentation for assessment and recertification;
 - (d) Case management agency selection and responsibility; and
 - (e) Reimbursement.
- (6) The case management agency, in coordination with the eligible disabled child's family and the child's physician, shall include in each case plan a process by which the eligible disabled child may receive necessary care, which may include respite care, if the eligible disabled child's family or care provider is unavailable due to an emergency situation or to unforeseen circumstances. The eligible disabled child's family shall be duly informed by the case management agency of these alternative care provisions at the time the case plan is initiated.
- (7) If the state department finds it cost-effective and all necessary federal waivers are obtained, parents of eligible disabled children may be authorized to hire and manage care providers from certified medicaid agencies. Case management agencies shall work with parents to develop the skills necessary for ongoing care management.
- (8) The state department is authorized to seek waivers from the federal government to qualify for federal financial participation in the program.
- (9) The state department is authorized to charge and collect copayments from parents for services rendered.
- (10) The state department is directed to study the advisability of setting an upper limit on parental income for participation in this program and other children's medicaid waiver programs.

Source: L. 2006: Entire article added with relocations, p. 1962, § 7, effective July 1.
L. 2008: (2)(d) amended, p. 134, § 22, effective January 1, 2009.

Editor's note: This section is similar to former § 26-4-509.2 as it existed prior to 2006.

PART 10

CONSUMER-DIRECTED ATTENDANT SUPPORT FOR PERSONS WITH DISABILITIES

25.5-6-1001 to 25.5-6-1004. (Repealed)

Editor's note: (1) This article was added with relocations in 2006, and this part 10 was subsequently repealed in 2009. For amendments to this part 10 prior to its repeal in 2009, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor's note following the article heading.

(2) Section 25.5-6-1004 provided for the repeal of this part 10, effective July 1, 2009. (See L. 2006, p. 1967.)

(3) Section 25.5-6-1002 (4) was amended in Senate Bill 09-292, effective August 5, 2009. However, those amendments did not take effect due to the repeal of this part 10, effective July 1, 2009.

PART 11

CONSUMER-DIRECTED CARE

25.5-6-1101. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Attendant support" means any action to assist an eligible person in accomplishing activities of daily living, instrumental activities of daily living, and habilitative and

health-related tasks. Such activities include, but are not limited to, personal care services, household services, cognitive services, mobility services, and health-related tasks.

(2) "Authorized representative" means an individual designated by the eligible person, by the parent of a minor, or by the legal guardian of the eligible person if the eligible person cannot demonstrate sound judgment to his or her primary care physician, who has the judgment and ability to assist the eligible person in acquiring and utilizing services under this part 11. The extent of the authorized representative's involvement shall be determined upon designation.

(3) "Consumer-directed" means that an eligible person receives a direct payment through a voucher and employs, trains, and in other ways manages the person who provides his or her attendant support. The direct payment through a voucher that is received by an eligible person to pay for attendant support shall not be counted as income for purposes of determining eligibility for medicaid and other state programs that use income to determine eligibility.

(4) "Eligible person" means a person who is eligible to receive services under parts 3 to 12 of this article or any other home- and community-based service waiver for which the state department has federal waiver authority.

(5) "Primary care physician" means a physician who is the primary provider of physician services to the eligible person or who is familiar with the eligible person's needs and capabilities.

(6) "Qualified services" means services provided under the eligible person's applicable waiver program and attendant support.

Source: L. 2006: Entire article added with relocations, p. 1967, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1301 as it existed prior to 2006.

25.5-6-1102. Service model - consumer-directed care. (1) The state department shall implement a consumer-directed care service model that allows eligible persons to receive a direct payment through a voucher to purchase qualified services. The state department is authorized to seek any federal waivers or waiver amendments that may be necessary to implement this part 11. The state department shall design and implement the consumer-directed care service model with input from consumers of home- and community-based services or their authorized representatives. An eligible person shall not be required to disenroll from the person's waiver program in order to receive qualified services through the consumer-directed care service model.

(2) In order to qualify and to remain eligible for the consumer-directed care service model authorized by this section, a person shall:

(a) Be eligible for home- and community-based services under parts 3 to 12 of this article or any other home- and community-based service waiver for which the state department has federal waiver authority;

(b) Be willing to participate;

(c) Obtain a statement from his or her primary care physician or advanced practice nurse indicating that the person has sound judgment and the ability to direct his or her care or has an authorized representative;

(d) Demonstrate the ability to handle the financial aspects of self-directed care or has an authorized representative who is able to handle the financial aspects of the eligible person's care; and

(e) Meet any other qualifications established by the state board by rule.

(3) The voucher issued to the eligible person under this part 11 shall be based on the eligible person's historical utilization of home- and community-based services under parts 3 to 12 of this article, the single entry point agency's care plan, or any approved resource allocation process as determined by the state department and the department of human services for the eligible person.

(4) While an eligible person is participating in the consumer-directed care service model established in this part 11, that person shall be ineligible to receive a home care allowance as provided in section 26-2-122.3 (1) (b), C.R.S.

(5) The state department shall develop the accountability requirements necessary to safeguard the use of public dollars, to promote effective and efficient delivery of services, and to monitor the safety and welfare of eligible persons under this part 11.

(6) The state board shall adopt rules as necessary for the implementation and administration of the consumer-directed care service model authorized by this part 11. Such rules shall include a provision allowing an eligible person to designate a family member or authorized representative to be responsible for managing the financial matters associated with the consumer-directed care or to direct the eligible person's care. The designee shall not receive reimbursement for managing the financial matters associated with the eligible person's care or for directing the eligible person's care.

(7) Sections 12-38-103 (8), 12-38-103 (11), 12-38-123 (1) (a), 12-38.1-102 (5), and 12-38.1-117 (1) (b), C.R.S., shall not apply to a person who is directly employed by an individual participating in the consumer-directed care service model pursuant to this section and who is acting within the scope and course of such employment. However, such person may not represent himself or herself to the public as a licensed nurse, a certified nurse aide, a licensed practical or professional nurse, a registered nurse, or a registered professional nurse. This exclusion shall not apply to any person who has had his or her license as a nurse or certification as a nurse aide suspended or revoked or his or her application for such license or certification denied.

(8) Section 25.5-6-310 does not apply to a family member of an eligible person who provides consumer-directed care services to the eligible person pursuant to this part 11.

(9) A person who has been designated as an authorized representative under this part 11 shall submit an affidavit, which shall become part of the eligible person's file, stating that:

- (a) He or she is at least eighteen years of age;
- (b) He or she has known the eligible person for at least two years;
- (c) He or she has not been convicted of any crime involving exploitation, abuse, or assault on another person; and
- (d) He or she does not have a mental, emotional, or physical condition that could result in harm to the eligible person.

Source: L. 2006: Entire article added with relocations, p. 1968, § 7, effective July 1.
L. 2008: (2)(c) amended, p. 134, § 24, effective January 1, 2009.

Editor's note: This section is similar to former § 26-4-1302 as it existed prior to 2006.

25.5-6-1103. Reporting. (1) The state department shall provide a report to the joint budget committee of the general assembly and the health and human services committees of the house of representatives and the senate, or any successor committees, by October 1, 2006, that includes, but is not limited to, the following:

- (a) The number of elderly persons participating in the consumer-directed care program;
- (b) The cost-effectiveness of the consumer-directed care program;
- (c) Feedback from consumers and the state department concerning the progress and success of the consumer-directed care program; and
- (d) Any changes to the health status or health outcomes of the program participants.

Source: L. 2006: Entire article added with relocations, p. 1969, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1303 as it existed prior to 2006.

PART 12

IN-HOME SUPPORT SERVICES

25.5-6-1201. Legislative declaration. The general assembly finds that there may be a more effective way to deliver home- and community-based services to the elderly, blind, and disabled and to disabled children that allows for more self direction in their care and

a cost savings to the state. The general assembly also finds that every person that is currently receiving home- and community-based services does not need the same level of supervision and care from a licensed health care professional in order to meet his or her care needs and remain living in the community. The general assembly, therefore, declares that it is beneficial to the elderly, blind, and disabled clients of home- and community-based services and to clients of the disabled children care program for the state department to develop a service that would allow these people to receive in-home support.

Source: L. 2006: Entire article added with relocations, p. 1970, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1401 as it existed prior to 2006.

25.5-6-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Attendant" means a person who is directly employed by an in-home support service agency to provide or a family member providing in-home support services to eligible persons.

(2) "Authorized representative" means an individual designated by the eligible person receiving services, or by the parent or guardian of the eligible person receiving services, if appropriate, who has the judgment and ability to assist the eligible person receiving services in acquiring and utilizing services under this part 12. The extent of the authorized representative's involvement shall be determined upon designation. The authorized representative shall not be the eligible person's service provider.

(3) "Eligible person" means any person who:

(a) Is eligible for home- and community-based services under part 3 of this article or is eligible for the disabled children care program under section 25.5-6-901;

(b) Is willing to participate;

(c) Obtains a statement from his or her primary care physician indicating that the person has sound judgment and the ability to direct his or her care, the eligible child's parent or guardian has sound judgment and the ability to direct the eligible child's care, or the person has an authorized representative; and

(d) Meets any other qualifications established by the state board by rule.

(4) "Health maintenance activities" means health-related tasks as defined in rule by the state board and include, but are not limited to, catheter irrigation, administration of medication, enemas, and suppositories, and wound care.

(5) "In-home support service agency" means an agency that is certified by the state department and provides independent living core services as defined in section 26-8.1-102 (3), C.R.S., and in-home support services.

(6) "In-home support services" means services that are provided by an attendant and include health maintenance activities, support for activities of daily living or instrumental activities of daily living, personal care services as defined in section 25.5-6-303 (18), and homemaker services as defined in section 25.5-6-303 (11).

Source: L. 2006: Entire article added with relocations, p. 1970, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1402 as it existed prior to 2006.

25.5-6-1203. In-home support services - eligibility - licensure exclusion - in-home support service agency responsibilities. (1) The state department shall offer in-home support services as an option for eligible persons who receive home- and community-based services. In-home support services shall be provided to eligible persons. The state department shall seek any federal authorization that may be necessary to implement this part 12. The state department shall design and implement in-home support services with input from consumers of home- and community-based services and independent living centers and home- and community-based service providers.

(2) An eligible person receiving in-home support services or the eligible person's authorized representative or parent or guardian shall be allowed to choose the eligible person's in-home support service agency or the eligible person's attendant.

(3) Sections 12-38-103 (8), 12-38-103 (11), 12-38-123 (1) (a), 12-38.1-102 (5), and 12-38.1-117 (1) (b), C.R.S., shall not apply to a person who is directly employed by an in-home support service agency to provide in-home support services and who is acting within the scope and course of such employment or is a family member providing in-home support services pursuant to this part 12. However, such person may not represent himself or herself to the public as a licensed nurse, a certified nurse aide, a licensed practical or professional nurse, a registered nurse, or a registered professional nurse. This exclusion shall not apply to any person who has had his or her license as a nurse or certification as a nurse aide suspended or revoked or his or her application for such license or certification denied.

(4) (a) In-home support service agencies providing in-home support services shall provide twenty-four-hour back-up services to their clients. In-home support service agencies shall either contract with or have on staff a state licensed health care professional, as defined by the state board by rule, acting within the scope of the person's profession. The state board shall promulgate rules setting forth the training requirements for attendants providing in-home support services and the oversight and monitoring responsibilities of the state licensed health care professional that is either contracting with or is on staff with the in-home support service agency.

(b) The state board shall promulgate rules that establish how an in-home support service agency can discontinue a client under this part 12. The rules shall establish that a client can only be involuntarily discontinued when equivalent care in the community has been secured or that a client can be discontinued after exhibiting documented prohibited behavior involving attendants, including abuse of attendants, and that dispute resolution has failed. The determination of whether an in-home support service agency has made adequate attempts at resolution shall be made by the state department.

(5) The single entry point agencies established in section 25.5-6-106 shall be responsible for determining a person's eligibility for in-home support services; except that for eligible disabled children the state department shall designate the entity that will determine the child's eligibility. The state board shall promulgate rules specifying the single entry point agencies' responsibilities under this part 12. At a minimum, these rules shall require that case managers discuss the option and potential benefits of in-home support services with all eligible long-term care clients.

(6) Section 25.5-6-310 does not apply to any parent who provides in-home support services to an eligible disabled child pursuant to this part 12.

(7) In administering the provision of in-home support services pursuant to this part 12, the state department shall:

(a) Implement a system for the routine and accurate monitoring of the number of persons receiving in-home support services; and

(b) Provide comprehensive, periodic training for all single entry point agencies in the state, which training shall include, at a minimum:

- (I) The current eligibility requirements for the receipt of in-home support services; and
- (II) The location of, and contact information for, the in-home support service agencies providing in-home support services in the state.

Source: L. 2006: Entire article added with relocations, p. 1971, § 7, effective July 1. L. 2011: (7) added, (SB 11-105), ch. 277, p. 1244, § 1, effective June 2.

Editor's note: This section is similar to former § 26-4-1403 as it existed prior to 2006.

25.5-6-1204. Provision of services - duties of state department - gifts - grants.

(1) The provision of the in-home support services set forth in this part 12 shall be subject to the availability of federal matching medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended, for payment of the costs for administration and the costs for the provision of such services.

(2) The state department shall seek and utilize any available federal, state, or private funds that are available for carrying out the purposes of this part 12, including but not limited to medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended.

(3) The executive director of the state department is authorized to accept and expend on behalf of the state any grants or gifts from any public or private source for the purpose of implementing this part 12.

Source: L. 2006: Entire article added with relocations, p. 1972, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1404 as it existed prior to 2006.

25.5-6-1205. Accountability - rate structure - rules. (1) The state department shall develop the accountability requirements necessary to safeguard the use of public dollars and to promote effective and efficient service delivery under this part 12.

(2) The state board, by rule, shall set a separate rate structure for in-home support services provided under this part 12.

(3) The state board shall adopt rules as necessary for the implementation and administration of the in-home support services authorized by this part 12. At a minimum, the rules shall include certification of in-home support service agencies and standards of care for the provision of services under this part 12.

Source: L. 2006: Entire article added with relocations, p. 1972, § 7, effective July 1.

Editor's note: This section is similar to former § 26-4-1405 as it existed prior to 2006.

25.5-6-1206. Report. The state department shall report annually to the joint budget committee of the general assembly and the health and human services committee of the senate, or any successor committee, and the health and environment committee of the house of representatives, or any successor committee, on the implementation of in-home support services. At a minimum the report shall include the cost-effectiveness of providing in-home support services to the elderly, blind, and disabled and to eligible disabled children, the number of persons receiving such services, and any strategies and resources that are available or that are necessary to assist more persons in staying in their homes through the use of in-home support services.

Source: L. 2006: Entire article added with relocations, p. 1973, § 7, effective July 1.
L. 2011: Entire section amended, (SB 11-105), ch. 277, p. 1244, § 2, effective June 2.

Editor's note: This section is similar to former § 26-4-1406 as it existed prior to 2006.

25.5-6-1207. Repeal of part. This part 12 is repealed, effective September 1, 2014. Prior to such repeal, in-home support services established under this part 12 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2006: Entire article added with relocations, p. 1973, § 7, effective July 1.
L. 2008: Entire section amended, p. 323, § 3, effective April 7. **L. 2011:** Entire section amended, (SB 11-105), ch. 277, p. 1245, § 3, effective June 2.

Editor's note: This section is similar to former § 26-4-1407 as it existed prior to 2006.

25.5-6-1208. Conditional repeal of part. (Repealed)

Source: L. 2006: Entire article added with relocations, p. 1973, § 7, effective July 1.
L. 2011: Entire section repealed, (SB 11-105), ch. 277, p. 1245, § 4, effective June 2;
entire section repealed, (HB 11-1303), ch. 264, p. 1169, § 69, effective August 10.

Editor's note: This section is similar to former § 26-4-1408 as it existed prior to 2006.

PART 13**COMPLEMENTARY AND ALTERNATIVE THERAPIES
FOR A PERSON WITH A SPINAL CORD INJURY**

25.5-6-1301. Legislative declaration. (1) The general assembly finds that:

(a) A person with a spinal cord injury could benefit from complementary and alternative therapies such as chiropractic care, massage therapy, or acupuncture; and

(b) Complementary and alternative therapies could improve the quality of life and help reduce the need for continuous or more expensive procedures, medications, and hospitalizations for a person with a spinal cord injury and could allow a person with a spinal cord injury to be employed.

Source: L. 2009: Entire part added, (HB 09-1047), ch. 395, p. 2128 § 1, effective August 5.

25.5-6-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Complementary or alternative therapy" means a form of diverse health care therapy not provided for under this article or article 4 or 5 of this title prior to August 5, 2009, but authorized by the rules of the state board adopted pursuant to section 25.5-6-1303 (4). The therapy shall be limited to chiropractic care, massage therapy, and acupuncture performed by licensed or certified providers.

(2) "Eligible person with a disability" means a person with a disability who meets the eligibility criteria specified in section 25.5-6-1303 (2) (b).

(3) "Pilot program" means the pilot program authorized pursuant to section 25.5-6-1303 to allow an eligible person with a disability to receive complementary and alternative therapies.

Source: L. 2009: Entire part added, (HB 09-1047), ch. 395, p. 2128, § 1, effective August 5.

25.5-6-1303. Pilot program - complementary or alternative therapies - rules.

(1) The general assembly authorizes the state department to implement a pilot program that would allow an eligible person with a disability to receive complementary or alternative therapies to the extent authorized by federal waiver. The pilot program shall begin no later than January 1, 2012. The state department shall design and implement the pilot program with input from an advisory committee that shall include, but need not be limited to, persons with spinal cord injuries who are receiving complementary or alternative therapies. The state department is authorized to seek any federal waivers that may be necessary to implement this part 13.

(2) (a) The purpose of the pilot program shall be to expand the choice of therapies available to eligible persons with disabilities, to study the success of complementary and alternative therapies, and to produce an overall cost savings for the state compared to the estimated expenditures that would have otherwise been spent for the same persons with spinal cord injuries absent the pilot program.

(b) In order to qualify and to remain eligible for the pilot program authorized by this section, a person shall:

(I) Be diagnosed with a spinal cord injury;

- (II) Be willing to participate in the pilot program;
 - (III) Demonstrate a current need, as further defined in rule by the state board, for complementary or alternative therapies; and
 - (IV) Be eligible for medicaid, including but not limited to persons whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level and who are eligible for a home- and community-based program authorized pursuant to this title or the consumer-directed attendant support pilot program authorized pursuant to part 10 of article 6 of this title.
- (3) The state department shall develop the accountability requirements for the pilot program necessary to safeguard the use of public moneys and to promote effective and efficient service delivery.
- (4) The state board shall adopt rules as necessary for the implementation and administration of the pilot program.
- (5) The state department shall cause to be conducted an independent evaluation of the pilot program to be completed by the end of the third year of the pilot program. The state department shall provide a report of the evaluation to the health and human services committees of the senate and the house of representatives, or any successor committees, by August 1, 2015. The report on the evaluation shall include the following:
- (a) The number of eligible persons with disabilities participating in the pilot program;
 - (b) The cost-effectiveness of the pilot program;
 - (c) Feedback from consumers and the state department concerning the progress and success of the pilot program;
 - (d) Any changes to the health status or health outcomes of the persons participating in the pilot program;
 - (e) Other information relevant to the success and problems of the pilot program; and
 - (f) Recommendations concerning the feasibility of continuing the pilot program beyond the pilot stage and changes, if any, that are needed.
- (6) The state department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this part 13; except that the state department shall not accept a gift, grant, or donation if it is subject to conditions that are inconsistent with this part 13 or any other law of the state. The state department shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the department of health care policy and financing cash fund created pursuant to section 25.5-1-109.
- (7) Unless the state department receives sufficient moneys from either the general fund or from gifts, grants, and donations made pursuant to subsection (6) of this section, the state department shall not be required to seek federal approval or implement the pilot program.

Source: L. 2009: Entire part added, (HB 09-1047), ch. 395, p. 2129, § 1, effective August 5.

25.5-6-1304. Repeal of part. This part 13 is repealed, effective September 1, 2015.

Source: L. 2009: Entire part added, (HB 09-1047), ch. 395, p. 2130, § 1, effective August 5.

PART 14

MEDICAID BUY-IN

Cross references: For the “Ticket to Work and Work Incentives Improvement Act of 1999”, see Pub.L. 106-170, codified at 42 U.S.C. sec. 1320b-19.

25.5-6-1401. Legislative declaration. The general assembly hereby declares its support for the full employment of people with disabilities. It is the general assembly’s intent

to enact this part 14 for the purpose of allowing an individual with disabilities to purchase medicaid coverage that will enable the individual to maintain employment without losing his or her medicaid benefits.

Source: L. 2008: Entire part added, p. 2197, § 1, effective July 1.

25.5-6-1402. Definitions. As used in this part 14, unless the context otherwise requires:

(1) “Basic coverage group” means the category of eligibility under the federal “Ticket to Work and Work Incentives Improvement Act of 1999”, Pub.L. 106-170, that provides an opportunity to buy into medicaid consistent with the federal “Social Security Act”, 42 U.S.C. 1396a (a) (10) (A) (ii) (XV), as amended, for each worker with disabilities who is at least sixteen years of age but less than sixty-five years of age and who, except for earnings, would be eligible for the supplemental security income program. A person who is eligible under the basic coverage group may also be a home- and community-based services waiver recipient.

(2) “Family” means an individual, the individual’s spouse, and any dependent child of the individual.

(3) “Health insurance” means surgical, medical, hospital, major medical, or other health service coverage, including a self-insured health plan, but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time, or accident benefits.

(4) “Medicaid buy-in program” means a program that gives each person with disabilities the opportunity to buy into medicaid if the person meets the eligibility criteria specified in section 25.5-6-1404.

(5) “Medical improvement group” means the category of eligibility under the federal “Ticket to Work and Work Incentives Improvement Act of 1999”, Pub.L. 106-170, that provides an opportunity to buy into medicaid consistent with the federal “Social Security Act”, 42 U.S.C. 1496a (a) (10) (A) (ii) (XV), as amended, for each worker with a medically improved disability who is at least sixteen years of age but less than sixty-five years of age and who was previously in the basic coverage group and is no longer eligible for the basic coverage group due to medical improvement. A person who is eligible under the medical improvement group may also be a home- and community-based services waiver recipient.

Source: L. 2008: Entire part added, p. 2197, § 1, effective July 1.

25.5-6-1403. Waivers and amendments. (1) On or before January 1, 2010, the state department shall submit to the joint budget committee of the general assembly a report on the actuarial study and the fiscal analysis of the premiums based on the study and the rules adopted pursuant to this section.

(2) If approved by the joint budget committee following its review of the report and subject to available appropriations, the state department shall submit to the federal centers for medicare and medicaid services an amendment to the state medical assistance plan, and shall request any necessary waivers from the secretary of the federal department of health and human services, to permit the state department to expand medical assistance eligibility as provided in this part 14 for the purpose of implementing a medicaid buy-in program for people with disabilities who are in the basic coverage group or the medical improvement group. In addition, the state department shall apply to the secretary of the federal department of health and human services for a medicaid infrastructure grant, if available, to develop and implement the federal “Ticket to Work and Work Incentives Improvement Act of 1999”, Pub.L. 106-170.

(3) If the state medical assistance plan amendment and all necessary waivers are approved, the state department shall implement the medicaid buy-in program provided in this part 14 not later than three months after receiving full federal approval, whichever is later.

Source: L. 2008: Entire part added, p. 2198, § 1, effective July 1. **L. 2009:** (2) amended, (HB 09-1293), ch. 152, p. 649, § 7, effective July 1.

25.5-6-1404. Medicaid buy-in program - eligibility - premiums - medicaid buy-in cash fund - report. (1) **Eligibility.** An individual is eligible for and shall receive medicaid provided in this part 14 through a medicaid buy-in program without losing eligibility for medicaid if all of the following conditions are met:

(a) The individual meets the requirements for the basic coverage group or the individual was previously in the basic coverage group and now meets the requirements for the medical improvement group;

(b) The individual maintains premium payments calculated by the state department in accordance with subsection (3) of this section, unless the individual is exempted from premium payments under rules promulgated by the state board; and

(c) The individual meets all other requirements established by rule of the state board.

(2) There is no income or asset limitation for a participant in the medicaid buy-in program. In addition, there is no income or asset limitation for an individual who participates in the medicaid buy-in program and also receives home- and community-based services.

(3) **Premiums.** (a) An individual who is eligible for and receives medicaid under subsection (1) of this section shall pay a premium pursuant to a payment schedule established by the state department. The amount of the premium shall be determined from a sliding-fee scale adopted by rule of the state board that is based on a percentage of the individual's income adjusted for family size and on any impairment-related work expenses; except that, consistent with federal law, if the amount of the individual's adjusted gross income exceeds seventy-five thousand dollars, the individual shall be responsible for paying one hundred percent of the premium. The actuarial study shall also consider contributions from employers pursuant to paragraph (b) of subsection (4) of this section. The rules shall specify the amount of unearned income the state department shall disregard in calculating the individual's income.

(b) The rules setting the premiums and the sliding-fee scale shall be based on an actuarial study of the disabled population in this state. The state department may solicit and accept federal grants to cover the costs of the actuarial study. Moneys received through any grants and any premiums shall be credited to the medicaid buy-in cash fund, which fund is hereby created in the state treasury. Moneys in the fund shall be appropriated by the general assembly and expended by the state department for the purpose of conducting implementation activities as determined by the state department, including conducting the actuarial study. Premiums shall be credited to the fund for the purpose of offsetting program costs.

(c) Within three years after implementation of the medicaid buy-in program pursuant to this part 14, the state department shall submit a report on the effectiveness of the program to the health and human services committees of the general assembly, or any successor committees, and the joint budget committee of the general assembly.

(4) **Private health insurance.** (a) The state department shall, on behalf of an individual who is eligible for medicaid under subsection (1) of this section, pay premiums for or purchase individual coverage offered by the individual's employer if the state department determines that paying the premiums or purchasing the coverage will be less than providing medicaid coverage. Any employer-sponsored health insurance plan shall be the primary payer, and any payments made under medicaid shall be secondary. In the event that the employer-sponsored health insurance plan provides benefits that are not equivalent to the benefits provided under medicaid, medicaid shall provide all additional benefits that are not provided by the employer-sponsored health insurance plan.

(b) If an individual is eligible for medicaid under subsection (1) of this section and the individual's employer would pay for all or a portion of the individual's private insurance, the state department may accept contributions from the individual's employer to offset part of the cost of providing services pursuant to this section.

(5) **Medicare.** If federal financial participation is available, subject to available appropriations, the state department may pay medicare part A and part B premiums for individuals who are eligible for medicare and for medicaid under subsection (1) of this section.

25.5-6-1405. Rule-making authority. (1) The state board shall promulgate rules necessary to implement and administer the medicaid buy-in program created in this part 14, including the establishment of appropriate premium and cost-sharing charges on a sliding-fee scale based on income. The premiums and cost-sharing charges shall be based upon an actuarial study of the disabled population in this state.

(2) Any rules adopted by the state board shall be consistent with the federal “Ticket to Work and Work Incentives Improvement Act of 1999”, Pub.L. 106-170.

Source: L. 2008: Entire part added, p. 2200, § 1, effective July 1.

25.5-6-1406. Availability of federal financial assistance under medical assistance. Notwithstanding any other provision of law, this part 14 shall be implemented only if, and to the extent that, the state department determines that federal financial participation is available under the medicaid program.

Source: L. 2008: Entire part added, p. 2200, § 1, effective July 1.

CHILDREN’S BASIC HEALTH PLAN

ARTICLE 8

Children’s Basic Health Plan

Editor’s note: This article was added with relocations in 2006 containing provisions of some sections formerly located in article 19 of title 26. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

- | | |
|--|---|
| 25.5-8-101. Short title. | tem of accounting. |
| 25.5-8-102. Legislative declaration. | 25.5-8-109. Eligibility - children - pregnant women. |
| 25.5-8-103. Definitions - repeal. | 25.5-8-110. Participation by managed care plans. |
| 25.5-8-104. Children’s basic health plan - rules. | 25.5-8-111. Department - administration - outsourcing. |
| 25.5-8-105. Trust - created. | 25.5-8-112. Authority to the department to apply for federal waivers. |
| 25.5-8-106. Annual savings report. | 25.5-8-113. Reports by contractors to medical services board. |
| 25.5-8-107. Duties of the department - schedule of services - premiums - copayments - subsidies. | |
| 25.5-8-108. Financial management - cash sys- | |

25.5-8-101. Short title. This article shall be known and may be cited as the “Children’s Basic Health Plan Act”.

Source: L. 2006: Entire article added with relocations, p. 1973, § 7, effective July 1.

Editor’s note: This section is similar to former § 26-19-101 as it existed prior to 2006.

25.5-8-102. Legislative declaration. (1) The general assembly hereby finds and declares that a significant percentage of children are uninsured. This lack of health insurance coverage decreases children’s access to preventive health care services, compromises the productivity of the state’s future workforce, and results in avoidable expenditures for emergency and remedial health care. Health care providers, health care facilities, and all purchasers of health care, including the state, bear the costs of this uncompensated care.

(2) The general assembly further finds and declares that the coordination and consolidation of funding sources currently available to provide services to uninsured children such as the Colorado indigent care program pursuant to part 1 of article 3 of this title, the children’s basic health plan, and other children’s health programs would efficiently and

effectively meet the health care needs of uninsured children and would help to reduce the volume of uncompensated care in the state.

(3) (a) It is the intent of the general assembly to make health insurance coverage available and affordable and to support employers in their efforts to provide their employees and their dependents with health insurance coverage and to support increased availability of affordable health insurance in the individual market.

(b) It is the intent of the general assembly that the savings and efficiencies realized through actual reductions in administrative and programmatic costs associated with the implementation of this article and achieved in consolidating other health care programs should be identified.

(4) It is not the intent of the general assembly to create an entitlement for health insurance coverage.

(5) The general assembly hereby declares that the following principles shall be used in implementing the children's basic health plan set forth in this article:

(a) The department shall establish and maintain a goal of inter-program communication in order to maximize existing state appropriations for the population served in the program;

(b) There shall be efficient program utilization through inter-program coordination and program consolidation and, where appropriate, through contracting with the private sector and with essential community providers;

(c) The policies enacted in House Bill 97-1304 regarding a strong managed care direction shall be emphasized;

(d) The private sector shall be involved to the greatest possible degree with respect to contracting for managed care;

(e) There shall be maximum emphasis on coordination with local and state public health programs and initiatives for children.

(6) The general assembly hereby finds and declares:

(a) That the goal of the "Children's Basic Health Plan Act" is to support low-income, working parents and families in overcoming barriers in obtaining good quality, affordable health care services for their children;

(b) That the health services that low-income children receive through the children's basic health plan should be cost-effective, of high quality, and promote positive health outcomes for enrolled children;

(c) That the children's basic health plan was designed as, and should continue to be, a private-public partnership that encourages enrollment and seeks every opportunity to operate with the efficiency and creativity that is found in utilizing private sector systems and business practices while maintaining the highest level of accountability to the general assembly, the executive branch, and the public through administration of the plan by the department;

(d) That the children's basic health plan was designed as, and should continue to be, a community-based program that encourages local participation in enrolling children in and supporting its goals.

Source: L. 2006: Entire article added with relocations, p. 1973, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-102 as it existed prior to 2006.

25.5-8-103. Definitions - repeal. As used in this article, unless the context otherwise requires:

(1) "Child" means a person who is less than nineteen years of age.

(2) "Children's basic health plan" or "plan" means the subsidized health insurance product designed by the department of health care policy and financing and provided to enrollees, as defined in this section.

(3) "Department" means the department of health care policy and financing created in section 25.5-1-104.

(4) "Eligible person" means:

(a) (I) A person who is less than nineteen years of age, whose family income does not exceed two hundred fifty percent of the federal poverty line, adjusted for family size.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for persons less than nineteen years of age, the state board may by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) reduce the percentage of the federal poverty line to below two hundred fifty percent, but the percentage shall not be reduced to below two hundred five percent.

(III) (A) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), until the state department receives federal authorization to increase the percentage of the federal poverty line for a person who is less than nineteen years of age, the percentage of the federal poverty line shall not exceed two hundred five percent.

(B) Within sixty days after the state department receives authorization to increase the percentage of the federal poverty line, the executive director shall send written notice to the revisor of statutes informing him or her of the authorization.

(C) This subparagraph (III) is repealed, effective the July 1 following the receipt of the notice to the revisor of statutes.

(b) (I) A pregnant woman whose family income does not exceed two hundred fifty percent of the federal poverty line, adjusted for family size, and who is not eligible for Medicaid.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b), after receiving recommendations from the hospital provider fee oversight and advisory board established pursuant to section 25.5-4-402.3 (6), for pregnant women, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the percentage of the federal poverty line to below two hundred fifty percent, but the percentage shall not be reduced to below two hundred five percent.

(III) (A) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), until the state department receives authorization to increase the percentage of the federal poverty line for a person who is less than nineteen years of age, the percentage of the federal poverty line shall not exceed two hundred five percent.

(B) Within sixty days after the state department receives authorization to increase the percentage of the federal poverty line, the executive director shall send written notice to the revisor of statutes informing him or her of the authorization.

(C) This subparagraph (III) is repealed, effective the July 1 following the receipt of the notice to the revisor of statutes.

(5) "Enrollee" means any eligible person that has enrolled in the plan.

(6) "Essential community provider" means a health care provider that:

(a) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations who make up a significant portion of its patient population, or in the case of a sole community provider, serves the medically indigent patients within its medical capability; and

(b) Waives charges or charges for services on a sliding scale based on income and does not restrict access or services because of a client's financial limitations.

(7) "Health care program" means any health care program in the state that is supported with state general fund or federal dollars.

(8) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.

(9) "Medical services board" means the medical services board created in section 25.5-1-301.

(10) "Subsidized enrollee" means an eligible person who receives a subsidy from the department to purchase coverage under the plan or a comparable health insurance.

(11) "Subsidy" means the amount paid by the department to assist an eligible person in purchasing coverage under the plan or a comparable health insurance product available to the eligible person through another coverage entity.

(12) "Trust" means the children's basic health plan trust created in section 25.5-8-105.

Source: **L. 2006:** Entire article added with relocations, p. 1975, § 7, effective July 1. **L. 2007:** (4) amended, p. 149, § 10, effective March 22. **L. 2008:** (4)(a) amended, p. 2019, § 1, effective March 1, 2009; (4)(b) amended, p. 2019, § 2, effective October 1, 2009. **L. 2009:** (4)(a) and (4)(b) amended, (SB 09-211), ch. 2, pp. 3, 4, § 1, 2, 3, effective February 26; (4) amended, (HB 09-1293), ch. 152, p. 650, § 8, effective July 1; (4)(b) amended, (SB 09-292), ch. 369, p. 1985, § 130, effective August 5. **L. 2010:** (4)(a)(I), (4)(a)(II), (4)(a)(III)(A), (4)(a)(III)(B), (4)(b)(I), (4)(b)(II), (4)(b)(III)(A), and (4)(b)(III)(B) amended, (HB 10-1422), ch. 419, p. 2114, § 150, effective August 11.

Editor's note: (1) This section is similar to former § 26-19-103 as it existed prior to 2006.

(2) (a) For the amendments to subsection (4)(a) that were in effect from March 1, 2009, to July 1, 2009, see section 1 chapter 2, Session Laws of Colorado 2009. (L. 2009, p. 3.)

(b) For the amendments to subsection (4)(b) that were in effect from February 26, 2009, to July 1, 2009, see section 2 chapter 2, Session Laws of Colorado 2009. (L. 2009, p. 3.)

25.5-8-104. Children's basic health plan - rules. The medical services board is authorized to adopt rules to implement the children's basic health plan to provide health insurance coverage to eligible persons on a statewide basis pursuant to the provisions of this article. Any rules adopted by the children's basic health plan policy board in accordance with the requirements of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall be enforceable and shall be valid until amended or repealed by the medical services board.

Source: **L. 2006:** Entire article added with relocations, p. 1976, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-104 as it existed prior to 2006.

25.5-8-105. Trust - created. (1) A fund to be known as the children's basic health plan trust is hereby created and established in the state treasury. Except as provided for in subsections (4) and (8) of this section, all moneys deposited in the trust and all interest earned on moneys in the trust shall remain in the trust for the purposes set forth in this article, and no part thereof shall be expended or appropriated for any other purpose. The principal of the trust shall be expended, subject to annual appropriation by the general assembly, solely for the purposes set forth in this article.

(2) (a) Except as provided for in subsections (4) and (8) of this section, all or a portion of the moneys in the trust shall be annually appropriated by the general assembly for the purposes of this article and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), moneys in the trust may be used to pay the state's portion of any computer system changes necessary to expand eligibility in the plan.

(3) (a) Pursuant to section 24-75-1104.5 (1) (c), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2006-07 fiscal year and in each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall transfer to the trust twenty-four percent of the total amount of the moneys annually received by the state pursuant to the master settlement agreement, not including attorney fees and costs, during the preceding fiscal year; except that the amount so transferred to the trust shall not exceed thirty million dollars in any fiscal

year. Except as otherwise provided in sections 24-22-115.5 (2) (a.7) and 24-75-1104.5 (1) (c), C.R.S., the state treasurer shall transfer the amount specified in this subsection (3) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S. The amount transferred pursuant to this subsection (3) shall be in addition to and not in replacement of any general fund moneys appropriated to the trust.

(b) Pursuant to section 24-75-1104.5 (1.5) (a) (V), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2007-08 fiscal year and each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall transfer to the trust five percent of the portion of the moneys annually received by the state pursuant to the master settlement agreement, not including attorney fees and costs, during the preceding fiscal year that remains after the programs, services, and funds that receive such moneys pursuant to section 24-75-1104.5 (1), C.R.S., have been fully funded.

(4) On June 30, 2006, the state treasurer and the controller shall transfer eight million one hundred thousand dollars from the trust to the state general fund.

(5) (a) Beginning in fiscal year 1998, appropriations to the trust may be made by the general assembly based on the savings achieved through reforms, consolidations, and streamlining of health care programs realized through actual reductions in administrative and programmatic costs associated with the implementation of this article and not decreases in the number of caseloads of such programs. Beginning with and subsequent to fiscal year 2000-01, the general assembly may make annual appropriations to the trust.

(b) (I) Notwithstanding any provision of paragraph (a) of this subsection (5) to the contrary, on March 27, 2002, the state treasurer shall deduct nine hundred thousand dollars from the trust and transfer such sum to the general fund.

(II) In order to restore the amount transferred from the trust pursuant to subparagraph (I) of this paragraph (b), moneys from the general fund shall be transferred to the trust in accordance with section 24-75-217, C.R.S.

(c) Notwithstanding any provision of this section to the contrary, on March 5, 2003, the state treasurer shall deduct from the trust, out of moneys appropriated pursuant to section 24-75-1104 (1) (b) (II), C.R.S., two million one thousand one hundred twenty-five dollars, and transfer such sum to the general fund.

(6) As part of its annual savings report to the general assembly on November 1 of each year, the department may identify efficiencies and consolidations that produce savings in the department's annual budget request that result in actual reductions in administrative and programmatic costs associated with the implementation of this article and not decreases in the number of caseloads of such programs. These identified savings shall not duplicate the savings reported in the annual savings report described in section 25.5-8-106.

(7) The department may receive payment for coverage offered and may receive or contract for donations, gifts, and grants from any source. Such funds shall be transmitted to the state treasurer who shall credit the same to the trust. The department may expend such funds from the trust for the purposes of this article.

(8) Beginning in the 2011-2012 fiscal year and for each fiscal year thereafter, moneys in the trust may be used for costs associated with children enrolled in the medical assistance program, articles 4, 5, and 6 of this title, whose family income is more than one hundred percent but does not exceed one hundred thirty-three percent of the federal poverty line and who would have been eligible for enrollment in the children's basic health plan prior to September 1, 2011.

Source: L. 2006: (3) amended, p. 1040, § 10, effective May 25; entire article added with relocations, p. 1976, § 7, effective July 1. L. 2007: (1), (2), and (3) amended, p. 150, § 11, effective March 22; (3)(b) amended, p. 892, § 5, effective July 1. L. 2008: (2) amended, p. 2020, § 3, effective June 3. L. 2009: (1), (2), and (3) amended, (SB 09-210), ch. 124, p. 531, § 5, effective April 16; (3) amended, (SB 09-269), ch. 333, p. 1768, § 9, effective June 1. L. 2011: (1) and (2)(a) amended and (8) added, (SB 11-008), ch. 100, p. 293, § 3, effective September 1. L. 2012: (3)(b) amended, (HB 12-1247), ch. 53, p. 197, § 7, effective March 22.

Editor's note: (1) This section is similar to former § 26-19-105 as it existed prior to 2006.

(2) Subsection (3) was originally numbered as § 26-19-105 (2.5), and the amendments to it in House Bill 06-1310 were harmonized with subsection (3) as it appeared in Senate Bill 06-219.

(3) Amendments to subsection (3) by Senate Bill 09-210 and Senate Bill 09-269 were harmonized.

25.5-8-106. Annual savings report. (1) By October 1 of each year, the department shall submit to the joint budget committee of the general assembly, to the health and human services committees of the house of representatives and the senate, or any successor committees, and to the office of state planning and budgeting an annual savings report stating the cost-savings anticipated in the previous, current, and subsequent fiscal years from health care program reforms, consolidations, and streamlining.

(2) The annual savings report shall include a description of net savings factoring in increased administrative expenses from the following:

(a) **Enrollment of medicaid clients in medicaid managed care programs.** In calculating savings from enrollment of medicaid clients into medicaid managed care programs, the department shall calculate the total annual savings from growth in managed care enrollment subsequent to June 30, 1997.

(b) **Consolidation of the children's portions of the Colorado indigent care program into the plan.** In calculating the savings accrued and anticipated from consolidation of the children's portions of the Colorado indigent care program, created in part 1 of article 3 of this title, into the plan, the department shall use the following methodology: Estimate the reduction in expenditures due to the reduction in the number of children under age nineteen served by the Colorado indigent care program for each fiscal year in which children have been enrolled in the children's basic health plan.

(3) As reported in the annual savings report, the total savings from consolidation of the children's portions of the Colorado indigent care program, created in part 1 of article 3 of this title, into the plan shall not reduce the reimbursement rate of expenditures made on behalf of children to the Colorado indigent care program enrolled providers below the reimbursement rates used in the fiscal year prior to the first child enrolling in the plan.

(4) The department shall modify total savings calculated in paragraph (b) of subsection (2) of this section according to the geographic residence of subsidized enrollees and to the probable location of their health care providers under the Colorado indigent care program, created in part 1 of article 3 of this title.

Source: L. 2006: Entire article added with relocations, p. 1977, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-106 as it existed prior to 2006.

25.5-8-107. Duties of the department - schedule of services - premiums - copayments - subsidies. (1) In addition to any other duties pursuant to this article, the department shall have the following duties:

(a) (I) To design, and from time to time revise, a schedule of health care services included in the plan and to propose said schedule to the medical services board for approval or modification. The schedule of health care services as proposed by the department and approved by the medical services board shall include, but shall not be limited to, preventive care, physician services, prenatal care and postpartum care, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be medically necessary for the health of enrollees. The department shall design and revise this schedule of health care services included in the plan to be based upon the basic and standard health benefit plans defined in section 10-16-102 (4) and (43), C.R.S.; except that the department may modify the basic and the standard health benefit plans to meet specific federal requirements or to accommodate those changes necessary for a program designed specifically for children.

(II) In addition to the items specified in subparagraph (I) of this paragraph (a) and any additional items approved by the medical services board, on and after January 1, 2001, the

medical services board shall include dental services in the schedule of health care services upon a finding by the board that:

(A) An adequate number of dentists are willing to provide services to eligible children; and

(B) The financial resources available to the program are sufficient to fund such services.

(III) In addition to the items specified in subparagraphs (I) and (II) of this paragraph (a) and any additional items approved by the medical services board, the medical services board shall include mental health services that are at least as comprehensive as the mental health services provided to medicaid recipients in the schedule of health care services.

(IV) The schedule of health care services included in the plan shall not include coverage pursuant to the mandatory coverage provisions of section 10-16-104 (1.4), C.R.S.

(b) To design and implement a system of cost-sharing with enrollees using an annual enrollment fee that is based on a sliding fee scale. The sliding fee scale shall be developed based on the enrollee's family income; except that no enrollment fee shall be assessed against an enrollee whose family income is at or below one hundred fifty percent of the federal poverty line and no enrollment fee shall be assessed against an enrollee who is a pregnant woman. As permitted by federal and state law, enrollees in the plan may use funds from a medical savings account to pay the annual enrollment fee. On or before November 1 of each year, the department shall submit for approval to the joint budget committee its annual proposal for cost sharing for the plan based upon a family's income.

(c) To design and implement a structure of copayments due to providers of managed health care plans from enrollees. Enrollees in the plan may use funds from a medical savings account to pay copayments.

(d) To design and propose to the medical services board for adoption detailed rules of eligibility and enrollment processes for the plan;

(e) To design a procedure whereby a financial sponsor may pay the annual enrollment fee or some portion thereof on behalf of a subsidized or nonsubsidized enrollee; except that the payment made on behalf of said enrollee shall not exceed the total enrollment fee due from the enrollee;

(f) To design a procedure whereby the plan may pay subsidies for eligible persons to purchase coverage under the plan or a comparable health insurance product;

(g) To establish criteria to allow a managed care plan, the department, or some other entity to verify eligibility pursuant to section 25.5-8-109;

(h) To conduct pilot projects including, but not limited to, testing models of marketing, enrollment, eligibility determination, and premium structures, to be implemented where appropriate and as approved by the joint budget committee.

(2) The department is authorized to institute a program for competitive bidding pursuant to section 24-103-202 or 24-103-203, C.R.S., for providing medical services on a managed care basis for children under this article. The department shall select more than one managed care contractor to serve counties in which there are providers contracting with more than one managed care plan. In counties where there is only one operational managed care plan, the department may contract with that managed care plan to serve children enrolled in the plan. The department shall assure the utilization of essential community providers for the provision of services including eligibility determination, enrollment, and outreach when reasonable. The department shall contract with managed care organizations for the delivery of health services pursuant to this article. The department may contract with essential community providers for health care services in areas of the state that are not adequately served by managed care organizations.

(3) The department may contract for billing and premium collection functions for the children's basic health plan with vendors who provide billing and premium collection functions for other state insurance programs in order to consolidate billing and premium collection functions among multiple state programs. Such contracts may be entered into if the department determines that the scope of work provided by the vendor is similar to the work requirements for the children's basic health plan and that it would be more efficient and cost-effective to contract with the same vendor on multiple programs.

(4) Commencing with fiscal year 2001-02, the annual administrative costs for the children's basic health plan shall not exceed ten percent of the total annual program costs.

Source: **L. 2006:** (1)(a)(I) amended, p. 1505, § 51, effective June 1; entire article added with relocations, p. 1978, § 7, effective July 1; (1)(a)(I) amended, p. 1078, § 6, effective January 1, 2007. **L. 2008:** (2)(a)(III) added, p. 2020, § 4, effective January 1, 2009. **L. 2009:** (1)(a)(IV) added, (SB 09-244), ch. 391, p. 2118, § 5, effective July 1, 2010. **L. 2010:** (1)(b) amended, (HB 10-1422), ch. 419, p. 2115, § 151, effective August 11.

Editor's note: (1) This section is similar to former § 26-19-107 as it existed prior to 2006.

(2) Amendments to section 26-19-107 (1)(a)(I) by House Bill 06-1391 were harmonized with subsection (1)(a)(I) as it appeared in Senate Bill 06-219. Amendments to section 26-19-107 (1)(a)(I) by Senate Bill 06-036 were further harmonized with subsection (1)(a)(I), effective January 1, 2007.

Cross references: For the legislative declaration contained in the 2006 act amending subsection (1)(a)(I), see § 1 of chapter 236, Session Laws of Colorado 2006. For the legislative declaration contained in the 2009 act adding subsection (1)(a)(IV), see § 1 of chapter 391, Session Laws of Colorado 2009.

25.5-8-108. Financial management - cash system of accounting. (1) The department shall propose rules for approval by the medical services board to implement financial management of the plan. Pursuant to such rules, the department shall adjust benefit levels, eligibility guidelines, and any other measure to ensure that sufficient funds are present to implement the provisions of this article. The department shall develop and use quality assurance measures, such as the health employer data information set (HEDIS) reports regarding provider compensation, adapted to children's needs, to ensure that appropriate health care outcomes are met and to justify the continued use of taxpayer dollars for the plan. The department shall implement performance-based contracting based on such quality assurance measures.

(2) The department shall make a quarterly assessment of the expected expenditures for the plan for the remainder of the current biennium and for the following biennium. The estimated expenditures, including minimum reserve requirements shall be compared to an estimate of the revenues that will be deposited in the trust fund. Based on this comparison, the department shall make adjustments as necessary to ensure that expenditures remain within the limits of available revenues for the remainder of the current biennium and the following biennium.

(3) The department may, in addition to any other measure it determines to be necessary, decrease subsidies for annual enrollment fees or limit enrollment in the plan to ensure that the trust retains sufficient funds pursuant to subsection (1) of this section.

(4) (a) Nothing in this article or any rules promulgated pursuant to the plan shall be interpreted to create a legal entitlement in any person to coverage under the plan. If enrollment in the plan is limited, the department shall give priority to children with family incomes under one hundred thirty-three percent of the federal poverty line.

(b) The department shall report quarterly to the joint budget committee on any enrollment caps that have been instituted for the plan and the number of children who are on waiting lists.

(5) The department shall utilize the cash system of accounting, as enunciated by the governmental accounting standards board, regardless of the source of revenues involved, for all activities of the department relating to the financial administration of any nonadministrative expenditure for the plan.

Source: **L. 2006:** Entire article added with relocations, p. 1980, § 7, effective July 1. **L. 2007:** (5) added, p. 465, § 3, effective July 1. **L. 2008:** (4)(a) amended, p. 459, § 2, effective April 14. **L. 2010:** (4)(a) amended, (HB 10-1422), ch. 419, p. 2115, § 152, effective August 11.

Editor's note: This section is similar to former § 26-19-108 as it existed prior to 2006.

25.5-8-109. Eligibility - children - pregnant women. (1) To be eligible for a subsidy, a child must not have currently nor in the three months prior to application for the

plan have been insured by a comparable health plan through an employer, with the employer contributing at least fifty percent of the premium cost. Children who have lost insurance coverage due to a change in or loss of employment shall not be subject to the waiting period.

(2) If one child from a family is enrolled in the plan, all children must be enrolled, unless the other children have alternative health insurance coverage.

(3) The department may establish procedures such that children with family incomes that exceed the percent of the federal poverty guidelines specified in section 25.5-8-103 (4) (a) may enroll in the plan, but are not eligible for subsidies from the department.

(4) A child whose family income does not exceed the applicable level specified in section 25.5-8-103 (4) (a) shall be presumptively eligible for the plan. Children who are determined to be eligible for the plan shall remain eligible for twelve months subsequent to the last day of the month in which they were enrolled; except that a child shall no longer be eligible for the plan and shall be disenrolled from the plan if the department becomes aware of or is notified that any of the following has occurred:

(a) The child has moved out of the state;

(b) The child has been enrolled in the medicaid program; except that, in disenrolling a child pursuant to this paragraph (b), the department shall ensure that the child is continuously covered under this section until the coverage is attained under the medicaid program and that there is no gap in coverage; or

(c) The child has been enrolled in a commercial health insurance plan during the twelve-month period following enrollment in the plan under this article.

(4.5) (a) (I) To the extent authorized by federal law, the department shall require an applicant to state only the applicant's family income and shall notify the applicant that the applicant's family income will be verified by the department through the most recently available records of the division of unemployment insurance in the department of labor and employment or through the income, eligibility, and verification system. The department shall allow an applicant to provide income information more recent than the records of the division of unemployment insurance or the income, eligibility, and verification system.

(II) The department shall annually verify the recipient's income eligibility at reenrollment through the records of the division of unemployment insurance in the department of labor and employment or through the income, eligibility, and verification system. If a recipient meets all eligibility requirements, a recipient remains enrolled in the plan. The department shall also allow a recipient to provide income information more recent than the records of the division of unemployment insurance or the income, eligibility, and verification system.

(III) If the state department determines that a recipient was not eligible for medical benefits solely based upon the recipient's income after the recipient had been determined to be eligible based upon the records of the division of unemployment insurance or the income, eligibility, and verification system, the state department shall not pursue recovery from a county department for the cost of medical services provided to the recipient, and the county department is not responsible for any federal error rate sanctions resulting from such determination.

(IV) Notwithstanding any other provision in this paragraph (a), for applications that contain self-employment income, the state department shall not implement this paragraph (a) until it can verify self-employment income through the income, eligibility, and verification system or other verification as authorized by rules of the state department and federal law.

(b) Repealed.

(c) Subject to the provisions and requirements of section 25.5-4-205 (3) (e), the department shall establish a process so that an enrollee or the parent or guardian of an enrollee may apply for reenrollment either over the telephone or through the internet.

(5) (a) (I) A pregnant woman whose family income does not exceed the applicable level specified in section 25.5-8-103 (4) (b) shall be presumptively eligible for the plan. Once determined eligible for the plan, a pregnant woman shall be considered to be continuously eligible throughout the pregnancy and for the sixty days following the pregnancy, even if the woman's eligibility would otherwise terminate during such period

due to an increase in income. Upon birth, a child born to a woman eligible for the plan shall be eligible for the plan and shall be automatically enrolled in the plan in accordance with the eligibility requirements for children specified in subsection (4) of this section.

(II) Repealed.

(b) (I) Under the plan, prenatal and postpartum primary health care providers shall implement policies regarding the integration of evidence-based tobacco use treatments into the regular health care delivery system, including, but not limited to:

- (A) Assessment of tobacco use and exposure to second-hand smoke;
- (B) Education on the dangers of tobacco use during pregnancy and postpartum;
- (C) Referrals to appropriate cessation services.

(II) Health care providers may coordinate the implementation of such policies with the tobacco education, prevention, and cessation programs established in section 25-3.5-804, C.R.S.

(c) The addition of coverage under the plan for pregnant women shall only be implemented if the department obtains a waiver from the federal department of health and human services.

(d) Enrollment of a pregnant woman in the plan shall be limited based upon annual appropriations made out of the trust by the general assembly as described in section 25.5-8-105 and any grants and donations. The general assembly shall annually establish maximum enrollment figures for pregnant women in the plan. The department shall not exceed the enrollment caps regardless of whether the funding comes from annual appropriations or grants and donations.

(6) Notwithstanding any other provision of law, but subject to the availability of sufficient appropriations and the receipt of federal financial participation, the department may provide benefits under this article to a pregnant woman who is a qualified alien and a child under nineteen years of age who is a qualified alien so long as such woman or child meets eligibility criteria other than citizenship.

Source: **L. 2006:** (5)(a) amended, p. 1121, § 1, effective May 25; entire article added with relocations, p. 1981, § 7, effective July 1. **L. 2007:** (5)(a)(I) and (5)(a)(II)(A) amended, p. 151, § 12, effective March 22; (3), IP(4), and (4)(b) amended, p. 1493, § 6, effective January 1, 2008. **L. 2008:** (4.5) added, p. 2026, § 2, effective June 3; (5)(a)(I) amended, p. 2020, § 5, effective October 1, 2009. **L. 2009:** (4.5)(c) added, (HB 09-1020), ch. 298, p. 1596, § 2, effective May 21; (6) added, (HB 09-1353), ch. 360, p. 1870, § 3, effective July 1, 2010. **L. 2012:** (4.5)(a)(I), (4.5)(a)(II), and (4.5)(a)(III) amended, (HB 12-1120), ch. 27, p. 109, § 26, effective June 1.

Editor's note: (1) This section is similar to former § 26-19-109 as it existed prior to 2006.

(2) Amendments to section 26-19-109 (5)(a) by Senate Bill 06-135 were harmonized with subsection (5)(a) as it appeared in Senate Bill 06-219.

(3) (a) Subsection (5)(a)(II)(B) provided for the repeal of subsection (5)(a)(II), effective July 1, 2007. (See L. 2006, pp. 1121, 1981.)

(b) For the amendment to subsection (5)(a)(II)(A) in effect from March 22, 2007, until July 1, 2007, see section 12 of chapter 41, Session Laws of Colorado 2007.

(4) Subsection (4.5)(b)(II) provided for the repeal of subsection (4.5)(b), effective July 1, 2009. (See L. 2008, p. 2026.)

(5) The effective date for amendments to subsections (4.5)(a)(I), (4.5)(a)(II), and (4.5)(a)(III) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: For the legislative declaration contained in the 2007 act amending subsections (3) and (4)(b) and the introductory portion to subsection (4), see section 1 of chapter 347, Session Laws of Colorado 2007.

25.5-8-110. Participation by managed care plans. (1) Managed care plans, as defined in section 10-16-102 (26.5), C.R.S., that participate in the plan shall do so by

contract with the department and shall provide the health care services covered by the plan to each enrollee.

(2) Managed care plans participating in the plan shall not discriminate against any potential or current enrollee based upon health status, disability, sex, sexual orientation, marital status, race, creed, color, national origin, ancestry, ethnicity, or religion.

(3) Managed care plans that contract with the department to provide the plan to enrollees shall also be willing to contract with the medicaid managed care program, as administered by the department.

(4) (a) Managed care plans shall be selected by the department to participate in the children's basic health plan based upon the managed care plans' assurances and the department's verification that the managed care plan is utilizing within its network essential community providers to the extent that this action does not result in a net increase in the cost for providing services to the managed care plan.

(b) The managed care organization shall seek proposals from each essential community provider in a county in which the managed care organization is enrolling recipients for those services that the managed care organization provides or intends to provide and that an essential community provider provides or is capable of providing. To assist managed care organizations in seeking proposals, the department shall provide managed care organizations with a list of essential community providers in each county. The managed care organization shall consider such proposals in good faith and shall, when deemed reasonable by the managed care organization based on the needs of its enrollees, contract with essential community providers. Each essential community provider shall be willing to negotiate on reasonably equitable terms with each managed care organization. Essential community providers making proposals under this subsection (4) shall be able to meet the contractual requirements of the managed care organization. The requirement of this subsection (4) shall not apply to a managed care organization in areas in which the managed care organization operates entirely as a group model health maintenance organization.

(c) Any disputes between a managed care organization and an essential community provider that cannot be resolved through good faith negotiations may be resolved through an informal review by the department at the request of one of the parties, or through the department's aggrieved provider appeal process in accordance with section 25.5-1-107 (2), if requested by one of the parties.

(d) In selecting managed care organizations through competitive bidding, the department shall give preference to those managed care organizations that have executed contracts for services with one or more essential community providers. In selecting managed care organizations, the department shall not penalize a managed care organization for paying cost-based reimbursement to federally qualified health centers as defined in the federal "Social Security Act".

(5) The department may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from eligible recipients.

(6) Parents or guardians of children shall choose a participating health maintenance organization before enrolling in the plan in areas of the state where a participating health maintenance organization is available. The department will assign children who are currently enrolled in the plan and whose parents or guardians have not selected a health maintenance organization within a time period determined by the department to a participating health maintenance organization with the child's primary care physician in the network. The department shall seek to maintain continuity of the health plan between medicaid and the children's basic health plan.

(7) In areas of the state in which a participating managed care plan does not have providers, the department may contract with essential community providers and other health care providers to provide health care services under the children's basic health plan using a managed care model.

(8) The department may contract with essential community providers or other providers or develop other administrative arrangements to provide health care services under the children's basic health plan to enrollees prior to the effective date of enrollment in the selected managed care plan.

(9) The department shall allow, at least annually, an opportunity for enrollees to transfer among participating managed care plans serving their respective geographic regions. The department shall establish a period of at least twenty days annually when this opportunity is afforded eligible recipients. In geographic regions served by more than one participating managed care plan, the department shall endeavor to establish a uniform period for such opportunity.

(10) (a) The department shall make a capitation payment to managed care plans based upon a defined scope of services at an agreed upon rate. The department shall only use market rate bids that do not discriminate and are adequate to assure quality, network sufficiency, and long-term competitiveness in the children's basic health plan managed care market. The department shall retain a qualified actuary to establish a lower limit for such bids. A certification by such actuary to the appropriate lower limit shall be conclusive evidence of the department's compliance with the requirements of this subsection (10). For the purposes of this subsection (10), a "qualified actuary" shall be a person deemed as such under rules promulgated by the commissioner of insurance.

(b) Repealed.

(11) All managed care plans participating in the plan shall meet standards regarding the quality of services to be provided, financial integrity, and responsiveness to the unmet health care needs of eligible persons that may be served.

Source: L. 2006: Entire article added with relocations, p. 1982, § 7, effective July 1. L. 2008: (2) amended, p. 1603, § 32, effective May 29. L. 2009: (10) amended, (SB 09-265), ch. 205, p. 936, § 7, effective May 1. L. 2010: (10)(b) repealed, (HB 10-1382), ch. 217, p. 940, § 6, effective May 6.

Editor's note: This section is similar to former § 26-19-110 as it existed prior to 2006.

Cross references: (1) For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 341, Session Laws of Colorado 2008.

(2) For the definition of "federally qualified health centers" in the federal Social Security Act, see 42 U.S.C. 1395x.

25.5-8-111. Department - administration - outsourcing. (1) (a) The department may:

(I) Pursuant to section 24-50-504 (2) (a), C.R.S., enter into personal services contracts for the administration of the children's basic health plan. Any contracts established pursuant to this section shall contain performance measures that shall be monitored by the department.

(II) Use county departments of social services to perform functions relating to the administration of the children's basic health plan;

(III) Perform administrative functions at the department, including consolidation of functions with other administrative functions handled by the department.

(b) In deciding how to allocate functions relating to the administration of the children's basic health plan as allowed under paragraph (a) of this subsection (1), the department shall determine and base its decisions upon what is the most cost-effective method to handle the particular function and to deliver the services.

(2) The implementation of subparagraph (I) of paragraph (a) of subsection (1) of this section is contingent upon a finding by the state personnel director that any of the conditions of section 24-50-504 (2), C.R.S., have been met or that the conditions of section 24-50-503 (1), C.R.S., have been met.

Source: L. 2006: Entire article added with relocations, p. 1984, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-111 as it existed prior to 2006.

25.5-8-112. Authority to the department to apply for federal waivers. The department is hereby authorized and required to apply for any federal waivers necessary to implement the purposes of this article.

Source: L. 2006: Entire article added with relocations, p. 1985, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-112 as it existed prior to 2006.

25.5-8-113. Reports by contractors to medical services board. Any personal services contractor that contracts with the department to provide services under this article shall provide quarterly reports to the medical services board relating to the functions performed by the contractor, including reports on enrollment, utilization, marketing, and any concerns or recommendations relating to improving the administration of or the quality of the program. In addition, any contractor shall submit any data requested by the medical services board relating to the children's basic health plan and the functions provided by that contractor.

Source: L. 2006: Entire article added with relocations, p. 1985, § 7, effective July 1.

Editor's note: This section is similar to former § 26-19-113 as it existed prior to 2006.

TITLE 26

HUMAN SERVICES CODE



TITLE 26

HUMAN SERVICES CODE

- Art. 1. Department of Human Services, 26-1-101 to 26-1-405.
- Art. 2. Public Assistance, 26-2-101 to 26-2-1005.
- Art. 3. Protective Services (Repealed).
- Art. 3.1. Protective Services for Adults at Risk of Mistreatment or Self-neglect, 26-3.1-101 to 26-3.1-301.
- Art. 4. Colorado Medical Assistance Act (Repealed).
- Art. 4.5. Alternatives to Long-term Nursing Home Care (Repealed).
- Art. 4.6. Task Force on Long-term Health Care (Repealed).
- Art. 5. Child Welfare Services, 26-5-101 to 26-5-110.
- Art. 5.3. Emergency Assistance for Families with Children at Imminent Risk of Out-of-Home Placement Act, 26-5.3-101 to 26-5.3-106.
- Art. 5.5. Family Preservation, 26-5.5-101 to 26-5.5-106.
- Art. 5.7. Homeless Youth, 26-5.7-101 to 26-5.7-109.
- Art. 5.9. Homeless Youth Services Act, 26-5.9-101 to 26-5.9-105 (Repealed).
- Art. 6. Child Care Centers, 26-6-101 to 26-6-606.
- Art. 6.5. Early Childhood and School Readiness, 26-6.5-101 to 26-6.5-307.
- Art. 7. Subsidization of Adoption, 26-7-101 to 26-7-108.
- Art. 7.5. Domestic Abuse Programs, 26-7.5-101 to 26-7.5-106.
- Art. 7.6. Task Force on Family Issues (Repealed).
- Art. 7.8. Homeless Prevention Activities Program, 26-7.8-101 to 26-7.8-106.
- Art. 8. Vocational Rehabilitation, 26-8-101 to 26-8-107.
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- Art. 8.5. Vending Facilities in State Buildings - Business Enterprise Program, 26-8.5-100.1 to 26-8.5-107.
- Art. 8.7. Colorado Commission for Individuals Who Are Blind or Visually Impaired, 26-8.7-101 to 26-8.7-107 (Repealed).
- Art. 9. Veterans Service Office and Officers (Repealed).
- Art. 10. Veterans Affairs (Repealed).
- Art. 11. Older Coloradans' Act, 26-11-100.1 to 26-11-207.
- Art. 11.5. Colorado Long-term Care Ombudsman Program, 26-11.5-101 to 26-11.5-112.
- Art. 12. State and Veterans Nursing Homes, 26-12-101 to 26-12-403.
- Art. 13. Child Support Enforcement Act, 26-13-101 to 26-13-129.
- Art. 13.5. Administrative Procedure for Child Support Establishment and Enforcement, 26-13.5-101 to 26-13.5-115.
- Art. 15. Reform Act for the Provision of Health Care for the Medically Indigent (Repealed).
- Art. 16. Program of All-inclusive Care for the Elderly (Repealed).
- Art. 17. Children's Health Plan (Repealed).
- Art. 18. Family Resource Center Program, 26-18-101 to 26-18-106.
- Art. 19. Children's Basic Health Plan (Repealed).
- Art. 20. Protection of Persons from Restraint, 26-20-101 to 26-20-109.

- Art. 21. Colorado Commission for the Deaf and Hard of Hearing, 26-21-101 to 26-21-108.
- Art. 22. Integrated System of Care Family Advocacy Demonstration Programs for Mental Health Juvenile Justice Populations, 26-22-101 to 26-22-106 (Repealed).

ARTICLE 1

Department of Human Services

Editor's note: This article was numbered as article 1 of chapter 119, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

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GENERAL PROVISIONS

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PART 1

GENERAL PROVISIONS

26-1-101. Short title. This title shall be known and may be cited as the “Colorado Human Services Code”.

Source: L. 73: R&RE, p. 1160, § 1. C.R.S. 1963: § 119-1-1. L. 93: Entire section amended, p. 1103, § 16, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

This title is a comprehensive legislative scheme addressing both the administrative and substantive aspects of Colorado's social services

system. *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

26-1-102. Legislative declaration. (1) The general assembly declares that state and local policymakers and health and human services administrators recognize that the management of and the delivery system for health and human services have become complex, fragmented, and costly and that the health and human services delivery system in this state should be restructured to adequately address the needs of Colorado citizens.

(2) The general assembly further finds and declares that a continuing budget crisis makes it unlikely that funding sources will keep pace with the increasing demands of health and human services.

(3) Therefore, the general assembly finds that it is appropriate to restructure the principal departments responsible for overseeing the delivery of health and human services and to reform the state's health and human services delivery system, using guiding principles and within the time frames set forth in article 1.7 of title 24, C.R.S. It is the general assembly's intent that the departments of public health and environment, health care policy and financing, and human services be operational, effective July 1, 1994.

Source: L. 73: R&RE, p. 1160, § 1. C.R.S. 1963: § 119-1-2. L. 77: Entire section amended, p. 1321, § 1, effective July 1. L. 79: (1) amended, p. 1080, § 1, effective July 1. L. 91: Entire section amended, p. 1895, § 3, effective July 1. L. 93: Entire section amended, p. 1103, § 17, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Code funding scheme constitutional. The counties retain sufficient control over the funds raised by levy under the code to be deemed the taxing authorities so that, since the levies fall uniformly upon the same class of property within each county, the funding scheme does not violate the constitutional provision requiring uniformity of taxation. *State Dept. of Soc. Servs. v. Bd. of County Comm'rs*, 697 P.2d 1 (Colo. 1985).

Financing provisions of social services code not violative of equal protection because a rational relationship exists between the requirement that local entities must support a portion of the costs of programs serving the disadvantaged within their localities and the purposes of the code. *State Dept. of Soc. Servs. v. Bd. of County Comm'rs*, 697 P.2d 1 (Colo. 1985).

The social services system is a matter of statewide concern, rather than local or munic-

ipal concern. *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

County is agent of state board. The legislative scheme embodied in the Colorado social services code contemplates the county being an agent of the state board of social services rather than a separate entity of sufficient independent identity to qualify as a "party". *Bd. of County Comm'rs v. State Bd. of Soc. Servs.*, 186 Colo. 435, 528 P.2d 244 (1974).

For discussion of history of Colorado welfare programs and current public assistance financing scheme, see *State Dept. of Soc. Servs. v. Bd. of County Comm'rs*, 697 P.2d 1 (Colo. 1985).

Applied in *Nadeau v. Merit Sys. Council for County Depts. of Soc. Servs.*, 36 Colo. App. 362, 545 P.2d 1061 (1975); *Dodge v. State Dept. of Soc. Servs.*, 657 P.2d 969 (Colo. App. 1982).

26-1-103. Definitions. As used in this title, unless the context otherwise requires:

- (1) "County board" means the county or district board of social services.
- (2) "County department" means the county or district department of social services.
- (3) "County director" means the director of the county or district department of social services.
- (4) "Executive director" means the executive director of the department of human services.

(5) "State board" means the state board of human services authorized to act in accordance with the provisions of section 26-1-107.

(6) "State department" means the department of human services.

(7) "State designated agency" means an agency designated to perform specified functions that would otherwise be performed by the county departments.

Source: L. 73: R&RE, p. 1160, § 1. C.R.S. 1963: § 119-1-3. L. 91: (7) added, p. 1895, § 4, effective July 1. L. 93: (4) to (6) amended, p. 1104, § 18, effective July 1, 1994. L. 94: (5) amended, p. 1560, § 6, effective July 1. L. 2003: (4), (5), and (6) amended, p. 2584, § 5, effective July 1. L. 2006: (4), (5), (6), and (7) amended, p. 1985, § 8, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

(2) For additional definitions applicable to this article, see § 26-2-103.

26-1-104. Construction of terms. (1) Whenever any law of this state refers to the state department of public welfare or the state department of social services, or to the director, said law shall be construed as referring to the department of human services or to the executive director of the department of human services. Whenever any law of this state refers to the division of public assistance, or to the division of children and youth, or to any other division of the state department, said law shall be construed as referring to the department of human services.

(2) Whenever any law of this state refers to the state board of public welfare or to the state board of social services, said law shall be construed as referring to the state board of human services.

Source: L. 73: R&RE, p. 1160, § 1. C.R.S. 1963: § 119-1-3. L. 93: Entire section amended, p. 1104, § 19, effective July 1, 1994. L. 94: (2) amended, p. 1560, § 7, effective July 1. L. 2006: Entire section amended, p. 1985, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-1-105. Department of human services created - executive director - powers, duties, and functions. (1) Effective July 1, 1994, there is hereby created a department of human services, the head of which shall be the executive director of the department of human services, which office is hereby created. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after an initial election of a governor shall be subject to the provisions of section 24-20-109, C.R.S. The executive director has those powers, duties, and functions prescribed for the heads of principal departments in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(1.5) The department of human services shall consist of a state board of human services, an executive director of the department of human services, and such divisions, sections, and other units as may be established by the executive director pursuant to the provisions of subsection (2) of this section.

(2) (a) The executive director may establish such divisions, sections, and other units within the state department as are necessary for the proper and efficient discharge of the powers, duties, and functions of the state department. The executive director may allocate the powers, duties, and functions previously assigned to statutorily created divisions or sections of the state department of social services and the department of institutions to the divisions, sections, and other units established pursuant to this subsection (2). The executive director is authorized to create, eliminate, or alter such sections and units within the state department as the executive director determines are necessary to effectively and efficiently

operate consistent with the plan for restructuring health and human services, as set forth in article 1.7 of title 24, C.R.S.

(b) (Deleted by amendment, L. 93, p. 1105, § 20, effective July 1, 1994.)

(3) The department of human services shall be responsible for the administration of human services programs as set forth in part 2 of this article.

Source: L. 73: R&RE, p. 1161, § 1. C.R.S. 1963: § 119-1-4. L. 93: Entire section amended, p. 1105, § 20, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-1-105.5. Transfer of functions - employees - property - records. (1) (a) The department shall, on and after July 1, 1994, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 1994, in the department of social services, the department of institutions, and the department of health concerning the administration of alcohol and drug abuse programs.

(b) On and after July 1, 2006, the provisions of this section shall not apply to the functions, employees, and property transferred under the provisions of sections 24-1-119.5, C.R.S., and 25.5-1-105, C.R.S., concerning the "Colorado Medical Assistance Act", the Colorado indigent care program, and the treatment program for high-risk pregnant women.

(2) (a) On and after July 1, 1994, all positions of employment in the department of health, the department of social services, and the department of institutions concerning the powers, duties, and functions transferred to the department of human services pursuant to this article and determined to be necessary to carry out the purposes of this article by the executive director of the department of human services shall be transferred to the department of human services and shall become employment positions therein. The executive director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the state department and the executive director. On and after July 1, 1994, any appointment of employees and any creation or elimination of positions of employment shall be consistent with the plan for restructuring health and human services as set forth in article 1.7 of title 24, C.R.S. Appointing authority may be delegated by the executive director as appropriate.

(b) On and after July 1, 1994, all employees of the department of health, the department of social services, and the department of institutions whose duties and functions concerned the powers, duties, and functions transferred to the department of human services pursuant to this article, regardless of whether the position of employment in which the employee served was transferred, shall be considered employees of the department of human services for purposes of section 24-50-124, C.R.S. Such employees shall retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed continuous.

(3) On July 1, 1994, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the departments of health, social services, and institutions pertaining to the duties and functions transferred to the department of human services are transferred to the department of human services and shall become the property thereof.

(4) On and after July 1, 1994, whenever the department of health, social services, or institutions is referred to or designated by any contract or other document in connection with the duties and functions transferred to the department of human services, such reference or designation shall be deemed to apply to the department of human services. All contracts entered into by the said departments prior to July 1, 1994, in connection with the duties and functions transferred to the department of human services are hereby validated, with the department of human services succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, trusts, grants, and any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department of human services for the payment of such obligations.

(5) On and after July 1, 1994, unless otherwise specified, whenever any provision of law refers to the department of health, social services, or institutions, in connection with the duties and functions transferred to the department of human services, said law shall be construed as referring to the department of human services.

(6) All rules, regulations, and orders of the departments of health, social services, and institutions adopted prior to July 1, 1994, in connection with the powers, duties, and functions transferred to the department of human services, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. The executive director shall adopt rules necessary for the administration of the state department and as otherwise authorized by this title. Any rules adopted on and after July 1, 1994, shall be consistent with the plan for restructuring health and human services, as set forth in article 1.7 of title 24, C.R.S.

(7) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 1994, or which could have been commenced prior to such date, by or against the department of health, social services, or institutions, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties, shall abate by reason of the transfer of duties and functions from the said department to the department of human services.

(8) The revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the department of social services and the department of institutions from said references to the department of human services, as appropriate and unless otherwise transferred to the department of health care policy and financing pursuant to section 25.5-1-105, C.R.S. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to this section.

Source: L. 93: Entire section added, p. 1106, § 21, effective July 1, 1994. L. 2006: (1)(b) amended, p. 2016, § 94, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

(2) For the "Colorado Medical Assistance Act", see articles 4, 5, and 6 of title 25.5.

26-1-106. Final agency action - administrative law judge - authority of executive director. (1) (a) The executive director may appoint one or more persons to serve as administrative law judges for the state department pursuant to section 24-4-105, C.R.S., and pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel. Hearings conducted by the administrative law judge shall be considered initial decisions of the state department which shall be reviewed by the executive director or a designee. In the event exceptions to the initial decision are filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., such review shall be in accordance with section 24-4-105 (15), C.R.S.; except that the state department may, at its discretion, permit a party to file an audio recording in lieu of a written transcript if the party cannot afford a written transcript. The state board may adopt rules delineating the criteria and process for filing an audio recording in lieu of a written transcript. In the absence of any exception filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., the executive director shall review the initial decision in accordance with a procedure adopted by the state board. Such procedure shall be consistent with federal mandates concerning the single state agency requirement. Review by the executive director in accordance with section 24-4-105 (15), C.R.S., or the procedure adopted by the state board pursuant to this section shall constitute final agency action. The administrative law judge may conduct hearings on appeals from decisions of county departments brought by recipients of and applicants for public assistance and welfare which are required by law in order for the state to qualify for federal funds, and may conduct other hearings for the state department. Notice of any such hearing shall be served at least ten days prior to such hearing.

(b) Repealed.

(c) (Deleted by amendment, L. 2009, (SB 09-044), ch. 57, p. 203, § 1, effective March 25, 2009.)

(2) (Deleted by amendment, L. 2009, (SB 09-044), ch. 57, p. 203, § 1, effective March 25, 2009.)

(3) (Deleted by amendment, L. 91, p. 1883, § 1, effective May 24, 1991.)

Source: L. 73: R&RE, p. 1161, § 1. C.R.S. 1963: § 119-1-5. L. 76: Entire section amended, p. 587, § 25, effective May 24. L. 78: Entire section amended, p. 272, § 90, effective May 23. L. 83: Entire section amended, p. 1113, § 1, effective May 16. L. 87: Entire section amended, p. 973, § 87, effective March 13. L. 89: Entire section amended, p. 1184, § 1, effective July 1. L. 91: (1) and (3) amended, p. 1883, § 1, effective May 24. L. 93: (1)(a) and (2) amended, pp. 425, 426, §§ 1, 2, effective April 19. L. 95: (2) amended, p. 928, § 33, effective May 25; (1)(a) and (1)(c) amended, p. 665, § 102, effective July 1. L. 97: (1)(b) amended, p. 1191, § 11, effective July 1. L. 2005: (1)(c) amended, p. 859, § 26, effective June 1. L. 2009: Entire section amended, (SB 09-044), ch. 57, p. 203, § 1, effective March 25.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective January 1, 2001. (See L. 97, p. 1191.)

26-1-107. State board of human services - rules. (1) (a) There is hereby created the state board of human services. The state board shall consist of nine members, each of whom shall be appointed by the governor, with the consent of the senate, for terms of four years each. In making appointments to the board, the governor shall include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2), C.R.S., a family member of a person with a disability, or a member of an advocacy group for persons with disabilities.

(b) As vacancies occur, on and after July 1, 1973, appointments shall be made so that three of the members of the state board shall be appointed from among persons who are serving as county commissioners in this state. Whenever a county commissioner serving as a member of the state board ceases to hold the office of county commissioner, a vacancy on the state board shall occur, and the governor shall fill the vacancy by the appointment of a person who at the time is serving as a county commissioner. A county commissioner shall not vote on any matter coming before the state board which affects the county in which he is serving as commissioner in a manner different from other counties.

(2) No recipient of a pension under the Colorado old age pension statutes shall be eligible for appointment to the state board.

(3) The members of the state board shall serve without compensation, with the exception of necessary actual traveling expenses.

(4) The state board shall act only by resolution adopted at a duly called meeting of the state board, and no individual member of the state board shall exercise administrative authority with respect to the state department.

(5) (a) "Board rules" are rules promulgated by the state board governing:

(I) Program scope and content;

(II) Requirements, obligations, and rights of clients and recipients;

(III) Non-executive director rules concerning vendors, providers, and other persons affected by acts of the state department.

(b) The state board shall have authority to adopt "board rules" for programs administered and services provided by the state department as set forth in this title and in title 27, C.R.S.

(c) Any rules adopted by the executive director to implement the provisions of this title or title 27, C.R.S., prior to March 25, 2009, whose content meets the definition of "board rules" shall continue to be effective until revised, amended, or repealed by the state board.

(d) Whenever a statutory grant of rule-making authority in this title or in title 27, C.R.S., refers to the state department or the department of human services, it shall mean the state department acting through either the state board or the executive director or both. When exercising rule-making authority under this title or title 27, C.R.S., the state

department, either acting through the state board or the executive director, shall establish rules consistent with the powers and the distinction between "board rules" as set forth in this section and "executive director rules" as set forth in section 26-1-108.

- (6) The state board shall:
 - (a) Adopt board rules;
 - (b) Hold hearings relating to the formulation and revision of the policies of the state department;
 - (c) Advise the executive director as to any matters that the executive director may bring before the state board;
 - (d) Meet as is necessary to adjust the minimum award for old age pensions for changes in the cost of living pursuant to section 26-2-114 (1); except that the state board shall meet for such a purpose whenever the monthly index of consumer prices, prepared by the bureau of labor statistics of the United States department of labor, increases or decreases by an amount warranting an increase or decrease over the previous adjustment and the United States social security administration increases benefits similarly adjusted for changes in the cost of living. Such a meeting shall be held within twenty days of the publication of the monthly index which first exceeds the previous level by said amount.
 - (e) Adopt rules and regulations for the purpose of establishing guidelines for the placement of children from locations outside of Colorado into this state for foster care or adoption pursuant to section 19-5-203, C.R.S., or section 26-6-104 or the terms of the "Interstate Compact on Placement of Children" as set forth in part 18 of article 60 of title 24, C.R.S.;
 - (f) Adopt rules governing the operations of the statewide adoption resource registry as described in section 26-1-111 (4);
 - (g) Adopt rules concerning mental health programs, alcohol and drug abuse programs, and developmental disabilities programs. To the extent that rules are promulgated by the state board of human services for programs or providers that receive either medicaid only or both medicaid and non-medicaid funding, the rules shall be developed in cooperation with the department of health care policy and financing and shall not conflict with state statutes or federal statutes or regulations.
 - (h) Adopt rules concerning standards for the level of training, education, and experience that a psychiatrist or psychologist shall have to be qualified to perform competency evaluations in criminal cases pursuant to section 16-8-106 and article 8.5 of title 16, C.R.S., and standards for conducting and reporting competency evaluations in criminal cases. Prior to adopting the rules, the state board shall consider recommendations from the competency evaluation advisory board created in section 16-8.5-119, C.R.S.
 - (7) When federal statute or regulation requires, as a condition for the receipt of federal participation in any state department administered or supervised public assistance or welfare program, that specific forms of income to recipients and applicants or other persons whose income would otherwise be considered to be disregarded, such income shall be disregarded and the rules of the state board shall include provisions to effect such requirements.
 - (8) Nothing in this section shall be construed to affect any specific statutory provision granting rule-making authority in relation to a specific program to the state board.
 - (9) and (9.5) (Deleted by amendment, L. 2006, p. 1986, § 10, effective July 1, 2006.)
 - (10) The state board shall fix minimum standards and qualifications for county department personnel based upon training and experience deemed necessary to fulfill the requirements and responsibilities for each position and establish salary schedules based upon prevailing wages for comparable work within each county or district or region where such data is available and is collected and compiled in a manner approved by the state personnel director. The rules issued by the state board shall be binding upon the several county departments. At any public hearing relating to a proposed rule making, interested persons shall have the right to present their data, views, or arguments orally. Proposed rules of the state board shall be subject to the provisions of section 24-4-103, C.R.S.

Source: L. 73: R&RE, p. 1162, § 1. C.R.S. 1963: § 119-1-6. L. 93: Entire section amended, p. 1108, § 22, effective July 1, 1994. L. 94: (9) amended, p. 1560, § 8, effective

July 1; (10) added, p. 2611, § 13, effective July 1. **L. 97:** (5), (7), and (10) amended, p. 1219, § 2, effective July 1; (6) amended, p. 1183, § 2, effective July 1. **L. 2003:** (9.5) added, p. 2585, § 6, effective July 1. **L. 2006:** (6)(g), (7), (9), and (9.5) amended, p. 1986, § 10, effective July 1. **L. 2007:** (6)(h) added, p. 41, § 2, effective March 8. **L. 2008:** (6)(h) amended, p. 1859, § 18, effective July 1. **L. 2009:** (5) amended, (SB 09-044), ch. 57, p. 204, § 3, effective March 25; (1)(a) amended, (HB 09-1281), ch. 399, p. 2154, § 5, effective August 5. **L. 2011:** (1)(a) amended, (SB 11-183), ch. 132, p. 466, § 3, effective August 10.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act enacting subsection (10), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2008 act amending subsection (6)(h), see section 1 of chapter 389, Session Laws of Colorado 2008.

ANNOTATION

Annotator's note. The following annotations include cases decided prior to the 1994 amendment of this section.

Section does not compel state board to adopt wage schedule submitted by a county for its social service employees. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

Or to provide salaries identical to prevailing rate. This section does not require that the state board provide salaries in every respect identical with those prevalent in a particular area. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

Section merely establishes a standard for the state board to follow in setting the salaries of social services employees, directing the state board to consider prevailing wages within each respective region as an initial or starting point for calculation. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

It leaves to the state board the task of preparing wage schedules, and does not empower a county to do anything more than submit suitable data for the state board's consideration. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

The state board is entrusted with the ultimate responsibility for the conduct of the fiscal affairs of the social services system. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

Discretion of board. This section grants to the state board a considerable degree of discretion in determining wage schedules for employees of the social services system. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

Factor in establishing wage schedules. If appropriations for the funds for the wages of county social services employees are insufficient in a given year, it is fully within the discretion accorded the state board in subsection (2) to consider this as a factor in establishing wage schedules. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

County board is arm of state. The county board of social services is set up as a subordinate agency or arm of the state. It is bound by, inter alia, the fiscal and personnel rules set up by the state board of social services. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

County board is without standing to challenge action of state board. In the absence of an express statutory right, the county board lacks standing or any other legal authority to obtain judicial review of an action of the merit system council. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

Right to judicial review limited. The right to judicial review of the final administrative actions of the state board of social services is limited to those parties to the proceeding before the administrative agency whose rights, privileges, or duties, as distinct from those of the state, are adversely affected by the decision. *Bd. of County Comm'rs v. State Bd. of Soc. Servs.*, 186 Colo. 435, 528 P.2d 244 (1974).

Applied in *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

26-1-108. Powers and duties of the executive director - rules. (1) Executive director rules shall be solely within the province of the executive director and shall include the following:

(a) Rules governing matters of internal administration in the state department, including organization, staffing, records, reports, systems, and procedures, and also governing fiscal and personnel administration for the state department and establishing accounting and fiscal reporting rules for disbursement of federal funds, contingency funds, and proration of

available appropriations except those determinations precluded by authority granted to the state board.

(b) (Deleted by amendment, L. 97, p. 1183, 3, effective July 1, 1997.)

(c) (Deleted by amendment, L. 93, p. 1110, 23, effective July 1, 1994.)

(1.5) (Deleted by amendment, L. 97, p. 1183, 3, effective July 1, 1997.)

(1.7) (a) The executive director shall have authority to adopt "executive director rules" for programs administered and services provided by the state department as set forth in this title and in title 27, C.R.S. Such rules shall be promulgated in accordance with the provisions of section 24-4-103, C.R.S.

(b) Any rules adopted by the state board to implement the provisions of this title or title 27, C.R.S., prior to March 25, 2009, whose content meets the definition of "executive director rules" shall continue to be effective until revised, amended, or repealed by the executive director.

(1.8) Whenever a statutory grant of rule-making authority in this title or title 27, C.R.S., refers to the state department or the department of human services, it shall mean the state department acting through either the state board or the executive director or both. When exercising rule-making authority under this title or title 27, C.R.S., the state department, either acting through the state board or the executive director, shall establish rules consistent with the powers and the distinction between "board rules" as set forth in section 26-1-107 and "executive director rules" as set forth in this section.

(2) The rules issued by the executive director pertaining to this title shall be binding upon the several county departments, providers, vendors, and agents of the state department. At any public hearing relating to a proposed rule making, interested persons shall have the right to present their data, views, or arguments orally. Proposed rules of the executive director shall be subject to the provisions of section 24-4-103, C.R.S.

(3) (Deleted by amendment, L. 93, p. 1109, 23, effective July 1, 1994.)

Source: L. 73: R&RE, p. 1162, § 1. C.R.S. 1963: § 119-1-7. L. 76: (1)(c)(V) added, p. 664, § 1, effective April 30. L. 79: (1)(a) amended, p. 1089, § 1, effective June 7. L. 93: Entire section amended, p. 1110, § 23, effective July 1, 1994. L. 94: (1)(a) and (2) amended, p. 2611, § 14, effective July 1. L. 97: Entire section amended, p. 1183, § 3, effective July 1. L. 2009: Entire section amended, (SB 09-044), ch. 57, p. 205, § 4, effective March 25.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

County is arm of state. A county, as used in this section, is assigned its traditional role as an arm of the state, existing only for the convenient administration of the state government and to carry out the will of the state. Bd. of County Comm'rs v. State Bd. of Soc. Servs., 186 Colo. 435, 528 P.2d 244 (1974).

County is without standing to challenge action of state board. A county and its board of county commissioners are without standing to challenge an action of the state board of social services, even though they may have been ex-

tended the courtesy of presenting evidence at the rule-making hearing. Bd. of County Comm'rs v. State Bd. of Soc. Servs., 186 Colo. 435, 528 P.2d 244 (1974).

County board bound by state board's rules. Pursuant to statute, county boards of social services act as agents of the state board, and are bound by the rules promulgated by the state board. Bd. of County Comm'rs v. Merit Sys. Council, 662 P.2d 1093 (Colo. App. 1982).

Applied in Dodge v. State Dept. of Soc. Servs., 657 P.2d 969 (Colo. App. 1982).

26-1-109. Cooperation with federal government - grants-in-aid. (1) The state department of human services shall be the sole state agency for administering the state plans for public assistance and welfare, including but not limited to assistance payments; food stamps; social services; child welfare services; rehabilitation; and programs for the aging in cooperation with the federal government; the Colorado works program; and any other state

plan relating to such public assistance and welfare that requires state action that is not specifically the responsibility of some other state department, division, section, board, commission, or committee under the provisions of federal or state law.

(2) (a) The state department of human services may accept on behalf of the state of Colorado the provisions and benefits of acts of congress designed to provide funds or other property for particular public assistance and welfare activities within the state, including but not limited to assistance payments; food stamps; social services; child welfare services; rehabilitation; and programs for the aging; which funds or other property are designated for such purposes within the function of the state department, and may accept on behalf of the state any offers which have been or may from time to time be made of funds or other property by any persons, agencies, or entities for particular public assistance and welfare activities within the state, which funds or other property are designated for such purposes within the function of the state department; but, unless otherwise expressly provided by law, such acceptance shall not be manifested unless and until the state department has recommended such acceptance to and received the written approval of the governor and the attorney general. Such approval shall authorize the acceptance of the funds or property in accordance with the restrictions and conditions and for the purpose for which funds or property are intended.

(b) The state treasurer is designated as ex officio custodian of all public assistance and welfare funds received by the state from the federal government and from any other source, if the approval provided for in paragraph (a) of this subsection (2) has been obtained.

(c) The state treasurer shall hold each such fund separate and distinct from state funds and is authorized to make disbursements from such funds for the designated purpose or for administrative costs, which may be provided in such grants, upon warrants issued by the state controller upon the voucher of the state department.

(3) The state department shall cooperate with the federal department of health, education, and welfare and other federal agencies in any reasonable manner, in conformity with the laws of this state, which may be necessary to qualify for federal aid, including the preparation of state plans, the making of reports in such form and containing such information as any federal agency may from time to time require, and the compliance with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of the reports.

(4) In administering any funds appropriated or made available to the state department for public assistance and welfare activities, the state department has the power to:

(a) Require as a condition for receiving grants-in-aid that each county in this state shall bear the proportion of the total expense of furnishing public assistance and food stamps as is fixed by law relating to such assistance;

(b) Terminate any grants-in-aid to any county of this state if the laws and regulations providing such grants-in-aid and the minimum standards prescribed by rules of the state department thereunder are not complied with;

(c) Undertake forthwith the administration of any or all public assistance and food stamp activities within any county of this state which has had any or all of its grants-in-aid terminated pursuant to paragraph (b) of this subsection (4); but the county shall continue to meet the requirements of paragraph (a) of this subsection (4);

(d) Recover any moneys owed by a county to the state by reducing the amount of any payments due from the state in connection with any program or activity;

(e) Take any other action which may be necessary or desirable for carrying out the provisions of this title.

(4.5) In addition to the powers granted the state department in subsection (4) of this section, the state department shall take necessary measures to obtain increased federal reimbursement moneys available under the Title IV-E program created under the federal "Social Security Act", as amended, based on the out-of-home placements and alternative care treatment by county departments of children eligible for Title IV-E federal assistance, which moneys shall be allocated to county departments in proportion to each county's eligible placements, to help defray program costs. Nothing in this subsection (4.5) shall be construed to allow counties to continue to receive an amount equal to the increased funding in the event the said funding is no longer available from the federal government.

(5) The rules of the state department may include provisions to accommodate requirements of contracts entered into between the state department and the federal department of health, education, and welfare for studies of guaranteed annual income or other forms of income maintenance research projects; and for such purpose the requirements of this title as to eligibility for public assistance shall not apply for the term of and in accordance with the contract for such purpose. No program shall be initiated or carried out under the authorization contained in this subsection (5) in a manner that will increase the welfare burden upon any county or city and county, and, if such a program is conducted in the Denver area, it shall be conducted within an area no smaller than the Denver S.M.S.A. (standard metropolitan statistical area) as defined by the United States bureau of the census.

(6) to (9) Repealed.

Source: L. 73: R&RE, p. 1163, § 1. C.R.S. 1963: § 119-1-8. L. 75: (4)(a) and (4)(c) amended and (4)(d) and (4)(e) added, p. 885, § 1, effective July 1; (6) to (9) repealed, p. 893, § 14, effective July 28. L. 79: (1) and (2)(a) amended, p. 1080, § 2, effective July 1. L. 91: (4,5) added, p. 1769, § 1, effective April 20. L. 93: (1) and (2)(a) amended, p. 1141, § 80, effective July 1, 1994. L. 97: (1) and (5) amended, p. 1220, § 3, effective July 1. L. 2006: (1) and (2)(a) amended, p. 1987, § 11, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Code funding scheme constitutional. The counties retain sufficient control over the funds raised by levy under the code to be deemed the taxing authorities so that, since the levies fall uniformly upon the same class of property within each county, the funding scheme does not violate the constitutional provision requiring uniformity of taxation. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Financing provisions of social services code not violative of equal protection because a rational relationship exists between the requirement that local entities must support a portion of the costs of programs serving the disadvantaged within their localities and the purposes of the code. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

County is arm of state. A county, as used in this section, is assigned its traditional role as an arm of the state, existing only for the convenient administration of the state government and to carry out the will of the state. Bd. of County Comm'rs v. State Bd. of Soc. Servs., 186 Colo. 435, 528 P.2d 244 (1974).

A county board does not have standing to compel a state department to reduce its state-wide expenditures. A county board is an agent of the state. Romer v. Bd. of County Comm'rs of the County of Pueblo, 956 P.2d 566 (Colo. 1998).

For discussion of history of Colorado welfare programs and current public assistance financing scheme, see State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

26-1-109.5. Treatment of restitution payments under this title - declaration - exclusion from financial determinations. (1) The general assembly finds that restitution payments made to Japanese Americans pursuant to the "Civil Liberties Act" (Pub.L. 100-383) were intended to redress the injustice done to United States citizens and resident aliens of Japanese ancestry who were incarcerated during World War II. The general assembly also finds that pursuant to such federal law, such payments are already excluded from state social service programs described in 31 U.S.C. sec. 3803 (c)(2)(c) which are funded by federal moneys.

(2) The state department shall exclude from consideration, when determining income or resources for purposes of determining eligibility or benefit amounts in any state-funded program under this title, moneys paid to eligible individuals pursuant to the "Civil Liberties Act" (Pub.L. 100-383).

Source: L. 89: Entire section added, p. 1186, § 1, effective April 26.

26-1-110. Publications.

- (1) Repealed.
- (2) Publications of the state department circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: **L. 73:** R&RE, p. 1166, § 1. **C.R.S. 1963:** § 119-1-9. **L. 83:** Entire section amended, p. 839, § 60, effective July 1. **L. 96:** (1) amended, p. 1244, § 108, effective August 7. **L. 2000:** (1) repealed, p. 462, § 7, effective August 2.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

26-1-111. Activities of the state department under the supervision of the executive director - cash fund - report - rules - statewide adoption resource registry. (1) The state department, under the supervision of the executive director, is charged with the administration or supervision of all the public assistance and welfare activities of the state, including but not limited to assistance payments, food stamps, social services, child welfare services, rehabilitation, and programs for the aging and for veterans, which activities as enumerated are declared to be state as well as county purposes.

(2) The state department, under the supervision of the executive director, shall:

(a) Administer or supervise all forms of public assistance and welfare, including but not limited to assistance payments, food stamps, and social services under programs for old age pensions except for the old age pension health and medical care program, and shall also administer and supervise the Colorado works program, aid to the blind, aid to the needy disabled, food stamps supplementation to households not receiving public assistance found eligible for food stamps under rules adopted by the state board, and such other public assistance and welfare activities as may be vested in the state department pursuant to law;

(b) Administer or supervise the establishment, extension, and strengthening of child welfare services and other social services in cooperation with the federal department of health, education, and welfare and other state or federal agencies;

(c) Administer the establishment, extension, and strengthening of rehabilitation programs and services, programs and services for the aging, and veterans' affairs activities in cooperation with the federal department of health, education, and welfare and other state or federal agencies;

(d) (I) Provide services to county governments including the organization and supervision of county departments for the effective administration of public assistance and welfare functions as set out in the rules of the executive director and the rules of the state board pursuant to section 26-1-107 as to program scope and content, including assistance payments, food stamps, and social services, and compilation of statistics and necessary information relative to assistance payments, food stamps, social services, child welfare services, including out-of-home placement services, rehabilitation, programs for the aging, and veterans' programs throughout the state, and obtaining federal reimbursement moneys available under the Title IV-E program created under the federal "Social Security Act", as amended, based on out-of-home placements and alternative care treatment by county departments of children eligible for Title IV-E federal assistance, which moneys shall be allocated to counties to help defray the costs of performing its functions; except that nothing in this paragraph (d) shall be construed to allow counties to continue to receive an amount equal to the increased funding in the event the said funding is no longer available from the federal government.

(II) (A) For the fiscal year beginning July 1, 1991, the state department shall pay to each county an amount equal to all federal revenues earned by the state pursuant to Title IV-E of the federal "Social Security Act", as amended, which exceed the amount necessary to fully fund program, training, and administrative costs that are reimbursed under Title IV-E for eligible services for the fiscal year beginning July 1, 1990, plus an amount necessary to fully fund the state foster care review program for the fiscal year beginning July 1, 1991.

(B) For each fiscal year after the fiscal year beginning July 1, 1991, the amount set aside from federal revenues earned by the state in accordance with sub-subparagraph (A) of this subparagraph (II) to fully fund Title IV-E eligible services and the costs of the administrative review unit shall be adjusted annually by the general assembly to reflect rate changes, workload, federal financial participation, and any other factor determined as necessary to maintain a comparable level of said services and costs as for the respective fiscal years described in sub-subparagraph (A) of this subparagraph (II).

(C) For fiscal year 2003-04 and each fiscal year thereafter, after the amounts described in sub-subparagraph (A) or (B) of this subparagraph (II) are set aside, the total amount of moneys remaining shall be transmitted to the state treasurer, who shall credit the same to the excess federal Title IV-E reimbursements cash fund, which fund is hereby created and referred to in this sub-subparagraph (C) as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department for allocation to counties to help defray the costs of performing administrative functions related to obtaining federal reimbursement moneys available under the Title IV-E program. In addition, the general assembly may annually appropriate moneys in the fund to the state department for allocation to the counties for the provision of assistance, as defined in section 26-2-703 (2), child care assistance, as described in section 26-2-805, social services, as defined in section 26-2-103 (11), and child welfare services, as defined in section 26-5-101 (3). For fiscal year 2004-05, and in subsequent years if so specified by the general assembly in the annual appropriations act, the counties shall expend the moneys allocated by the state department for the provision of assistance, child care assistance, social services, and child welfare services pursuant to this sub-subparagraph (C) in a manner that will be applied toward the state's maintenance of historic effort as specified in section 409 (a) (7) of the federal "Social Security Act", as amended. Any moneys in the fund not expended for the purposes specified in this sub-subparagraph (C) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred or revert to the general fund or another fund.

(C.5) and (D) Repealed.

(E) One hundred percent of the federal Title IV-E incentive funding received by the state for completion of timely interstate home studies shall be distributed to the county departments conducting the home studies. The Title IV-E incentives paid to the county departments pursuant to this sub-subparagraph (E) shall be divided and distributed according to the distribution formula set forth in rules to be promulgated by the state board no later than January 1, 2008. A county department receiving an incentive payment pursuant to this sub-subparagraph (E) shall expend those moneys for the provision of services allowed under Title IV-B and Title IV-E of the federal "Social Security Act", as amended.

(III) (Deleted by amendment, L. 2004, p. 955, § 1, effective May 21, 2004.)

(e) Prescribe the form of blanks necessary for applications, reports, affidavits, and such other forms as it may deem necessary and advisable;

(f) Designate child placement agencies licensed pursuant to article 6 of this title or county departments to act as agents of the state department for the purpose of authorizing child care placement as set forth in section 26-1-107 (6) (e) and county departments to serve as agents of the state department in the performance of certain public assistance and welfare and related activities in the county;

(g) Cooperate with other departments, agencies, and institutions of the state and federal governments in the performance of activities in conformity with the purposes of this title;

(h) Act as the agent of the federal government in public assistance and welfare activities, including but not limited to assistance payments, food stamps, social services, child welfare services, rehabilitation, and programs for the aging, in matters of mutual concern in conformity with this title and in the administration of any federal funds granted to the state to aid in the furtherance of any functions of the state department;

(i) Administer such additional public assistance and welfare activities and functions as may be vested in it pursuant to law;

(j) and (k) (Deleted by amendment, L. 93, p. 1111, § 24, effective July 1, 1994.)

(l) Repealed.

(m) (Deleted by amendment, L. 97, p. 1220, § 4, effective July 1, 1997.)

(n) and (o) (Deleted by amendment, L. 93, p. 1111, § 24, effective July 1, 1994.)

(p) Carry out the duties prescribed in article 11.7 of title 16, C.R.S.;

(q) Promulgate rules in accordance with section 19-3-308 (1), C.R.S., for determining the risk of harm to a child who is the subject of a child abuse and neglect report setting forth the appropriate response by the county departments to such risks;

(r) Adopt standards for conducting videotaped child abuse interviews in accordance with section 19-3-308.5 (1) (e), C.R.S.;

(s) Promulgate rules in accordance with section 19-3-211, C.R.S., for establishing a conflict resolution process for resolving grievances against the county departments concerning responses to reports of child abuse and neglect and the performance of duties pursuant to article 3 of title 19, C.R.S. Such rules shall take into account and allow for any subsequent locally developed grievance procedures that apply to a locally restructured human services system to ensure consistency within the system.

(3) (Deleted by amendment, L. 93, p. 1111, § 24, effective July 1, 1994.)

(4) (a) The state department shall establish a statewide adoption resource registry which shall serve authorized or licensed child placement agencies, including, but not limited to, any agency, official, or court of the state or any of its political subdivisions authorized to place children and any other organizations or individuals whose purpose is to seek or assist in the adoptive placement of children who are listed or who may be listed in the adoption resource registry. As a means of recruiting adoptive families for children who have been legally freed for adoption by the termination of all parent-child legal relationships, including residual parental rights and responsibilities, and who are waiting for adoption in this state, such agencies and other organizations and individuals whose purpose is to seek or assist in the adoption of waiting children shall utilize any appropriate means to publicize the availability of such children. The statewide adoption resource registry shall include the age, sex, race or ethnic background of each child, a photograph of the child, and the child's social and medical history, psychological and emotional status, and known physical and mental impairments. It may also include any special services a child may need and physical descriptions, educational backgrounds, and known medical and emotional conditions of the child's parents and other relatives which may have developmental significance to the child. The statewide adoption resource registry shall be updated monthly.

(b) (Deleted by amendment, L. 93, p. 1111, § 24, effective July 1, 1994.)

(c) Unless otherwise exempted pursuant to rules adopted by the state board, each authorized or licensed child placement agency shall refer to the statewide adoption resource registry within ninety days of the termination of the parent-child legal relationship the name and a photograph and description of each child in its care, as required by regulations of the state board, who has been legally freed for adoption by the termination of the parent-child legal relationship and for whom no adoptive home has been found. The state board, in accordance with section 26-1-107 (6) (f), shall establish criteria by which an authorized or licensed child placement agency may determine that a child need not be listed with the registry. Such a child's name shall be forwarded to the state department by the authorized or licensed child placement agency, with reference to the specific reason for which the child was not placed with the registry. The state board shall establish procedures for periodic review of the status of such children in accordance with section 26-1-107 (6) (f). If the state department, in accordance with the criteria established by the state board, determines that adoption would be appropriate for a child not placed with the registry, the agency shall forthwith list the child. Each authorized or licensed child placement agency may voluntarily refer any child who has been legally freed for adoption.

(d) Expenditures by a county department for the care and maintenance of a child who has not been referred to the statewide adoption resource registry in accordance with the requirements of this section shall not be subject to state reimbursement.

(5) The state department, through the unit in the state department that administers behavioral health programs and services, including those related to mental health and substance abuse, shall administer alcohol and drug abuse programs set forth in articles 80, 81, and 82 of title 27, C.R.S.

(6) and (7) Repealed.

Source: **L. 73:** R&RE, p. 1166, § 1. **C.R.S. 1963:** § 119-1-10. **L. 76:** (2)(j) added, p. 665, § 1, effective May 7. **L. 77:** (2)(f) amended and (2)(k) added, p. 1005, § 5, effective May 16; (2)(j) R&RE, p. 1325, § 1, effective July 1; (4) added, p. 1327, § 1, effective July 1. **L. 79:** (4)(a) amended, p. 1090, § 1, effective May 25; (1), (2)(a), (2)(d), and (2)(h) amended, p. 1081, § 3, effective July 1. **L. 83:** (2)(l) added, p. 1238, § 2, effective July 1; (4)(c) amended, p. 2050, § 18, effective October 14. **L. 85:** (4)(a) amended, p. 935, § 1, effective April 24; (2)(l)(II) amended, p. 1063, § 2, effective May 22; (2)(j) amended, p. 1015, § 43, effective July 1. **L. 87:** (2)(k) amended, p. 821, § 38, effective October 1. **L. 89:** (2)(l) amended, p. 1188, § 1, effective March 15. **L. 89, 1st Ex. Sess.:** (2)(m) added, p. 38, § 2, effective July 25. **L. 91:** (2)(d) amended, p. 1769, § 2, effective April 20; (2)(l) repealed and (2)(n) added, pp. 1860, 936, §§ 1, 5, effective July 1. **L. 91, 2nd Ex. Sess.:** (2)(o) added, p. 80, § 1, effective October 16. **L. 92:** (2)(p) added, p. 462, § 8, effective June 2; (2)(j) amended, p. 1156, § 9, effective July 1. **L. 93:** (2)(o)(II) repealed, p. 332, § 1, effective April 12; (2)(q) and (2)(r) added, p. 1170, § 3, effective June 3; (2)(d)(II)(C) amended, p. 1683, § 1, effective June 6; (1), IP(2), (2)(c), (2)(d)(I), (2)(h), (2)(j), (2)(k), (2)(n), (2)(o), (3), (4)(b), and (4)(c) amended and (5) and (6) added, p. 1111, § 24, effective July 1, 1994. **L. 94:** (2)(s) added, p. 2084, § 2, effective June 3. **L. 96:** (2)(f) amended, p. 1474, § 28, effective June 1. **L. 97:** (2)(a) and (2)(m) amended, p. 1220, § 4, effective July 1. **L. 2001:** (2)(d)(III) added, p. 741, § 7, effective June 1; (7) added, p. 703, § 1, effective August 8. **L. 2003:** (2)(a) amended, p. 2585, § 7, effective July 1. **L. 2004:** (2)(d) amended, p. 955, § 1, effective May 21. **L. 2006:** (6) repealed, p. 1987, § 12, effective July 1. **L. 2007:** (2)(d)(II)(D) repealed, p. 757, § 8, effective May 10; (2)(d)(II)(E) added, p. 1020, § 11, effective May 22. **L. 2009:** (2)(d)(II)(C.5) added, (SB 09-264), ch. 204, p. 929, § 7, effective May 1. **L. 2011:** (5) amended, (HB 11-1303), ch. 264, p. 1169, § 70, effective August 10; (2)(a) amended, (SB 11-210), ch. 187, p. 722, § 9, effective July 15, 2012. **L. 2012:** (5) amended, (HB 12-1311), ch. 281, p. 1629, § 77, effective July 1.

Editor's note: (1) Subsection (2)(p) was enacted as subsection (2)(o) by House Bill 92-1021, Session Laws of Colorado 1992, chapter 86, section 8, but has been renumbered on revision for ease of location.

(2) Subsection (7)(e) provided for the repeal of subsection (7), effective March 16, 2002. (See L. 2001, p. 703.)

(3) Subsection (2)(d)(II)(C.5) provided for its repeal, effective July 1, 2011. (L. 2009, p. 929.)

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (1), the introductory portion to subsection (2), and subsections (2)(c), (2)(d)(I), (2)(h), (2)(j), (2)(k), (2)(n), (2)(o), (3), (4)(b), and (4)(c) and enacting subsections (5) and (6), see section 1 of chapter 230, Session Laws of Colorado 1993.

(2) For the duty of the department of human services with respect to the Colorado customized training program, see § 23-60-306.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

County is arm of state. A county, as used in this section, is assigned its traditional role as an arm of the state, existing only for the convenient administration of the state government and to carry out the will of the state. *Bd. of County Comm'rs v. State Bd. of Soc. Servs.*, 186 Colo. 435, 528 P.2d 244 (1974).

Standards to be established by state department. Standards governing the granting of aid and the amount to be paid are established by

the state department, except as provided by statute. *State Bd. of Soc. Servs. v. Billings*, 175 Colo. 380, 487 P.2d 1110 (1971).

And followed by county board and department. The county board of social services and the county department of social services must follow the standards established by the state department. *State Bd. of Soc. Servs. v. Billings*, 175 Colo. 380, 487 P.2d 1110 (1971).

Subsection (2)(o)(I) is a constitutional delegation of legislative authority to the state department of social services because the language provides the necessary statutory safe-

guards and standards to guide the department in rational and consistent rulemaking and mean-

ingful judicial review of department actions. *Barela v. Beye*, 916 P.2d 668 (Colo. App. 1996).

26-1-112. Locating violators - recoveries. (1) The executive director of the department of human services or district attorneys may request and shall receive from departments, boards, bureaus, or other agencies of the state or any of its political subdivisions, and the same are authorized to provide, such assistance and data as will enable the state department of human services and county departments properly to carry out their powers and duties to locate and prosecute any person who has fraudulently obtained public assistance under this title. Any records established pursuant to the provisions of this section shall be available only to the state department of human services, the county departments, the attorney general, and the district attorneys, county attorneys, and courts having jurisdiction in fraud or recovery proceedings or actions.

(2) (a) All departments and agencies of the state and local governments shall cooperate in the location and prosecution of any person who has fraudulently obtained public assistance under this title, and, on request of the county board, the county director, the state department of human services, or the district attorney of any judicial district in this state, shall supply all information on hand relative to the location, employment, income, and property of such persons, notwithstanding any other provision of law making such information confidential, except the laws pertaining to confidentiality of any tax returns filed pursuant to law with the department of revenue. The department of revenue shall furnish at no cost to inquiring departments and agencies such information as may be necessary to effectuate the purposes of this article. The procedures whereby this information will be requested and provided shall be established by rule of the state department. The state department or county departments shall use such information only for the purposes of administering public assistance under this title, and the district attorney shall use it only for the prosecution of persons who have fraudulently obtained public assistance under this title, and he shall not use the information, or disclose it, for any other purpose.

(b) (I) Whenever the state department of human services or a district attorney, for the state department, or the state department on behalf of a county department recovers any amount of fraudulently obtained public assistance funds, the federal government shall be entitled to a share proportionate to the amount of federal funds paid unless a different amount is otherwise provided by federal law, the state shall be entitled to a share proportionate to the amount of state funds paid and such additional amounts of federal funds recovered as provided by federal law, and the county department shall be entitled to a share proportionate to the amount of county funds paid unless a different amount is provided pursuant to federal law or this section.

(II) Whenever a county department, a county board, a district attorney, or a state department on behalf of a county department recovers any amount of fraudulently obtained public assistance funds in the form of assistance payments, it shall be deposited in the county general fund and the federal government shall be entitled to a share proportionate to the amount of federal funds paid unless a different amount is provided for by federal law, the state shall be entitled to a share proportionate to one-half the amount of state funds paid, and the county shall be entitled to a share proportionate to the amount of county funds paid and, in addition, a share proportionate to one-half the amount of state funds paid. In the case of funds recovered from fraudulently obtained food stamp coupons by the county department, the county board, the district attorney, or the state department on behalf of a county department, the county shall be entitled to the share of the recovered funds provided by the federal "Food Stamp Act".

(3) (a) Whenever the county department, the county board, the district attorney, or the state department on behalf of a county department pursuant to Public Law 96-58 recovers funds from food stamp coupons which were obtained through unintentional client error, the county shall be entitled to the share of the recovered funds provided by the federal "Food Stamp Act".

(b) Whenever a county department, a county board, a district attorney, or the state department on behalf of the county recovers any amount of public assistance payments funds that were obtained through unintentional client error, the federal government shall be

entitled to a share proportionate to the amount of federal funds paid, unless a different amount is provided for by federal law, the state shall be entitled to a share proportionate to seventy-five percent of the amount of state funds paid, the county shall be entitled, except for the Colorado works program, to a share proportionate to the amount of county funds paid, if any, and, in addition, a share proportionate to twenty-five percent of the amount of state funds paid. In the Colorado works program, the county shall be entitled to a share proportionate to the amount of county funds paid and, in addition, a share proportionate to one-half the amount of state funds paid.

(4) Actual costs and expenses incurred by the district attorney's office in carrying out the provisions of subsections (2) and (3) of this section shall be billed to counties or a county within the judicial district in the proportions specified in section 20-1-302, C.R.S. Each county shall make an annual accounting to the state department on all amounts recovered.

Source: L. 73: R&RE, p. 1167, § 1. C.R.S. 1963: § 119-1-11. L. 77: (1) R&RE and (3)(c) amended, p. 1329, §§ 1, 2, effective July 1; (3)(a) and (3)(c) amended, p. 1331, § 1, effective January 1, 1978. L. 79: Entire section R&RE, p. 639, § 4, effective June 7. L. 81: (2)(b) R&RE, p. 1367, § 1, effective July 1. L. 85: (2)(b)(II) amended, p. 937, § 1, effective May 16. L. 89: (1) and (2) amended and (3) and (4) added, p. 1193, § 2, effective June 7. L. 91: (2)(b)(II) and (3)(a) amended, p. 1860, § 2, effective July 1. L. 93: (1), (2), and (3)(b) amended, p. 1142, § 81, effective July 1, 1994. L. 97: (3)(b) amended, p. 1221, § 5, effective July 1. L. 2006: (1), (2), and (3)(b) amended, p. 1988, § 13, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

(2) For the federal "Food Stamp Act", now known as the "Food and Nutrition Act of 2008", see 7 U.S.C. sec. 2011 et seq. (Section 4001 of the "Food, Conservation, and Energy Act of 2008", Pub.L. 110-234, changed the name of the federal "Food Stamp Act of 1977" to the "Food and Nutrition Act of 2008" and changed the name of the federal food stamp program to the "supplemental nutrition assistance program".)

26-1-112.5. Birth-related cost recovery program - cooperation with the department of health care policy and financing - duties of state department - repeal. (Repealed)

Source: L. 95: Entire section added, p. 1398, § 4, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective June 30, 1999. (See L. 95, p. 1398.)

26-1-113. Enforcement of support - RURES.A. (Repealed)

Source: L. 73: R&RE, p. 1168, § 1. C.R.S. 1963: § 119-1-12. L. 77: (1)(b) amended, p. 1330, § 3, effective July 1. L. 79: Entire section repealed, p. 643, § 6, effective June 7.

26-1-114. Records confidential - authorization to obtain records of assets - release of location information to law enforcement agencies - outstanding felony arrest warrants. (1) The state department of human services may establish reasonable rules to provide safeguards restricting the use or disclosure of information concerning applicants, recipients, and former and potential recipients of federally aided public assistance and welfare, including but not limited to assistance payments, food stamps, social services, and child welfare services, to purposes directly connected with the administration of such public assistance and welfare and related state department activities and covering the custody, use, and preservation of the records, papers, files, and communications of the state and county departments. Whenever, under provisions of law, names and addresses of applicants for,

recipients of, or former and potential recipients of public assistance and welfare are furnished to or held by another agency or department of government, such agency or department shall be required to prevent the publication of lists thereof and their uses for purposes not directly connected with the administration of such public assistance and welfare.

(2) Repealed.

(3) (a) (I) Except as provided in subparagraphs (II) and (III) of this paragraph (a), or except as disclosure is otherwise required by statute or by rule of civil procedure for child support establishment or enforcement purposes, it is unlawful for any person to solicit, disclose, or make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names of or any information concerning persons applying for or receiving public assistance and welfare directly or indirectly derived from the records, papers, files, or communications of the state or county departments or subdivisions or agencies thereof or acquired in the course of the performance of official duties. No financial institution or insurance company that provides the data, whether confidential or not, required by the state department, in accordance with the provisions of this subsection (3), shall be liable for the provision of the data to the state department nor for any use made thereof by the state department.

(II) The information described in subparagraph (I) of this paragraph (a) may be disclosed for purposes directly connected with the administration of public assistance and welfare and in accordance with this paragraph (a) and paragraphs (b) and (c) of this subsection (3) and with the rules and regulations of the state department.

(III) (A) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the state department shall provide the bureau with information concerning the location of any person whose name appears in the department's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the state department. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The state department and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the state department nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this sub-subparagraph (A).

(B) As used in sub-subparagraph (A) of this subparagraph (III), "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

(b) By signing an application or redetermination of eligibility form for assistance or welfare, an applicant authorizes the state department to obtain records pertaining to information provided in that application or redetermination of eligibility form from a financial institution, as defined in section 15-15-201 (4), C.R.S., or from any insurance company. The application or redetermination of eligibility form shall contain language clearly indicating that signing constitutes such an authorization.

(c) (I) In order to determine if applicants for or recipients of public assistance have assets within eligibility limits, the state department of human services may provide a list of information identifying these applicants or recipients to any financial institution, as defined in section 15-15-201 (4), C.R.S., or to any insurance company. This information may include identification numbers or social security numbers. The state department of human services may require any such financial institution or insurance company to provide a written statement disclosing any assets held on behalf of individuals adequately identified on the list provided. Before a termination notice is sent to the recipient, the county department in verifying the accuracy of the information obtained as a result of the match shall contact the recipient and inform him or her of the apparent results of the computer match and give the recipient the opportunity to explain or correct any erroneous information secured by the match. The requirement to run a computerized match shall apply only to

information that is entered in the financial institution's or insurance company's data processing system on the date the match is run and shall not be deemed to require any such institution or company to change its data or make new entries for the purpose of comparing identifying information. The cost of providing such computerized match shall be borne by the appropriate state department. The state department of human services shall not use the provisions of this subparagraph (I) for the information-gathering purposes of the financial institution data match system required by section 26-13-128.

(II) For the fiscal year beginning July 1, 1984, and thereafter, all funds expended by the state department to pay the cost of providing such computerized matches shall be subject to an annual appropriation by the general assembly.

(III) The state department of human services may expend funds appropriated pursuant to subparagraph (II) of this paragraph (c) in an amount not to exceed the amount of annualized general fund savings that result from the termination of recipients from public assistance specifically due to disclosure of assets pursuant to this subsection (3).

(IV) The state department of human services shall make quarterly reports concerning the value of computerized matches pursuant to this paragraph (c) to the general assembly and the joint budget committee. Such reports shall include, but need not be limited to, the number of individuals against whom computer matches were run, the number of resulting matches, and the resulting public assistance case load reduction and corresponding savings to the state department.

(d) No applicant shall be denied nor any recipient discontinued due to the disclosure of their assets unless and until the county department has assured that such assets taken together with other assets exceed the limit for eligibility of countable assets. Any information concerning assets found may be used to determine if such applicant's or recipient's eligibility for other public assistance is affected.

(4) The applicant for or recipient of public assistance and welfare, or his representative, shall have an opportunity to examine all applications and pertinent records concerning said applicant or recipient which constitute a basis for denial, modification, or termination of such public assistance and welfare or to examine such records in case of a fair hearing.

(5) Any person who violates subsection (1) or (3) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 73: R&RE, p. 1169, § 1. C.R.S. 1963: § 119-1-13. L. 75: (2) amended, p. 888, § 1, effective July 28. L. 77: (2) repealed, p. 1337, § 1, effective May 27. L. 79: (1), (3), and (4) amended, p. 1082, § 4, effective July 1. L. 83: (3) amended, p. 1114, § 1, effective June 15. L. 90: (3)(b) and (3)(c)(I) amended, p. 921, § 7, effective July 1. L. 93: (1), (3)(c)(I), (3)(c)(III), and (3)(c)(IV) amended, p. 1144, § 82, effective July 1, 1994. L. 95: (3)(a) amended, p. 1124, § 4, effective July 1. L. 98: (3)(c)(I) amended, p. 767, § 19, effective July 1. L. 2001: (3)(a)(I) amended, p. 722, § 5, effective May 31. L. 2006: (1), (3)(c), and (3)(d) amended, p. 1989, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Trust Protection of Personal Injury Recoveries from Public Creditors", see 19 Colo. Law. 2187 (1990).

The right of privacy conferred by this section ceases when the recipient becomes a criminal defendant charged with a crime directly connected with this statute, and this right of privacy is lost without regard to the outcome of the charges. *Lincoln v. Denver Post*, 31 Colo. App. 283, 501 P.2d 152 (1972).

The public has a right to know and the press to disclose such facts relative to the pending criminal case as may reasonably be expected to be relevant and material thereto. *Lincoln v. Denver Post*, 31 Colo. App. 283, 501 P.2d 152 (1972).

Department is required to disclose name and address of adoptive home to guardian ad litem appointed in prior dependency and neglect proceeding despite confidentiality regulation

promulgated pursuant to this section so long as the guardian's appointment has not yet termi-

nated. People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988).

26-1-115. County departments - district departments. (1) Except as provided in subsection (2) of this section, there shall be established in each county of the state a county department of social services which shall consist of a county board of social services, a county director of social services, and such additional employees as may be necessary for the efficient performance of public assistance and welfare activities, including but not limited to assistance payments, food stamps, and social services.

(2) With the approval of the state department, two or more counties may jointly establish a district department of social services. All duties and responsibilities set forth in this title for county departments shall also apply to district departments.

(3) (Deleted by amendment, L. 2006, p. 1990, § 15, effective July 1, 2006.)

Source: L. 73: R&RE, p. 1170, § 1. C.R.S. 1963: § 119-1-14. L. 79: (1) amended, p. 1082, § 5, effective July 1. L. 91: (1) amended and (3) added, p. 1895, § 5, effective July 1. L. 2006: (1) and (3) amended, p. 1990, § 15, effective July 1.

26-1-116. County boards - district boards. (1) (a) The county board shall consist of the board of county commissioners in each county; except that "board of county commissioners" as used in this title, in the city and county of Denver, means the department or agency with the responsibility for public assistance and welfare activities and, in the city and county of Broomfield, means the city council or a board or commission appointed by the city and county of Broomfield.

(b) In the case of a district department established pursuant to section 26-1-115 (2), the district board shall consist of not less than three members, and each county in the district shall select one or more of its county commissioners to serve as a member of the district board. The district board shall, in relation to the district department, have all the powers, duties, and responsibilities which the county board has in relation to the county department.

(2) The county board shall elect a chairman who shall preside at meetings and, when authorized by the board, shall sign all necessary documents for the board.

(3) The county board may hold a meeting to address the public assistance and welfare duties, responsibilities, and activities of the county department in conjunction with a meeting of the board of county commissioners, upon full and timely notice given pursuant to the provisions of section 24-6-402, C.R.S. The county board shall act in accordance with rules adopted by the state board when addressing public assistance and welfare duties, responsibilities, and activities of the county department.

Source: L. 73: R&RE, p. 1170, § 1. C.R.S. 1963: § 119-1-15. L. 79: (1)(a) and (3) amended, p. 1083, § 6, effective July 1. L. 2001: (1)(a) amended, p. 256, § 1, effective November 15. L. 2004: (3) amended, p. 371, § 1, effective August 4.

ANNOTATION

County board is subordinate to state. The county board of social services is set up as a subordinate agency or arm of the state. It is bound by, inter alia, the fiscal and personnel rules set up by the state board of social services. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

Pursuant to statute, county boards of social services act as agents of the state board, and are bound by the rules promulgated by the state board. *Bd. of County Comm'rs v. Merit Sys. Council*, 662 P.2d 1093 (Colo. App. 1982).

County board lacks standing to obtain judicial review of merit system council action. In the absence of an express statutory right, the county board lacks standing or any other legal authority to obtain judicial review of an action of the merit system council. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

A county board of social services is not an adversely affected or aggrieved "party" empowered to bring an action for judicial review of an agency action. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

Where the state board of social services is a party to judicial review proceedings, as a result of which a settlement agreement was reached, reinstating an employee suspended by a county department of social services, the county board and the county department, as subordinates of the state agency, are bound by the state department's actions settling the judicial review pro-

ceedings. Accordingly, the county board and the county department are without standing to seek judicial review of the merit system council's order implementing the settlement agreement, and the board of county commissioners is likewise without standing to seek judicial review. *Bd. of County Comm'rs v. Merit Sys. Council*, 662 P.2d 1093 (Colo. App. 1982).

26-1-117. County director - district director. (1) It is the duty of the county board to appoint a county director, who shall be charged with the executive and administrative duties and responsibilities of the county department, subject to the policies, rules, and regulations of the state department, and who shall serve as secretary to the county board, unless a secretary is otherwise appointed by the board. The salary of the county director shall be established by the board of county commissioners of the county. The state department shall reimburse the salary of the county director as provided in section 26-1-120.

(2) In the case of a district department established pursuant to section 26-1-115 (2), the district board shall appoint one district director to serve the entire district. Such district director shall be appointed in the same manner and subject to the same conditions as the county director provided for in subsection (1) of this section. The district director shall, in relation to the district department, have all the powers, duties, and responsibilities which the county director has in relation to the county department.

Source: L. 73: R&RE, p. 1170, § 1. C.R.S. 1963: § 119-1-16. L. 81: (1) amended, p. 1369, § 1, effective June 9. L. 97: (1) amended, p. 1189, § 7, effective July 1.

ANNOTATION

County departments functional division of state department. It is clear that the county departments of social services, and the merit system council, are both functional divisions of the state department of social services for the convenient administration of the state program and are not independent entities separate and distinct from the state. *Nadeau v. Merit Sys. Council*, 36 Colo. App. 362, 545 P.2d 1061 (1975).

Province of the county board is to appoint the county director, fix his salary, approve ap-

pointments, and raise the money to pay the bill. *State Bd. of Soc. Servs. v. Billings*, 175 Colo. 380, 487 P.2d 1110 (1971).

Director subject to policies, rules, and regulations of state department. The director of a county department of social services, while appointed by the county board, is subject to the policies, rules, and regulations of the state department. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

Applied in *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

26-1-118. Duties of county departments, county directors, and district attorneys.

(1) The county departments or other state designated agencies, where applicable, shall serve as agents of the state department and shall be charged with the administration of public assistance and welfare and related activities in the respective counties in accordance with the rules and regulations of the state department.

(2) The county departments or other state designated agencies, where applicable, shall report to the state department at such times and in such manner and form as the state department may from time to time direct. The state department may require a county department to report information concerning county employees, including but not limited to qualifications, work schedules, pay, duties, evaluations, training, and corrective and disciplinary actions. A county department may provide such information by use of a unique identifier for each employee that provides the information without identifying the name of the employee. However, nothing in this section shall be construed to prevent access by the state department to individual employee files, to the extent permitted by state and federal law, for purposes of carrying out the responsibility of the state department for the supervision and administration of programs funded in whole or in part by the state

department. The state department shall maintain the confidentiality of such records in a manner consistent with state and federal law.

(2.5) Repealed.

(3) The county department or other state designated agencies, where applicable, in each county shall submit quarterly and annually to the board of county commissioners a budget containing an estimate and supporting data setting forth the amount of money needed to carry out the provisions of this title.

(4) When appointed by a court of competent jurisdiction and consistent with state department rules and regulations, the county director shall perform under the supervision of such court the function of officer or agent of the court in any social services matters which may be before it.

(5) The county department may receive for placement in foster care any child upon agreement of his parent, his guardian, or any other person having legal custody of such child. Such agreements, provided for in this subsection (5), shall be in writing and on forms prescribed by the state department and may contain any proper and legal provisions for proper care of the child and such other provisions as may be considered necessary by the state department.

(6) The county department shall report, to the district attorney monthly, data relating to fraudulent activities covering, as a minimum, the activities specified in paragraphs (a), (b), and (d) of this subsection (6), and the district attorney shall likewise report, monthly to the county department, the data specified in paragraph (c) of this subsection (6), as follows when applicable:

(a) Investigations (including welfare and district attorney cases accepted for fraud investigation during the month);

(b) Welfare action - assistance denials and assistance reductions;

(c) District attorney action:

(I) Criminal complaints requested during the month;

(II) Criminal complaints declined during the month;

(III) Cases dismissed during the month;

(IV) Cases acquitted during the month;

(V) Convictions during the month;

(VI) Confessions of judgments (notes);

(d) Recoveries:

(I) Fines and penalties _____ (in dollars);

(II) Restitutions ordered _____ (in dollars);

(III) Restitutions collected _____ (in dollars).

(7) The counties may prepare and issue to all payees, excluding heads of households in nonpublic assistance food stamp cases, at the time of delivery of any public assistance, a hermetically sealed photo identification card which is manufactured in such a secure manner as to resist duplication or intrusion and containing the full name, a card identification number, and any other data which would insure proper identification. A county department shall refer to the appropriate law enforcement agency for investigation, within ten working days after discovery, any information it may have concerning the improper use of a photo identification card by a person not eligible to possess such card.

(8) Starting in the calendar year 1979, no less than eight hours of fraud prevention training shall be given to all eligibility technicians, caseworkers, resource investigators, homemakers, supervisors, and such other persons within the county department as the county director deems necessary, who have not previously received such training. Such training shall be conducted by a law enforcement agency or its appropriate professional association.

(9) Repealed.

Source: L. 73: R&RE, p. 1171, § 1. C.R.S. 1963: § 119-1-17. L. 75: (5) added, p. 894, § 1, effective July 14. L. 77: (6) to (9) added, p. 1332, § 2, effective January 1, 1978. L. 79: (8) R&RE, p. 1092, § 1, effective May 22; (9) repealed, p. 1093, § 2, effective June 21. L. 89, 1st Ex. Sess.: (2.5) added, p. 38, § 3, effective July 25. L. 91: (1), (2), and (3)

amended, p. 1896, § 6, effective July 1. **L. 97:** (2.5) repealed, p. 1221, § 6, effective July 1. **L. 2008:** (2) amended, p. 1527, § 3, effective May 28. **L. 2010:** (7) amended, (HB 10-1422), ch. 419, p. 2115, § 153, effective August 11.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 327, Session Laws of Colorado 2008.

ANNOTATION

County is arm of state. A county, as used in this section, is assigned its traditional role as an arm of the state, existing only for the convenient administration of the state government and to carry out the will of the state. *Bd. of County Comm'rs v. State Bd. of Soc. Servs.*, 186 Colo. 435, 528 P.2d 244 (1974).

It is clear that the county departments of social services, and the merit system council, are both functional divisions of the state department of social services for the convenient administration of the state program and are not independent entities separate and distinct from the state. *Nadeau v. Merit Sys. Council*, 36 Colo. App. 362, 545 P.2d 1061 (1975).

The county board of social services is set up as a subordinate agency or arm of the state. It is bound by, *inter alia*, the fiscal and personnel rules set up by the state board of social services. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

County has no standing to seek review of state board's action. A county department of social services has no standing to seek judicial review of action by the state board of social services by the merit system council. *Nadeau v. Merit Sys. Council*, 36 Colo. App. 362, 545 P.2d 1061 (1975).

In the absence of an express statutory right, the county board lacks standing or any other legal authority to obtain judicial review of an action of the merit system council. *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976); *Jefferson County DSS v. Dept. of Institutions*, 784 P.2d 805 (Colo. App. 1989).

In the absence of an express statutory authorization, a subordinate state agency lacks standing to obtain judicial review of the action of its superior state agency. *City & County of Denver v. Brockhurst Boys Ranch, Inc.*, 195 Colo. 22, 575 P.2d 843 (1978).

Where the state board of social services is a party to judicial review proceedings, as a result of which a settlement agreement was reached, reinstating an employee suspended by a county department of social services, the county board and the county department, as subordinates of the state agency, are bound by the state department's action settling the judicial review proceedings. Accordingly, the county board and the county department are without standing to seek judicial review of the merit system council's order implementing the settlement agreement, and the board of county commissioners is likewise without standing to seek judicial review. *Bd. of County Comm'rs v. Merit Sys. Council*, 662 P.2d 1093 (Colo. App. 1982).

A county department of social services is not a "person" for the purpose of a civil rights action for damages, as opposed to injunctive relief, under 42 U.S.C. § 1983. *Wigger v. McKee*, 809 P.2d 999 (Colo. App. 1990); *Pierce v. Delta County Dept. of Soc. Servs.*, 119 F. Supp. 2d 1139 (D. Colo. 2000).

For authority of county welfare departments in placing children for adoption, see *People in Interest of M.D.C.M.*, 34 Colo. App. 91, 522 P.2d 1234 (1974).

Applied in *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

26-1-119. County staff. The county director, with the approval of the county board, shall appoint such staff as may be necessary as determined by the state department rules to administer public assistance and welfare and child welfare activities within his or her county. Such staff shall be appointed and shall serve in accordance with a merit system for the selection, retention, and promotion of county department employees as described in section 26-1-120. The salaries of the members of such staff shall be fixed in accordance with the rules and salary schedules prescribed by the state department; except that, once a county transfers its county employees to a successor merit system as provided in section 26-1-120, the salaries shall be fixed by the county commissioners.

Source: **L. 73:** R&RE, p. 1171, § 1. **C.R.S. 1963:** § 119-1-18. **L. 93:** Entire section amended, p. 1145, § 83, effective July 1, 1994. **L. 97:** Entire section amended, p. 1184, § 4, effective July 1. **L. 2006:** Entire section amended, p. 1991, § 16, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-1-120.3. Merit system transition - progress report - repeal. (Repealed)

Source: L. 97: Entire section added, p. 1189, § 6, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2000. (See L. 97, p. 1189.)

26-1-120.5. Positions exempted from merit system - repeal. (Repealed)

Source: L. 91: Entire section added, p. 1786, § 2, effective April 11. L. 97: Entire section amended, p. 1190, § 8, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective January 1, 2001. (See L. 97, p. 1190.)

26-1-121. Appropriations - food distribution programs. (1) (a) For carrying out the duties and obligations of the state department of human services and county departments under the provisions of this title and for matching such federal funds or meeting maintenance of effort requirements as may be available for public assistance and welfare activities in the state, including but not limited to assistance payments, food stamps (except the value of food stamp coupons), social services, child welfare services, rehabilitation, programs for the aging and for veterans, and related activities, the general assembly, in accordance with the constitution and laws of the state of Colorado, shall make adequate appropriations for the payment of such costs, pursuant to the budget prepared by the executive director.

(b) Subject to the provisions of section 26-1-109 (2), if the federal law shall provide federal funds, in cash or in another form such as food stamps, for public assistance and welfare activities, including but not limited to assistance payments, food stamps, social services, and child welfare services, not otherwise provided for in this title, the state department is authorized to make such payments or offer such services in accordance with the requirements accompanying said federal funds within the limits of available state appropriations.

(c) When the executive director determines that adequate appropriations for the payment of the costs described in paragraph (a) of this subsection (1) have not been made and that an overexpenditure of an appropriation will occur based upon the state department's estimates, the state board may take actions consistent with state and federal law to bring the rate of expenditure into line with available funds. The general assembly declares that case load and utilization based on medical necessity are legitimate reasons for supplemental funding.

(2) There shall be appropriated by the general assembly from the general fund for the costs of administering the assistance payments, food stamps, social services, and other public assistance and welfare functions of the state department and the state's share of the costs of administering such functions by the county departments amounts sufficient for the proper and efficient performance of the duties imposed upon them by law, including a legal advisor appointed by the attorney general. The general assembly shall make two separate appropriations, one for the administrative costs of the state department and another for the administrative costs of the county departments. Any applicable matching federal funds shall be apportioned in accordance with the federal regulations accompanying such funds. Any unobligated and unexpended balances of such state funds so appropriated remaining at the end of each fiscal year shall be credited to the state general fund.

(3) The expenses of training personnel for special skills relating to public assistance and welfare activities, including but not limited to assistance payments, food stamps, social services, child welfare services, rehabilitation, and programs for the aging, as such expenses shall be determined and approved by the state department, may be paid from whatever state and federal funds are available for such training purposes.

(4) (a) The state department is authorized to charge an administrative fee for commodities delivered to agencies that receive these commodities through food distribution

programs authorized by the United States department of agriculture pursuant to 7 CFR 250.1 et seq., as amended, including the "National School Lunch Program", the "Child and Adult Care Food Program", and the "Summer Food Service Program". The department shall collect the administrative fee authorized pursuant to this subsection (4) on a monthly basis from agencies that receive commodities from such programs.

(b) All administrative fees collected from agencies pursuant to paragraph (a) of this subsection (4) shall be transmitted to the state treasurer, who shall credit the same to the food distribution program service fund, which fund is hereby created and referred to in this paragraph (b) as the "fund". The moneys in the fund shall be continuously appropriated to the state department to defray the cost of administering the food distribution programs specified in paragraph (a) of this subsection (4). Any moneys in the fund not expended for the purpose of administering the food distribution programs specified in paragraph (a) of this subsection (4) may be invested by the state as provided in section 24-36-113, C.R.S. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The fund balances shall comply with any applicable federal laws or regulations. At the end of each fiscal year, any unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

Source: L. 73: R&RE, p. 1173, § 1. C.R.S. 1963: § 119-1-20. L. 79: Entire section amended, p. 1083, § 7, effective July 1. L. 84: (1)(c) added, p. 792, § 1, effective May 11. L. 93: (1)(a), (1)(b), and (3) amended, p. 1145, § 84, effective July 1, 1994. L. 97: (1)(a) amended, p. 1221, § 7, effective July 1. L. 2005: (4) added, p. 743, § 1, effective June 1. L. 2006: (1)(a), (1)(b), and (3) amended, p. 1991, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Former provision held unconstitutional. A requirement that any balances remaining in the administrative account at the end of the biennium commencing July 1, 1937, should be disbursed as the general assembly should direct, to the extent that such balances contained unused money arising from the five percent of the pension fund to be used in payment of administrative expenses, was unconstitutional and void. *Davis v. Pensioners Protective Ass'n*, 110 Colo. 380, 135 P.2d 142 (1943).

Budget need not describe every medical procedure eligible for reimbursement. Colo-

rado's constitution requires neither the general assembly nor the department of social services to prepare or adopt a budget describing each or any particular medical procedure eligible for reimbursement under the Colorado medical assistance act (article 4 of this title). *Dodge v. State Dept. of Soc. Servs.*, 657 P.2d 969 (Colo. App. 1982).

Applied in *Burciaga v. Shea*, 187 Colo. 78, 530 P.2d 508 (1974); *Rodgers v. Atencio*, 43 Colo. App. 268, 608 P.2d 813 (1979).

26-1-122. County appropriations and expenditures - advancements - procedures. (1) (a) Except as provided in subsection (6) of this section and section 26-1-122.5, the board of county commissioners in each county of this state shall annually appropriate as provided by law such funds as shall be necessary to defray the county department's twenty percent share of the overall cost of providing the assistance payments, food stamps (except the value of food stamp coupons), and social services activities delivered in the county, including the costs allocated to the administration of each, and shall include in the tax levy for such county the sums appropriated for that purpose. Such appropriation shall be based upon the county social services budget prepared by the county department pursuant to section 26-1-124, after taking into account state advancements provided for in this section.

(b) In the case of a district department, each county forming a part of said district shall appropriate the funds necessary to defray its proportionate share of the costs of assistance payments, food stamps (except the value of food stamp coupons), and social services

activities of such individual county based on the ratio set out in paragraph (a) of this subsection (1).

(c) Additional funds shall be made available by the board of county commissioners if the county funds so appropriated prove insufficient to defray the county department's twenty percent share of actual costs for assistance payments, food stamps (except the value of food stamp coupons), and social services activities, including the administrative costs of each.

(d) Under no circumstances shall any county expend county funds in an amount to exceed its twenty percent share of actual costs for assistance payments, food stamps (except the value of food stamp coupons), and social services activities, including the administrative costs of each, except as provided in paragraph (i) of subsection (4) of this section.

(2) (a) The county boards, in accordance with the rules of the state department, shall file requests with the state department for advancement of funds for the program costs of assistance payments, food stamps (except the value of food stamp coupons), and social services and for the administrative costs of each. The state department shall determine the requirements of each county for such program costs and administrative costs, taking into consideration available funds and all pertinent facts and circumstances, and shall certify by voucher to the controller the amounts to be paid to each county. The amounts so certified shall be paid from the state treasury upon voucher of the state department and warrant of the controller and shall be credited by the county treasurer to the county social services fund in accordance with the law and rules of the state department.

(b) For purposes of operating the electronic benefits transfer service as authorized in section 26-2-104 once the service has been fully developed and implemented in any county, the state department shall determine the program costs and administrative costs related to assistance payments and food stamps for each county. Upon implementation of the electronic benefits transfer service in any county, the county share of the program and administrative costs shall either be billed to the county or deducted from appropriate advances to the county or from the county block grant allocation for implementation of the Colorado works program pursuant to part 7 of article 2 of this title. The cost of administering the electronic benefits transfer service shall not exceed the proportional cost per client that would have been paid by counties to issue benefits through the nonelectronic benefits system for the same fiscal year. Any savings that result from the use of the electronic benefits transfer service shall be shared among the state and local governments in proportion to such entities' contribution to the electronic benefits transfer service.

(3) (a) County departments shall keep such records and accounts in relation to the costs of administering assistance payments, the costs of administering food stamps, and the costs of administering social services as the state department shall prescribe by rules. Except as provided in subsection (6) of this section, all administrative costs shall be allocated, under rules of the state department, to either the performance of assistance payments functions, the performance of food stamp functions, or the performance of social services functions.

(b) Except as provided in subsection (6) of this section and section 26-1-122.5, if the county departments are administered in accordance with the policies and rules of the state department for the administration of county departments, eighty percent of the costs of administering assistance payments, food stamps, and social services in the county departments shall be advanced to the county by the state treasurer from funds appropriated or made available for such purpose, upon authorization of the state department, but in no event shall the state department authorize expenditures greater than the annual appropriation by the general assembly for the state's share of such administrative costs of the county departments. As funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes.

(c) For purposes of this article, and except as otherwise provided in subsection (6) of this section, under rules of the state department, administrative costs shall include: Salaries of the county director and employees of the county department staff engaged in the performance of assistance payments, food stamps, and social services activities; the county's payments on behalf of such employees for old age and survivors' insurance or pursuant to a county officers' and employees' retirement plan and for any health insurance plan, if approved by the state department; the necessary travel expenses of the county board

and the administrative staff of the county department in the performance of their duties; necessary telephone and telegraph; necessary equipment and supplies; necessary payments for postage and printing, including the printing and preparation of county warrants required for the administration of the county department; and such other administrative costs as may be approved by the state department; but advancements for office space, utilities, and fixtures may be made from state funds only if federal matching funds are available.

(4) (a) County departments shall keep such records and accounts in relation to assistance payments program costs and social services program costs as the state department shall prescribe by rules and as may be required in part 7 of article 2 of this title. All program costs shall be allocated, under rules of the state department, to either assistance payments or social services.

(b) Except as provided in paragraph (d) of this subsection (4) and subsection (6) of this section, eighty percent of the amount expended for assistance payments program costs and social services program costs or the amount equal to the state's share of the amount expended as determined pursuant to section 26-1-122.5 shall be advanced to the county by the state treasurer from funds appropriated or made available for such purpose upon authorization of the state department pursuant to the provisions of this title. As funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes.

(c) For purposes of this article and except as otherwise provided in subsection (6) of this section, under rules of the state department, program costs shall include: Amounts expended for assistance payments and social services (except for items enumerated in subsection (3) (c) of this section) under programs for aid to the needy disabled, aid to the blind, child welfare services, expenses of treatment to prevent blindness or restore eyesight as defined in section 26-2-121, funeral and burial expenses as defined in section 26-2-129, and state supplementation under part 2 of article 2 of this title.

(d) Whenever any county, by reason of an emergency or other temporary condition, shall be unable to meet its necessary financial obligations for other public assistance purposes, and at the same time meet its requirements for assistance payments and social services under the program for aid to the needy disabled, the state department may in its discretion, upon consideration of the conditions and requirements of this title, reimburse such county in excess of eighty percent of the amount expended for assistance payments and social services under such program. The state department shall determine the amount of such excess reimbursement and the period of time during which such excess reimbursement shall be made. For such purpose, the state department may use not to exceed five percent of the total amount allocated to it by the state for administrative and program costs for assistance payments and social services under the program for which the excess reimbursement is provided.

(e) When a county department provides or purchases certain specialized social services for public assistance applicants, recipients, or others to accomplish self-support, self-care, or better family life, including but not limited to day care, homemaker services, foster care, and services to mentally retarded persons, in accordance with applicable rules, the state may advance funds to such county department at a rate in excess of eighty percent within available appropriations, but not to exceed the amount expended by the county department for such services. The county department contribution shall be for the period from January 1, 1981, through June 30, 1981, ten percent, and beginning July 1, 1981, five percent for the aid to the needy disabled home care program, the special needs of the disabled program, aid to the blind home care program, the special needs of the blind program, the adult foster care program, and other programs providing public assistance in the form of social services required by the federal "Social Security Act", as amended, for the purpose of establishing services which promote self-sufficiency for adult clients. As funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes. The expenses of training personnel to provide these services as determined and approved by the state department shall be paid from whatever state and federal funds are available for such training purposes.

(f) County departments shall provide or contract to provide a central information and referral service for all available services in the county which may prevent or reduce inappropriate institutional care through the use of community-based or home-based care.

(g) The state department is authorized to provide not more than ten additional home-maker positions to be located in Adams, Larimer, Garfield, Otero, and Morgan counties. Reimbursement to each county for one hundred percent homemaker costs shall be based on a minimum case load of ten clients per reimbursed position which clients are currently in or would be admitted to skilled or intermediate care facilities or hospitals and who would not otherwise be served by current county staffing. Reports shall be provided monthly to the joint budget committee.

(h) Notwithstanding any other provision of this article, the county department may spend in excess of twenty percent of actual costs for the purpose of matching federal funds for the administration of the child support enforcement program or for the administrative costs of activities involving food stamp, public assistance, or medical assistance fraud investigations or prosecutions.

(i) Notwithstanding any other provision of this article, the county department may receive and spend federal funds to which it is entitled by reason of the county's expenditures in excess of the twenty percent required by subsection (1) of this section for any social services activity that has been approved by the department as an activity that is eligible for reimbursement under any federal program. Acceptance and expenditure of such federal funds shall in no way affect the state's share of and contribution to such payments, and the county shall be solely responsible for the provision of the nonfederal share that is in excess of the twenty percent.

(j) Repealed.

(k) (I) Notwithstanding any other provision of this article, the county department may receive and spend federal funds to which it is entitled based on the county's certification of public expenditures made by other entities within the county, which expenditures:

(A) Are from sources other than the county social services fund;

(B) Are in excess of the twenty percent required by subsection (1) of this section; and

(C) Are for a social services activity that has been approved by the state department as an activity that is eligible for reimbursement under a federal program.

(II) Acceptance and expenditure of federal funds pursuant to subparagraph (I) of this paragraph (k) shall not affect the state's share of and contribution to the assistance payments program costs and social services program costs. The county shall be solely responsible for certifying the nonfederal share that is in excess of the county's twenty-percent share. The state department may retain up to five percent of any federal funds received by a county department pursuant to this paragraph (k). In addition, the state, in accordance with the provisions of section 26-1-109 (4) (d), shall recover any federal funds received by the county through the certification of public expenditures that are subsequently determined to be ineligible for federal reimbursement.

(5) Except as otherwise provided in subsection (6) of this section, if in any fiscal year the annual appropriation by the general assembly for the state's share, together with any available federal funds for any income maintenance or social services program, or the administration of either, is not sufficient to advance to the counties the full applicable state share of costs, said program or the administration thereof shall be temporarily reduced by the state board so that all available state and federal funds shall continue to constitute eighty percent of the costs.

(6) (a) Notwithstanding any other provision of this section, the board of county commissioners in each county of this state shall annually appropriate as provided by law such funds as shall be necessary to defray the county's maintenance of effort requirement for the Colorado works program, created in part 7 of article 2 of this title, and the Colorado child care assistance program, created in part 8 of article 2 of this title, including the costs allocated to the administration of each, and shall include in the tax levy for such county the sums appropriated for that purpose. The county's maintenance of effort requirement for the Colorado works program for state fiscal year 1997-98 and for state fiscal years thereafter shall be the targeted spending level identified in section 26-2-714 (6). Such appropriation shall be based upon the county social services budget prepared by the county department pursuant to section 26-1-124, after taking into account state advancements provided for in this section.

(b) Additional funds shall be made available by the board of county commissioners if the county funds so appropriated prove insufficient to defray the county department's maintenance of effort requirements for the Colorado works program and the Colorado child care assistance program, including the costs allocated to the administration of each.

(c) The state department shall establish rules concerning what shall constitute administrative costs and program costs for the Colorado works program. The state treasurer shall make advancements to county departments for the costs of administering the Colorado works program and the Colorado child care assistance program from funds appropriated or made available for such purpose, upon authorization of the state department; except that in no event shall the state department authorize expenditures greater than the annual appropriation by the general assembly for such administrative costs of the county departments. As funds are advanced, adjustment shall be made from subsequent monthly payments for those purposes.

Source: **L. 73:** R&RE, p. 1173, § 1. **C.R.S. 1963:** § 119-1-21. **L. 75:** (4)(c) amended, p. 888, § 2, effective July 28. **L. 76:** (4)(f) and (4)(g) added, p. 667, § 1, effective May 10. **L. 77:** (1)(a), (1)(b), (2), (3)(b), (3)(c), (4)(b), (4)(e), and (5) amended and (1)(c), (1)(d), and (4)(h) added, p. 1322, § 2, effective July 1. **L. 79:** (1) to (3) amended, p. 1084, § 8, effective July 1. **L. 80:** (4)(e) amended, p. 642, § 2, effective July 1. **L. 85:** (4)(h) amended, p. 938, § 2, effective May 16. **L. 87:** (1)(d) amended and (4)(i) added, p. 1155, § 2, effective June 16. **L. 93:** (1)(a), (3)(b), and (4)(b) amended, p. 1116, § 26, effective July 1; (4)(e) amended, p. 1146, § 85, effective July 1, 1994. **L. 94:** (4)(i) amended, p. 636, § 1, effective April 14. **L. 95:** (2) amended, p. 592, § 2, effective May 22. **L. 97:** Entire section amended, p. 1222, § 8, effective July 1. **L. 98:** (6)(a) amended, p. 1197, § 4, effective June 1. **L. 2000:** (6)(a) amended, p. 283, § 7, effective March 31. **L. 2008:** (4)(j) added, p. 1518, § 2, effective May 28. **L. 2009:** (4)(j) amended, (SB 09-267), ch. 206, p. 939, § 1, effective May 1. **L. 2011:** (4)(k) added, (HB 11-1196), ch. 160, p. 554, § 5, effective August 10.

Editor's note: Subsection (4)(j)(II) provided for the repeal of subsection (4)(j), effective January 1, 2010. (See L. 2009, p. 939.)

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsections (1)(a), (3)(b), and (4)(b), see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 161, Session Laws of Colorado 1995.

(2) For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

ANNOTATION

Law reviews. For note, "Aid to Families with Dependent Children — A Study of Welfare Assistance", see 44 Den. L.J. 102 (1967).

Code funding scheme constitutional. The counties retain sufficient control over the funds raised by levy under the code to be deemed the taxing authorities so that, since the levies fall uniformly upon the same class of property within each county, the funding scheme does not violate the constitutional provision requiring uniformity of taxation. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Financing provisions of social services code not violative of equal protection because a rational relationship exists between the requirement that local entities must support a portion of the costs of programs serving the disadvantaged within their localities and the purposes of the

code. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Counties must produce their 20 percent of aid to dependent children whether it be from contingency funds, an excess levy, registered warrants, sales tax, or otherwise. State Bd. of Soc. Servs. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

The state department of social services must require as a condition for a county to receive grants-in-aid that the county shall bear the proportion of the total expense of furnishing aid as fixed by law. State Bd. of Soc. Servs. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

County commissioners lack discretion to determine aid recipients. The county commissioners do not have discretion to decide who is going to receive aid to dependent children benefits, nor how much each person will receive,

nor to rescind the benefits awarded to a person. *State Bd. of Soc. Servs. v. Billings*, 175 Colo. 380, 487 P.2d 1110 (1971).

County's share of payments under this section are not a "subsidy." Attempted turnback by county of its responsibilities under human services code pursuant to art. X, § 20(9), of the state constitution was invalid because when a county (itself a political subdivision of the state) attempts to subsidize the state, the state, through the county, contributes to itself. *Romer v. Bd. of County Comm'rs, Weld County*, 897 P.2d 779 (Colo. 1995).

Passage of art. X, § 20, of the state constitution did not change the mixed state and local character of social services. *Romer v. Bd. of County Comm'rs, Weld County*, 897 P.2d 779 (Colo. 1995).

For discussion of history of Colorado welfare programs and current public assistance financing scheme, see *State Dept. of Soc. Servs. v. Bd. of County Comm'rs*, 697 P.2d 1 (Colo. 1985).

Applied in *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976); *Martin v. District Court*, 191 Colo. 107, 550 P.2d 864 (1976).

26-1-122.5. County appropriation increases - limitations. (1) Beginning in calendar fiscal year 1994 and for each calendar fiscal year thereafter to and including calendar fiscal year 1997, the board of county commissioners in each county of this state shall annually appropriate funds for the county share of the administrative costs and program costs of public assistance and food stamps in the county in an amount equal to the actual county share for the previous fiscal year adjusted by an amount equal to the actual county share for the previous fiscal year multiplied by the percentage of change in property tax revenue.

(2) For the purposes of this section:

(a) "County share" means the actual amount of the county share for the previous fiscal year. "County share" shall not include:

(I) The amount expended by the county from the county contingency fund or the county tax base relief fund pursuant to section 26-1-126;

(II) The amount expended by the county for general assistance pursuant to part 1 of article 17 of title 30, C.R.S.; and

(III) The amount expended by the county for programs or services provided by the county on its own, without requirements or funding from any other governmental agency.

(b) "Percentage of change in property tax revenue" means the difference between the total property tax levied for the previous fiscal year less the amount levied for debt service for the previous fiscal year and the total property tax levied for the year for which the percentage of change in tax revenue is being calculated less the amount levied for debt service for the year in which the percentage of change in tax revenue is being calculated divided by the total property tax levied for the previous fiscal year less the amount levied for debt service for the previous fiscal year.

(3) Notwithstanding the provisions of section 26-1-122, no county in the state shall be required to contribute more than the amount set forth in subsection (1) of this section in any fiscal year. Nothing in this section shall be construed to limit the ability of a county to establish programs or services provided by the county on its own, without requirements or funding from any other governmental agency.

(4) (Deleted by amendment, L. 2008, p. 1813, § 4, effective June 2, 2008.)

(5) Any amounts remaining in the county social services fund created in section 26-1-123 at the end of any fiscal year shall remain in the county fund for expenditure as determined by the board of county commissioners for administrative costs and program costs of public assistance, medical assistance, and food stamps.

(6) The limitation set forth in this section on the increase in the county share of the administrative costs and program costs of public assistance and food stamps will result in increased costs to the state. By making state funds available, the state is encouraging counties not to exercise any right a county may have pursuant to section 20 (9) of article X of the Colorado constitution to reduce or end its share of the costs of public assistance and food stamps for the county for three fiscal years following the fiscal year in which the state funds are received. If a county accepts funds from the state based on the limitation provided in this section for any fiscal year, the county agrees not to exercise any rights the county may have to reduce or end its share of the costs of public assistance and food stamps for the fiscal year in which the funds are accepted. Nothing in this subsection (6) or any

agreement pursuant to this subsection (6) shall be construed to affect the existence or status of any rights accruing to the state or any county pursuant to section 20 (9) of article X of the Colorado constitution.

(7) In the event that there are any funds remaining in the department of human services budget which were appropriated for fiscal year 1994-95 to cover the additional state share of expenses required as a result of the limitation established in this section, the executive director of the department of human services shall distribute such remaining funds to counties whose assessed valuation declined between calendar year 1992 and 1993 if such county provides evidence to the department in 1994 that the county has a shortfall. Distributions to counties pursuant to this subsection (7) shall be made on a pro rata basis and shall not exceed the amount of the county's shortfall. For purposes of this section, "shortfall" means the amount by which a county's 1992 county share exceeds the property tax revenue collected by the county through its 1992 social services mill levy levied on the county's 1992 assessed valuation.

Source: L. 93: Entire section added, p. 1117, § 27, effective July 1. L. 94: (7) added, p. 2612, § 15, effective July 1. L. 2006: (1) and (6) amended, p. 1992, § 18, effective July 1. L. 2008: (2)(a)(I) and (4) amended, p. 1813, § 4, effective June 2.

Cross references: (1) For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

26-1-123. County social services fund. (1) A fund to be known as the "county social services fund" is hereby created and established in each of the counties of the state of Colorado, which fund shall consist of such accounts as may from time to time be established pursuant to rules of the state board.

(2) The county social services fund shall consist of all moneys appropriated by the board of county commissioners for public assistance and welfare and related purposes; all moneys allotted, allocated, or apportioned to the county by the state department; such funds as are granted to the state of Colorado by the federal government for public assistance and welfare and related purposes and allocated to the county by the state department; and such other moneys as may be provided from time to time from other sources. The fund shall be available for the program and administrative costs of the county department.

(3) (a) The county board shall administer the fund pursuant to rules adopted by the state department. The county treasurer shall be the treasurer and custodian of the fund and shall disburse money from the fund only upon special county social services warrants drawn by the person duly appointed by the county board. The county treasurer shall not collect any fee as provided in section 30-1-102, C.R.S., for the collection or deposit of any moneys in the county social services fund. Warrants shall be signed by one member of the county board, who shall be designated by resolution for that purpose, and also signed by the person duly appointed by the county board. Such signatures shall indicate the approval of the board of county commissioners and the county board of social services. At such time as Title XVI of the social security act, as amended by Public Law 92-603, becomes effective, the state board by rule may make other provision for the issuance and signing of warrants under the old age pension, aid to the blind, and aid to the needy disabled.

(b) All increased bonding fees necessitated by reason of the custody by the county treasurer of the county social services fund shall be a part of the administrative costs of the county department and shall be paid by the county board.

Source: L. 73: R&RE, p. 1176, § 1. C.R.S. 1963: § 119-1-22. L. 79: (2) amended, p. 1085, § 9, effective July 1. L. 97: (1) and (3)(a) amended, p. 1226, § 9, effective July 1.

Cross references: For amount and qualification of official bond of county treasurers in Colorado, see § 30-10-701; for form of bond, see § 30-10-703.

26-1-124. County social services budget. (1) As a part of the county budget and in conformity with the county budget law and the rules of the state board, a county social services budget shall be prepared by the county director and reviewed by the county board.

(2) Before such budget is adopted by the board of county commissioners, it shall be submitted by the county board to the state department for review. The state department review shall include an assessment as to whether the county budget includes adequate funding for the county's maintenance of effort for the Colorado works program created in part 7 of article 2 of this title and the Colorado child care assistance program created in part 8 of article 2 of this title.

(3) The state department shall prescribe budget forms and shall furnish a sufficient number of such forms to the county board without charge.

Source: L. 73: R&RE, p. 1176, § 1. C.R.S. 1963: § 119-1-23. L. 97: Entire section amended, p. 1227, § 10, effective July 1.

ANNOTATION

Contents of budget. The county social services budget is to contain, among other things, the estimated amount required to be raised by county taxation in order to meet the county's

share of the cost of social services. State Bd. of Soc. Servs. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

26-1-125. County social services levy - limitations. (Repealed)

Source: L. 73: R&RE, p. 1176, § 1. C.R.S. 1963: § 119-1-24. L. 77: (1) R&RE, p. 1324, § 3, effective July 1. L. 2008: Entire section repealed, p. 1809, § 1, effective June 2.

26-1-126. County contingency fund - county tax base relief fund - creation.

(1) Repealed.

(1.5) There is hereby created the county tax base relief fund, which shall be expended to supplement county expenditures for public assistance, as provided in this section.

(2) Subject to available appropriations, the state department of human services or the state department of health care policy and financing shall make an advancement, in addition to that provided in section 26-1-122, out of the county tax base relief fund to any county that is eligible for a non-zero amount calculated by using the formula described in subsections (3) and (4) of this section.

(2.1) (a) (Deleted by amendment, L. 2008, p. 1809, § 2, effective June 2, 2008.)

(b) For the fiscal year beginning July 1, 2008, and for each fiscal year thereafter, a county's qualification for an advancement from the county tax base relief fund during the fiscal year shall be based upon a three-tiered system whereby a county may qualify for a distribution of moneys from one or more tiers. For any fiscal year in which appropriations to the county tax base relief fund are insufficient to provide advancements from each tier as described in subsections (3) and (4) of this section:

(I) Any moneys appropriated to the county tax base relief fund shall first be used to provide advancements from tier 1;

(II) If sufficient moneys are appropriated to provide all advancements from tier 1, the remaining moneys shall be used to provide advancements from tier 2; and

(III) If sufficient moneys are appropriated to provide all advancements from tier 1 and tier 2, the remaining moneys shall be used to provide advancements from tier 3.

(3) Subject to available appropriations, the amount of the additional advancement for each county for each month commencing on or after July 1, 2008, shall be the total of amounts calculated for each of the three tiers from which the county qualifies to receive a distribution of moneys pursuant to section 26-1-126 (2.1) (b), as follows:

(a) A distribution of moneys from tier 1 shall be calculated as seventy-five percent of the remainder of the equation X minus Y, where:

(I) X equals the sum of the monthly amount of the county's obligations pursuant to section 26-1-122 and the county share of the monthly amount expended for administrative costs of medical assistance pursuant to section 25.5-1-122, C.R.S., and section 26-1-122; and

(II) Y equals the amount of moneys that would be raised by a levy of 3.0 mills on the property valued for assessment in the county, divided by twelve.

(b) For a county not receiving a distribution of moneys from tier 1, the distribution from tier 2 shall be calculated as fifty percent of the remainder of the equation X minus Y, where:

(I) X equals the sum of the monthly amount of the county's obligations pursuant to section 26-1-122 and the county share of the monthly amount expended for administrative costs of medical assistance pursuant to section 25.5-1-122, C.R.S., and section 26-1-122; and

(II) Y equals the amount of moneys that would be raised by a levy of 2.5 mills on the property valued for assessment in the county, divided by twelve.

(c) For a county that receives a distribution of moneys from tier 1, the distribution from tier 2 shall be calculated as fifty percent of the remainder of the equation X minus Y, where:

(I) X equals the amount of moneys that would be raised by a levy of 3.0 mills on the property valued for assessment in the county, divided by twelve; and

(II) Y equals the amount of moneys that would be raised by a levy of 2.5 mills on the property valued for assessment in the county, divided by twelve.

(d) For a county not receiving a distribution of moneys from tier 2, the distribution from tier 3 shall be calculated as twenty-five percent of the remainder of the equation X minus Y, where:

(I) X equals the sum of the monthly amount of the county's obligations pursuant to section 26-1-122 and the county share of the monthly amount expended for administrative costs of medical assistance pursuant to section 25.5-1-122, C.R.S., and section 26-1-122; and

(II) Y equals the amount of moneys that would be raised by a levy of 2.0 mills on the property valued for assessment in the county, divided by twelve.

(e) For a county that receives a distribution of moneys from tier 2, the distribution from tier 3 shall be calculated as twenty-five percent of the remainder of the equation X minus Y, where:

(I) X equals the amount of moneys that would be raised by a levy of 2.5 mills on the property valued for assessment in the county, divided by twelve; and

(II) Y equals the amount of moneys that would be raised by a levy of 2.0 mills on the property valued for assessment in the county, divided by twelve.

(4) (a) (I) Except as provided in paragraph (b) of subsection (2.1) of this section, in the event appropriations are insufficient to cover advancements from one or more tiers as provided for in this section, the advancements from a tier from which appropriations are insufficient to cover all advancements from that tier shall be advanced to each county that is eligible to receive an advancement from that tier in an equitable manner, such that each such county shall have the same proportion of the county's obligations paid through the combination of its property tax revenue available and its advancement from the county tax base relief fund.

(II) As used in subparagraph (I) of this paragraph (a):

(A) "County's obligations" means a county department's share of the overall cost of providing the assistance payments, food stamps (except the value of food stamp coupons), and social services activities delivered in the county, including the costs allocated to the administration of each, as described in section 26-1-122; and the county share of the administrative costs of medical assistance in the county, as described in section 25.5-1-122, C.R.S.

(B) "Property tax revenue available" means the amount of moneys that would be raised by a levy of 3.0 mills on the property valued for assessment in the county if moneys are insufficient to cover advancements from tier 1, the amount of moneys that would be raised by a levy of 2.5 mills on the property valued for assessment in the county if moneys are insufficient to cover advancements from tier 2, or the amount of moneys that would be

raised by a levy of 2.0 mills on the property valued for assessment in the county if moneys are insufficient to cover advancements from tier 3.

(b) (I) The executive director of the department may, on or after May 1 of any fiscal year and before the forty-fifth day after the close of the fiscal year:

(A) Transfer unexpended general fund moneys in the county tax base relief fund line item of the general appropriation act to offset general fund over-expenditures in the county administration line in the general appropriation act; and

(B) Transfer unexpended general fund moneys in the county administration line in the general appropriation act to offset general fund over-expenditures in the county tax base relief fund line item of the general appropriation act.

(II) The transfers authorized by subparagraph (I) of this paragraph (b) shall be in addition to any other transfers within the department that are authorized by law or that are authorized in the general appropriation act and are required to implement appropriations conditioned on the distribution or transfer of the appropriated amounts.

(III) The total amount of moneys transferred pursuant to subparagraph (I) of this paragraph (b) shall not exceed one million dollars for any fiscal year.

(5) Each county eligible for county tax base relief fund moneys pursuant to this section shall only be responsible for an amount equal to the county's pro rata share of the general assembly's appropriation to the county tax base relief fund. If state and county appropriations are insufficient to meet the administrative and program costs of public assistance and the administrative costs of medical assistance and food stamps, then the executive director of the department of human services, the executive director of the department of health care policy and financing, and the state board of human services shall act pursuant to sections 26-1-121 (1) (c) and 26-1-122 (5) to reduce the rate of expenditure so that it matches the available funds.

(6) Repealed.

Source: **L. 73:** R&RE, p. 1177, § 1. **C.R.S. 1963:** § 119-1-25. **L. 74:** Entire section amended, p. 356, § 1, effective May 17. **L. 75:** (2), (3), and (4) amended, p. 886, § 2, effective July 1. **L. 85:** (2), IP(3), and (4) amended and (5) added, p. 289, § 2, effective June 11. **L. 87:** (2.1) added, p. 1156, § 3, effective June 16. **L. 89:** (2), (2.1)(a), and (3)(b) amended and (2.1)(b) R&RE, pp. 1190, 1191, §§ 1, 3, 2, effective April 5. **L. 93:** (2) and (5) amended, p. 1146, § 86, effective July 1, 1994. **L. 97:** Entire section amended, p. 1227, § 11, effective July 1. **L. 2008:** Entire section amended, p. 1809, § 2, effective June 2. **L. 2010:** (2.1)(b) and (4)(a) amended and (6) added, (SB 10-149), ch. 94, p. 321, § 1, effective April 15. **L. 2011:** (4)(a) amended, (SB 11-228), ch. 156, p. 541, § 1, effective May 5.

Editor's note: (1) Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 2008. (See L. 2008, p. 1809.)

(2) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2012. (See L. 2010, p. 321.)

Cross references: (1) For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

(2) For the provision outlining the general assembly's discretion to establish levels of funding for programs, see § 2-4-215; for limitations on the funding of statutorily created programs, see § 2-4-216.

ANNOTATION

Code funding scheme constitutional. The counties retain sufficient control over the funds raised by levy under the code to be deemed the taxing authorities so that, since the levies fall uniformly upon the same class of property within each county, the funding scheme does not violate the constitutional provision requiring uniformity of taxation. State Dept. of Soc.

Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Financing provisions of social services code not violative of equal protection because a rational relationship exists between the requirement that local entities must support a portion of the costs of programs serving the disadvantaged within their localities and the purposes of the

code. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

This statute requires that state provide sufficient funding to fulfill the justifiable claims of counties eligible for assistance. State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985) (decided prior to 1985 amendment to this section and enactment of § 26-1-126.5).

Subsection (5) does not provide the county with a right to seek judicial review of the actions of a superior agency. Romer v. Bd. of

County Comm'rs of the County of Pueblo, 956 P.2d 566 (Colo. 1998).

The statute does not confer a substantive legal right on a county to sue for monetary damages. Romer v. Bd. of County Comm'rs of the County of Pueblo, 956 P.2d 566 (Colo. 1998).

For discussion of history of Colorado welfare programs and current public assistance financing scheme, see State Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

26-1-126.5. Effect of supreme court's interpretation of section 26-1-126, creating the county contingency fund for public assistance and welfare programs. The general assembly hereby finds and declares that the Colorado supreme court decision entitled *Colorado Department of Social Services v. Board of County Commissioners of the County of Pueblo and Samuel J. Corsentino*, No. 83SA316, March 11, 1985, which interpreted section 26-1-126 to require the general assembly to fully fund the county contingency fund, leaving no discretion with the general assembly to determine annually the level of funding of said fund, has not been adopted by the general assembly. The general assembly specifically rejects this interpretation and any implication in such decision which would result in any state liability for amounts not appropriated for such fund in previous fiscal years.

Source: L. 85: Entire section added, p. 290, § 3, effective June 11.

Cross references: For the provision outlining the general assembly's discretion to establish levels of funding for programs, see § 2-4-215; for limitations on the funding of statutorily created programs, see § 2-4-216; for the Colorado Supreme Court decision *Colorado Department of Social Services v. Board of County Commissioners of the County of Pueblo and Samuel J. Corsentino*, see 697 P.2d 1 (Colo. 1985).

26-1-127. Fraudulent acts. (1) Any person who obtains or any person who willfully aids or abets another to obtain public assistance or vendor payments or medical assistance as defined in this title to which the person is not entitled or in an amount greater than that to which the person is justly entitled or payment of any forfeited installment grants or benefits to which the person is not entitled or in a greater amount than that to which the person is entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor. To the extent not otherwise prohibited by state or federal law, any person violating the provisions of this subsection (1) is disqualified from participation in any public assistance program under article 2 of this title for one year for a first offense, two years for a second offense, and permanently for a third or subsequent offense. Such disqualification is mandatory and is in addition to any other penalty imposed by law.

(1.5) To the extent not otherwise prohibited by state or federal law, any person against whom a county department of social services or the state department obtains a civil judgment in a state or federal court of record in this state based on allegations that the person obtained or willfully aided and abetted another to obtain public assistance or vendor payments or medical assistance as defined in this title to which the person is not entitled or in an amount greater than that to which the person is justly entitled or payment of any forfeited installment grants or benefits to which the person is not entitled or in a greater amount than that to which the person is entitled, by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device, is disqualified from participation in any public assistance program under article 2 of this title for one year for

a first incident, two years for a second incident, and permanently for a third or subsequent incident. Such disqualification is mandatory and is in addition to any other remedy available to a judgment creditor.

(2) (a) If, at any time during the continuance of public assistance under this title, the recipient thereof acquires any property or receives any increase in income or property, or both, in excess of that declared at the time of determination or redetermination of eligibility or if there is any other change in circumstances affecting the recipient's eligibility, it shall be the duty of the recipient to notify the county department within thirty days in writing or take steps to secure county assistance to prepare such notification in writing of the acquisition of such property, receipt of such income, or change in such circumstances; and any recipient of such public assistance who knowingly fails to do so commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If such property or income is received infrequently or irregularly and does not exceed a total value of ninety dollars in any calendar quarter, such property or income shall be excluded from the thirty-day written reporting requirement but shall be reported at the time of the next redetermination of eligibility of a recipient.

(b) The county departments shall use an application form which contains appropriate and conspicuous notice of the penalties for fraud and shall deliver to each recipient, with the first check and each redetermination thereafter, a notice explaining what changes in circumstances require written notification to the county department under paragraph (a) of this subsection (2). The county department shall make available suitable forms which may be used for the purposes of this notification.

(3) Any recipient or vendor who falsifies any report required under this title commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) Subject to available appropriations, additional costs incurred by the district attorneys in enforcing this section shall be billed to the county departments in the judicial district in such proportion for each county as specified in section 20-1-302, C.R.S., and the county departments shall pay such costs as an expense of public assistance administration.

(5) Notwithstanding the provisions of this section, the state department, county departments, or district attorney may elect, in the alternative, to prosecute under the general criminal statutes.

(6) Repealed.

Source: L. 77: Entire section added, p. 1333, § 3, effective January 1, 1978. L. 79: (6) repealed, p. 1093, § 2, effective June 21. L. 81: (1) amended, p. 1371, § 1, effective June 5. L. 89: (1) amended, p. 846, § 118, effective July 1. L. 94: (1) amended and (1.5) added, p. 2062, § 4, effective July 1. L. 97: (1) and (1.5) amended, p. 1229, § 13, effective July 1. L. 2002: (1), (2)(a), and (3) amended, p. 1538, § 272, effective October 1.

Cross references: (1) For fraudulent acts relating to food stamps, see §§ 26-2-305 and 26-2-306; for offenses involving fraud under the "Colorado Criminal Code", see part 1 of article 5 of title 18.

(2) For the legislative declaration contained in the 2002 act amending subsections (1), (2)(a), and (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

26-1-127.5. Prevention of erroneous payments to prisoners - incentives. (1) In the event the identifying information transmitted to the state department and the county departments pursuant to section 17-26-118.5 (2), C.R.S., results in the termination of benefits from any program administered by the state department or county departments, the state department or county department shall pay as a reward to the sheriff ten percent of each of the following:

(a) Any portion of one month's benefit that would have been payable to the incarcerated recipient that consists of state or county moneys;

(b) Any portion of one month's benefit that would have been payable to the incarcerated recipient that consists of federal moneys granted to the state or counties, unless federal law prohibits the use of such grant moneys for the purpose specified in this subsection (1);

(c) Any portion of one month's benefit that would have been payable to the incarcerated recipient that consists of federal moneys made available by waiver for the purpose specified in this subsection (1).

(2) The executive director may apply for any federal waivers necessary to maximize the amount of the incentive payments to sheriffs.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), the state department or county departments shall not pay a reward to a sheriff for providing identifying information pursuant to subsection (1) of this section in connection with a participant in the Colorado works program, created pursuant to part 7 of article 2 of this title, unless the federal government permits any amount paid as a reward to qualify as an expenditure for the purposes of meeting the state maintenance of historic effort required pursuant to section 26-2-713.

(b) The state department or county departments shall not pay a reward as authorized under this section if the state or county costs of implementing the provisions of this section exceed the overall saving of state or county moneys that the state department or county departments estimate shall be realized by implementing this section.

Source: L. 99: Entire section added, p. 553, § 2, effective August 4.

26-1-128. Report required. (Repealed)

Source: L. 77: Entire section added, p. 1336, § 9, effective January 1, 1978. L. 80: Entire section repealed, p. 795, § 56, effective June 5.

26-1-129. Comprehensive information - packet of aged services and programs - implementation. (1) The general assembly hereby finds and declares that, while numerous programs and services are available for the aged, their access to such programs and services is often fragmented due to a lack of knowledge and information, and, as a result, needs which could be met are not. The general assembly further finds that compiling a single information packet on all programs and services would assist the aged in utilizing these programs and services more effectively.

(2) (a) To assist the aged in utilizing existing programs and services for which they may become eligible at sixty-two years of age or older, the state department shall compile a list of all such programs at the federal, state, and local level.

(b) The state department shall supervise the compilation of an information packet containing information on the said programs and services, their eligibility requirements, mode of delivery, and application forms, and shall make a single copy of the compiled information available to specified local agencies serving the aged, including the county departments of social services and the area agencies on aging.

(c) The packet shall contain only the listing of federal, state, and local services and programs, referral agencies, information pamphlets, and application forms. It shall not contain any materials which represent or promote the aims of private agencies or organizations.

(3) The designated local agencies shall:

(a) Provide appropriate assistance to individuals utilizing the information packet; and

(b) Coordinate client referrals to community agencies serving the aged and to institutional and noninstitutional programs, services, and activities within the community, as appropriate.

Source: L. 91: Entire section added, p. 1854, § 2, effective April 11.

26-1-130. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the state department or any authorized agent of said department shall require the applicant's name, address, and social security number.

(2) The state department or any authorized agent of the state department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, and any rules promulgated in furtherance thereof, if the state department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the state department and rules promulgated by the state board for the implementation of this section and section 26-13-126.

(3) (a) The state department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the state department and the state child support enforcement agency with respect to the implementation of this section and section 26-13-126.

(b) The appropriate rule-making body of the state department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the state department or any authorized agent of said department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1286, § 31, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-1-131. (Reserved)

Editor's note: This section was originally enacted in 2004; however section 2 of chapter 328, Session Laws of Colorado 2004, provided that this section would only take effect if the department of human services provided written notice to the revisor of statutes that potential partners for a merger with the Colorado mental health institute were identified. No such notification was received by the revisor of statutes, therefore this section as it appeared in the 2004 Colorado Revised Statutes did not take effect.

26-1-132. Department of human services - rate setting - residential treatment service providers - monitoring and auditing - report. (1) The state department shall develop a rate-setting process consistent with medicaid requirements for providers of residential treatment services in the state of Colorado. Representatives of counties and the provider community shall be involved in the actual development of the rate-setting process. The rate-setting process for rates funded by medicaid shall be approved by the department of health care policy and financing. The rate-setting process developed pursuant to this section may include, but shall not be limited to:

(a) A range for reimbursement that represents a base-treatment rate for serving a child who is subject to out-of-home placement due to dependency and neglect, a child placed in a residential child care facility pursuant to the "Child Mental Health Treatment Act", article 67 of title 27, C.R.S., or a child who has been adjudicated a delinquent, which includes a defined service package to meet the needs of the child;

(b) A request for proposal to contract for specialized service needs of a child, including but not limited to: Substance-abuse treatment services; sex offender services; and services for the developmentally disabled; and

(c) Negotiated incentives for achieving outcomes for the child as defined by the state department, counties, and providers.

(2) In auditing residential treatment providers, the state department shall apply compliance requirements and monitoring functions consistently across all division and monitoring teams.

(3) The rate-setting process developed by the state department, counties, and providers and approved by the department of health care policy and financing pursuant to subsection (1) of this section shall include a two- or three-year implementation timeline with implementation beginning in state fiscal year 2008-09.

(4) (a) The state department, in conjunction with the counties and providers, shall submit an initial report to the joint budget committee of the general assembly on or before January 1, 2008. The report shall include the rate-setting process and the implementation timeline developed pursuant to this section.

(b) The department of health care policy and financing and the state department, in consultation with the representatives of the counties and the provider community, shall review the rate-setting process every two years and shall submit any changes to the joint budget committee of the general assembly.

Source: L. 2005: Entire section added, p. 115, § 1, effective August 8. L. 2006: (1), (3), and (4) amended, p. 1992, § 19, effective July 1. L. 2007: (1)(a), (3), and (4) amended, p. 618, § 3, effective August 3. L. 2010: (1)(a) amended, (SB 10-175), ch. 188, p. 802, § 71, effective April 29.

26-1-133. Colorado mental health institute at Pueblo - forensic unit - authority to enter into lease. (Repealed)

Source: L. 2005: Entire section added, p. 1512, § 1, effective June 9. L. 2006: Entire section repealed, p. 287, § 3, effective March 31.

Editor's note: This section was originally numbered as section 26-1-132 in House Bill 05-1309 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 2006 act repealing this section, see section 1 of chapter 91, Session Laws of Colorado 2006.

26-1-133.5. Rental properties - fund created. (1) The executive director is authorized to rent surplus facilities on the campuses of the various institutions operated by the state department so long as the rentals are not prohibited by contractual agreement, state law, or other legal restrictions on the state department's possession or use of the property. The state department shall not enter into any lease agreement that would endanger the state's ownership of the property or that is expected to result in a financial loss to the state.

(2) All moneys collected from the rental of surplus facilities pursuant to subsection (1) of this section shall be transmitted to the state treasurer, who shall credit the same to the department of human services buildings and grounds cash fund, which fund is hereby created and referred to in this section as the "fund".

(3) The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department to be used in operating, repairing, remodeling, or demolishing the facilities of any properties rented by the state department pursuant to subsection (1) of this section.

(4) Any moneys in the fund not expended for the purposes of subsection (3) of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2008: Entire section added, p. 1344, § 1, effective May 27.

26-1-134. Home- and community-based services for persons with developmental disabilities - cooperation. It is the intent of the general assembly that the department of health care policy and financing and the state department cooperate to the maximum extent possible in designing, implementing, and administering the program authorized under part 4 of article 6 of title 25.5, C.R.S.

Source: L. 2006: Entire section added, p. 1993, § 20, effective July 1.

26-1-135. Child welfare action committee - reporting - cash fund - created. (1) As part of the work done by the governor's child welfare action committee, created by executive order B 006 08, the state department shall make periodic reports of findings and recommendations, including a report of the child welfare action committee's initial recommendations, to the health and human services committees of the senate and the house of representatives, or any successor committees, and the joint budget committee on or before January 31, 2009.

(2) (a) (I) There is hereby created in the state treasury the child welfare action committee cash fund, referred to in this section as the "fund". The fund shall be comprised of moneys transferred to the fund in accordance with paragraph (b) of this subsection (2), moneys credited to the fund pursuant to subsection (3) of this section, and any other moneys appropriated to the fund. All interest earned on the investment of moneys in the fund shall be credited to the fund.

(II) Moneys in the fund are continuously appropriated to the department of human services to pay any necessary expenses related to the governor's child welfare action committee, created by executive order B 006 08, and the implementation of any recommendations of the committee.

(III) Any moneys credited to the fund and unexpended at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(b) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the department of human services for the fiscal year commencing on July 1, 2007, that are unexpended or unencumbered as of the close of the 2007-08 fiscal year shall not revert to the general fund but shall be transferred by the state treasurer and the controller to the child welfare action committee cash fund created in subsection (2) of this section; except that the amount so transferred shall not exceed two hundred thousand dollars.

(c) Notwithstanding any provision of this section to the contrary, the state treasurer shall transfer to the general fund any unexpended and unencumbered moneys remaining in the fund as of July 1, 2011.

(3) The state department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section; except that no gift, grant, or donation may be accepted if it is subject to conditions that are inconsistent with this section or any other law of the state. All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the child welfare action committee cash fund, created in subsection (2) of this section.

Source: L. 2008: Entire section added, p. 1526, § 2, effective May 28. **L. 2011:** (2)(c) added, (SB 11-226), ch. 190, p. 734, § 4, effective May 19.

Cross references: For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 327, Session Laws of Colorado 2008.

26-1-136. Persons in a department of human services facility - medical benefits application assistance - county of residence - rules. (1) (a) Beginning as soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, state department facility personnel shall assist the following persons in applying for medical assistance pursuant to part 1 or 2 of article 5 of title 25.5, C.R.S.:

(I) A person who was receiving medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., immediately prior to entering the state department facility

and is likely to be terminated from receiving medical assistance while committed or otherwise placed or is reasonably expected to meet the eligibility criteria specified in section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., upon release; and

(II) (A) A person who is committed to a state department facility pursuant to part 1 of article 8 of title 16, C.R.S.; or

(B) A person who is a patient or a juvenile who is placed in a state department facility pursuant to court order.

(b) If the person is committed or placed for less than one hundred twenty days, state department personnel shall make a reasonable effort to assist the person in applying for medical assistance as soon as practicable.

(2) As soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, state department facility personnel shall assist the following persons in applying for supplemental security income benefits under Title II of the federal "Social Security Act", 42 U.S.C. sec. 301, et seq., as amended, and in any associated appeals process:

(a) A person who was eligible for supplemental security income benefits under Title II of the federal "Social Security Act", 42 U.S.C. sec. 301, et seq., as amended, immediately prior to entering the state department facility and is likely to be terminated from receiving supplemental security income benefits while committed or otherwise placed, or is reasonably expected to meet the eligibility criteria for supplemental security income benefits upon release; and

(b) (I) A person who is committed to a state department facility pursuant to part 1 of article 8 of title 16, C.R.S.; or

(II) A person who is a patient who is placed in a state department facility pursuant to court order.

(3) The department of health care policy and financing shall provide information and training on medical assistance eligibility requirements and assistance to the facility personnel at each facility to assist in and expedite the application process for medical assistance for a person held in custody who meets the requirements of paragraph (a) of subsection (1) of this section.

(4) The state department shall provide information and education regarding the supplemental security income systems and application processes to personnel at each facility.

(5) (a) For purposes of determining eligibility pursuant to section 25.5-4-205, C.R.S., the county of residence of the person shall be the county specified by the person as his or her county of residence upon release.

(b) The executive director of the department of health care policy and financing shall promulgate rules to simplify the processing of applications for medical assistance pursuant to paragraph (a) of subsection (1) of this section and to allow a person determined to be eligible for such medical assistance to access the medical assistance upon release and thereafter. If a county department determines that a person is eligible for medical assistance, the county shall enroll the person in medicaid effective upon his or her release. At the time of the person's release, the facility personnel shall give the person information and paperwork necessary for the person to access medical assistance. The information shall be provided to the facility by the applicable county department.

(c) Each state department facility shall attempt to enter into prerelease agreements with local social security administration offices, and, if appropriate, the county department or the department of health care policy and financing in order to:

(I) Simplify the processing of applications for medical assistance or for supplemental security income to enroll, effective upon release, a person who is eligible for medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S.; and

(II) Provide the person with the information and paperwork necessary to access medical assistance immediately upon release.

26-1-134. Home- and community-based services for persons with developmental disabilities - cooperation. It is the intent of the general assembly that the department of health care policy and financing and the state department cooperate to the maximum extent possible in designing, implementing, and administering the program authorized under part 4 of article 6 of title 25.5, C.R.S.

Source: L. 2006: Entire section added, p. 1993, § 20, effective July 1.

26-1-135. Child welfare action committee - reporting - cash fund - created. (1) As part of the work done by the governor's child welfare action committee, created by executive order B 006 08, the state department shall make periodic reports of findings and recommendations, including a report of the child welfare action committee's initial recommendations, to the health and human services committees of the senate and the house of representatives, or any successor committees, and the joint budget committee on or before January 31, 2009.

(2) (a) (I) There is hereby created in the state treasury the child welfare action committee cash fund, referred to in this section as the "fund". The fund shall be comprised of moneys transferred to the fund in accordance with paragraph (b) of this subsection (2), moneys credited to the fund pursuant to subsection (3) of this section, and any other moneys appropriated to the fund. All interest earned on the investment of moneys in the fund shall be credited to the fund.

(II) Moneys in the fund are continuously appropriated to the department of human services to pay any necessary expenses related to the governor's child welfare action committee, created by executive order B 006 08, and the implementation of any recommendations of the committee.

(III) Any moneys credited to the fund and unexpended at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(b) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the department of human services for the fiscal year commencing on July 1, 2007, that are unexpended or unencumbered as of the close of the 2007-08 fiscal year shall not revert to the general fund but shall be transferred by the state treasurer and the controller to the child welfare action committee cash fund created in subsection (2) of this section; except that the amount so transferred shall not exceed two hundred thousand dollars.

(c) Notwithstanding any provision of this section to the contrary, the state treasurer shall transfer to the general fund any unexpended and unencumbered moneys remaining in the fund as of July 1, 2011.

(3) The state department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section; except that no gift, grant, or donation may be accepted if it is subject to conditions that are inconsistent with this section or any other law of the state. All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the child welfare action committee cash fund, created in subsection (2) of this section.

Source: L. 2008: Entire section added, p. 1526, § 2, effective May 28. **L. 2011:** (2)(c) added, (SB 11-226), ch. 190, p. 734, § 4, effective May 19.

Cross references: For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 327, Session Laws of Colorado 2008.

26-1-136. Persons in a department of human services facility - medical benefits application assistance - county of residence - rules. (1) (a) Beginning as soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, state department facility personnel shall assist the following persons in applying for medical assistance pursuant to part 1 or 2 of article 5 of title 25.5, C.R.S.:

(I) A person who was receiving medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., immediately prior to entering the state department facility

and is likely to be terminated from receiving medical assistance while committed or otherwise placed or is reasonably expected to meet the eligibility criteria specified in section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S., upon release; and

(II) (A) A person who is committed to a state department facility pursuant to part 1 of article 8 of title 16, C.R.S.; or

(B) A person who is a patient or a juvenile who is placed in a state department facility pursuant to court order.

(b) If the person is committed or placed for less than one hundred twenty days, state department personnel shall make a reasonable effort to assist the person in applying for medical assistance as soon as practicable.

(2) As soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, state department facility personnel shall assist the following persons in applying for supplemental security income benefits under Title II of the federal "Social Security Act", 42 U.S.C. sec. 301, et seq., as amended, and in any associated appeals process:

(a) A person who was eligible for supplemental security income benefits under Title II of the federal "Social Security Act", 42 U.S.C. sec. 301, et seq., as amended, immediately prior to entering the state department facility and is likely to be terminated from receiving supplemental security income benefits while committed or otherwise placed, or is reasonably expected to meet the eligibility criteria for supplemental security income benefits upon release; and

(b) (I) A person who is committed to a state department facility pursuant to part 1 of article 8 of title 16, C.R.S.; or

(II) A person who is a patient who is placed in a state department facility pursuant to court order.

(3) The department of health care policy and financing shall provide information and training on medical assistance eligibility requirements and assistance to the facility personnel at each facility to assist in and expedite the application process for medical assistance for a person held in custody who meets the requirements of paragraph (a) of subsection (1) of this section.

(4) The state department shall provide information and education regarding the supplemental security income systems and application processes to personnel at each facility.

(5) (a) For purposes of determining eligibility pursuant to section 25.5-4-205, C.R.S., the county of residence of the person shall be the county specified by the person as his or her county of residence upon release.

(b) The executive director of the department of health care policy and financing shall promulgate rules to simplify the processing of applications for medical assistance pursuant to paragraph (a) of subsection (1) of this section and to allow a person determined to be eligible for such medical assistance to access the medical assistance upon release and thereafter. If a county department determines that a person is eligible for medical assistance, the county shall enroll the person in medicaid effective upon his or her release. At the time of the person's release, the facility personnel shall give the person information and paperwork necessary for the person to access medical assistance. The information shall be provided to the facility by the applicable county department.

(c) Each state department facility shall attempt to enter into prerelease agreements with local social security administration offices, and, if appropriate, the county department or the department of health care policy and financing in order to:

(I) Simplify the processing of applications for medical assistance or for supplemental security income to enroll, effective upon release, a person who is eligible for medical assistance pursuant to section 25.5-5-101 (1) (f) or 25.5-5-201 (1) (j), C.R.S.; and

(II) Provide the person with the information and paperwork necessary to access medical assistance immediately upon release.

26-1-137. Persons committed to or placed in a department of human services facility - prohibition against the use of restraints on pregnant women. (1) As used in this section, “facility staff” means the staff of a state department facility or facility supervised by the executive director.

(2) Facility staff, in restraining a woman who is committed to or placed pursuant to this title or title 27, C.R.S., in a state department facility or a facility supervised by the executive director, shall use the least restrictive restraint necessary to ensure safety if the facility staff have actual knowledge or a reasonable belief that the woman is pregnant. The requirement that staff use the least restrictive restraints necessary to ensure safety shall continue during postpartum recovery and transport to or from a facility.

(3) (a) (I) Facility staff or medical staff shall not use restraints of any kind on a pregnant woman during labor and delivery of the child; except that staff may use restraints if:

(A) The medical staff determine that restraints are medically necessary for safe childbirth;

(B) The facility staff or medical staff determine that the woman presents an immediate and serious risk of harm to herself, to other patients, or to medical staff; or

(C) The facility staff determine that the woman poses a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (a) to the contrary, under no circumstances shall staff use leg shackles or waist restraints on a pregnant woman during labor and delivery of the child, postpartum recovery while in a medical facility, or transport to or from a medical facility for childbirth.

(b) The facility or medical staff authorizing the use of restraints on a pregnant woman during labor or delivery of the child shall make a written record of the use of restraints, which record shall include, at a minimum, the type of restraint used, the circumstances that necessitated the use of the restraint, and the length of time the restraint was used. The state department shall retain the record for a minimum of five years and shall make the record available for public inspection with individually identifying information redacted from the record unless the woman who is the subject of the record gives prior written consent for the public release of the record. The written record of the use of restraint shall not constitute a medical record under state or federal law.

(4) After childbirth and upon return to a state department facility or a facility supervised by the executive director, the woman shall be entitled to have a member of the state department’s medical staff present during any strip search.

(5) When a woman’s pregnancy is determined, the facility staff shall inform a pregnant woman committed to or placed in a state department facility or a facility supervised by the executive director in writing in a language and in a manner understandable to the woman of the provisions of this section concerning the use of restraints and the presence of medical staff during a strip search.

(6) The executive director shall ensure that facility staff receive adequate training concerning the provisions of this section.

Source: L. 2010: Entire section added, (SB 10-193), ch. 312, p. 1467, § 4, effective January 1, 2011.

26-1-138. Memorandum of understanding - notification of risk - rules. (1) On or before July 1, 2011, the department of human services and the department of education shall enter into a memorandum of understanding, pursuant to section 22-2-139, C.R.S., concerning the enrollment of students in the public school system from a state-licensed day treatment facility, facility school, or hospital licensed or certified pursuant to section 25-3-101, C.R.S.

(2) The state board may promulgate rules pursuant to the “State Administrative Procedure Act”, article 4 of title 24, C.R.S., concerning the implementation of the memorandum of understanding, including but not limited to rules regarding notification of and sharing of information as described in section 22-2-139, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1274), ch. 271, p. 1251, § 6, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 271, Session Laws of Colorado 2010.

26-1-139. Child fatality and near fatality prevention - legislative declaration - process - department of human services child fatality review team - reporting - rules.

(1) The general assembly hereby finds and declares that:

(a) It is of the utmost importance and a community responsibility to mitigate the incidents of egregious abuse or neglect, near deaths, or deaths of children in the state due to abuse or neglect. Professionals from disparate disciplines share responsibilities for the safety and well-being of children as well as expertise that can promote that safety and well-being. Multidisciplinary reviews of the incidents of egregious abuse or neglect, near deaths, or deaths of children due to abuse or neglect can lead to a better understanding of the causes of such tragedies and, more importantly, methods of mitigating future incidents of egregious abuse or neglect, near deaths, or deaths.

(b) There is a need for agency transparency and accountability to the public regarding an incident of egregious abuse or neglect against a child, a near fatality, or a child fatality that involves a suspicion of abuse or neglect when the child or family has had previous involvement with the state or county that was directly related to the incident.

(c) There is a need for a multidisciplinary team to conduct in-depth case reviews after an incident of egregious abuse or neglect against a child, a near fatality, or a child fatality that involves a suspicion of abuse or neglect and when the child or family has had previous involvement, that was directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality, with a county department within two years prior to the incident. The multidisciplinary review would complement that of the review conducted by the Colorado state child fatality prevention review team in the department of public health and environment pursuant to article 20.5 of title 25, C.R.S. The goal of the multidisciplinary review shall not be to affix blame, but rather to improve understanding of why the incidents of egregious abuse or neglect against a child, near fatalities, or fatalities occur and develop recommendations for mitigation of future incidents of egregious abuse or neglect against a child, near fatalities, or fatalities.

(d) It is the intent of the general assembly to codify the department of human services child fatality review team as well as modify certain aspects of its processes to promote an understanding of the causes of each child's death or near death incident due to abuse or neglect, identify systemic deficiencies in the delivery of services and supports to children and families, and recommend changes to help mitigate future incidents of egregious abuse or neglect against a child, near fatalities, or child deaths.

(e) It is further the intent of the general assembly to comply with the federal "Child Abuse Prevention and Treatment Act", 42 U.S.C. sec. 5101 et seq., which requires states to allow for public disclosure of the findings or information about a case of child abuse or neglect that resulted in a child fatality or near fatality.

(2) As used in this section, unless the context otherwise requires:

(a) "Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect involving significant violence, torture, use of cruel restraints, or other similar, aggravated circumstances that may be further defined in rules promulgated by the state department pursuant to this section.

(b) "Near fatality" means a case in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(c) "Previous involvement" means a situation in which the county department has received a referral, responded to a report, opened an assessment, provided services, or opened a case in the Colorado TRAILS system; except that the following situations shall not be considered to be "previous involvement":

(I) The situation did not involve abuse or neglect;

(II) The situation occurred when the parent was seventeen years of age or younger and before he or she was the parent of the deceased child; or

(III) The situation occurred with a different family composition and a different alleged perpetrator.

(d) “Suspicious fatality or near fatality” means a fatality or near fatality that is more likely than not to have been caused by abuse or neglect.

(e) “Team” means the department of human services child fatality review team established in rules promulgated pursuant to section 26-1-111 and codified pursuant to subsection (3) of this section.

(3) There is hereby established in the state department the department of human services child fatality review team. The team shall have the following objectives:

(a) To assess the records of each case in which a suspicious incident of egregious abuse or neglect against a child, near fatality, or child fatality occurred and the child or family had previous involvement with a county department that was directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality within two years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality;

(b) To understand the causes of the reviewed incidents of egregious abuse or neglect against a child, near fatalities, or child fatalities;

(c) To identify any gaps or deficiencies that may exist in the delivery of services to children and their families by public agencies that are designed to mitigate future child abuse, neglect, or death; and

(d) To make recommendations for changes to laws, rules, and policies that will support the safe and healthy development of Colorado’s children.

(4) The team shall have the following duties:

(a) To review the circumstances around the incident of egregious abuse or neglect against a child, near fatality, or child fatality;

(b) To review the services provided to the child, the child’s family, and the perpetrator by the county department for any county with which the family has had previous involvement that was directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality in the two years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality;

(c) To review records and interview individuals, as deemed necessary and not otherwise prohibited by law, involved with or having knowledge of the facts of the incident of egregious abuse or neglect against a child, near fatality, or fatality, including but not limited to all other state and local agencies having previous involvement with the child or family that was directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality within two years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality;

(d) To review the county department’s compliance with statutes, regulations, and relevant policies and procedures that are directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality;

(e) To identify strengths and best practices of service delivery to the child and the child’s family;

(f) To identify factors that may have contributed to conditions leading to the incident of egregious abuse or neglect against a child, near fatality, or fatality, including, but not limited to, lack of or unsafe housing, family and social supports, educational life, physical health, emotional and psychological health, and other safety, crisis, and cultural or ethnic issues;

(g) To review supports and services provided to siblings, family members, and agency staff after the incident of egregious abuse or neglect against a child, near fatality, or fatality;

(h) To identify the quality and sufficiency of coordination between state and local agencies;

(i) To develop and distribute the following reports, the content of which shall be determined by rules promulgated by the state department pursuant to subsection (7) of this section:

(I) On or before April 30, 2013, and each April 30 thereafter, an annual child fatality and near fatality review report, absent confidential information, summarizing the reviews

required by subsection (5) of this section conducted by the team during the previous year. The team shall post the annual child fatality and near fatality review report on the state department's web site and distribute it to the Colorado state child fatality prevention review team established in the department of public health and environment pursuant to section 25-20.5-406, C.R.S., the governor, the health and human services committee of the senate, and the health and environment committee of the house of representatives, or any successor committees. The annual child fatality and near fatality review report shall be prepared within existing resources.

(II) The final confidential, case-specific review report required pursuant to subsection (5) of this section for each child fatality, near fatality, or incident of egregious abuse or neglect. The final confidential, case-specific review report shall be submitted to the Colorado state child fatality prevention review team established in the department of public health and environment pursuant to section 25-20.5-406, C.R.S.

(III) A case-specific executive summary, absent confidential information, of each incident of egregious abuse or neglect against a child, near fatality, or child fatality reviewed. The team shall post the case-specific executive summary on the state department's web site.

(5) (a) Each county department shall report to the state department any suspicious incident of egregious abuse or neglect against a child, near fatality, or fatality of a child within twenty-four hours of the incident of egregious abuse or neglect against a child, near fatality, or fatality. If the county department has had previous involvement that was directly related to the incident of egregious abuse or neglect against a child, near fatality, or child fatality within two years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality, the county department shall provide the state department with all relevant reports and documentation regarding its previous involvement with the child within sixty calendar days after the incident of egregious abuse or neglect against a child, near fatality, or fatality. The state department may grant, at its discretion, an extension to a county department for delays outside of the county department's control regarding the receipt of all relevant reports and information critical to an effective review, including but not limited to the final autopsy and law enforcement reports, until such documents can be made available for review by the team.

(b) Within three business days after receiving the information provided under paragraph (a) of this subsection (5), the department shall disclose to the public that information has been received, whether the department is conducting a review of the incident, whether the child was in his or her own home or in foster care, as defined in section 19-1-103 (51.3), C.R.S., and the child's gender and age. The department may disclose the scope of the review.

(c) The team shall complete its review of each incident of egregious abuse or neglect, near fatality, or fatality, draft a confidential, case-specific review report and submit the draft report to any county department with previous involvement within thirty calendar days after the review team meeting. Any county department with previous involvement shall have thirty calendar days after the completion of the draft confidential, case-specific review report to review the draft confidential, case-specific review report and provide a written response to be included in the final confidential, case-specific review report. A confidential, case-specific review report shall be finalized and submitted pursuant to paragraph (e) of this subsection (5) no more than thirty calendar days after the county department's response is received by the team or upon confirmation in writing from the county department that a written response will not be provided.

(d) The proceedings, records, opinions, and deliberations of the department of human services child fatality review team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the state department or county department. Nothing in this paragraph (d) shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the department of human services child fatality review team.

(e) The final confidential, case-specific review report shall be provided to the executive director, the director for any county or community agency referenced in the report, the

county commissioners of any county department with previous involvement, the legislative members of the team appointed pursuant to paragraph (f) of subsection (6) of this section, and the department of public health and environment.

(f) The state department shall post on its web site, within seven business days after the report's finalization, a case-specific executive summary of the final confidential, case-specific review report, absent confidential information as described in paragraph (i) of this subsection (5), of each incident of egregious abuse or neglect against a child, near fatality, or child fatality reviewed pursuant to this section.

(g) The case-specific executive summary for a child who was in his or her own home at the time of the incident shall include:

(I) The age and gender of the child and a description of the child's family;

(II) A statement of whether any child welfare services, as defined in section 26-5-101 (3), were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect;

(III) The date of the last contact between the agency providing any child welfare service and the child, the child's family, or the person suspected of the abuse or neglect; and

(IV) Any other information required by rules promulgated by the state department pursuant to subsection (7) of this section.

(h) The case-specific executive summary for a child who was in foster care, as defined in section 19-1-103 (51.3), C.R.S., at the time of the incident shall include:

(I) The age, gender, and race or ethnicity of the child;

(II) A description of the foster care placement;

(III) The licensing history of the foster care placement; and

(IV) Any other information required by rules promulgated by the state department pursuant to subsection (7) of this section.

(i) The case-specific executive summary or other release or disclosure of information pursuant to this section shall not include:

(I) Any information that would reveal the identity of the child who is the subject of the executive summary, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child;

(II) Any information that would reveal the identity of the person suspected of the abuse or neglect or any employee of any agency that provided child welfare services, as defined in section 26-5-101 (3), to the child or that participated in the investigation of the incident of fatality, near fatality, or egregious abuse or neglect;

(III) Any information that would reveal the identity of a reporter or of any other person who provides information relating to the incident of fatality, near fatality, or egregious abuse or neglect;

(IV) Any information which, if disclosed, would not be in the best interests of the child who is the subject of the report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child, as determined by the state department in consultation with the county that reported the incident of fatality, near fatality, or egregious abuse or neglect and the district attorney of the county in which the incident occurred, and after balancing the interests of the child, family, household member, or caregiver in avoiding the stigma that might result from disclosure against the interest of the public in obtaining the information.

(V) Any information for which disclosure is not authorized by state law or rule or federal law or regulation.

(j) The state department may not release the case-specific executive summary if the state department, in consultation with the county, determines that making the executive summary available would jeopardize any of the following:

(I) Any ongoing criminal investigation or prosecution or a defendant's right to a fair trial; or

(II) Any ongoing or future civil investigation or proceeding or the fairness of such proceeding.

(k) If at any point in the review process it is determined that the incident of egregious abuse or neglect against a child, near fatality, or fatality is not the result of abuse or neglect, the review shall cease.

(l) The state department or any county department may release to the public any information at any time to correct any inaccurate information reported in the news media, so long as the information released by the state department or county department is not explicitly in conflict with federal law.

(6) The team consists of up to twenty members, appointed on or before September 30, 2011, as follows:

- (a) Three members from the state department, appointed by the executive director;
- (b) Two members from the department of public health and environment, appointed by the executive director of said department;
- (c) Three members representing county departments, appointed by a statewide organization representing county commissioners;
- (d) At least eight additional multidisciplinary members, to be appointed by the members described in paragraphs (a) to (c) of this subsection (6), including but not limited to representatives from the office of the child protection ombudsman and from the fields of child protection, physical medicine, mental health, education, law enforcement, district attorneys, child advocacy, and any others as deemed appropriate;

(e) For the purposes of participating in a specific case review, additional members may be appointed at the discretion of the members described in paragraphs (a) to (c) of this subsection (6) to represent agencies involved with the child or the child's family in the twelve months prior to the incident of egregious abuse or neglect against a child, a near fatality, or fatality; and

(f) One member from the health and environment committee of the house of representatives or any successor committee, to be appointed by the speaker of the house of representatives, and one member from the health and human services committee of the senate or any successor committee, to be appointed by the president of the senate. The members appointed pursuant to this paragraph (f) are nonvoting members and are not required to be present at any meeting of the team.

(7) The state department shall promulgate additional rules, as necessary, for the implementation of this section, including but not limited to the confidentiality of information in incidents of egregious abuse or neglect against a child, near fatalities, or child fatalities.

Source: L. 2011: Entire section added, (HB 11-1181), ch. 120, p. 375, § 1, effective April 20. **L. 2012:** Entire section amended, (SB 12-033), ch. 91, p. 295, § 1, effective April 12.

PART 2

PROGRAMS ADMINISTERED BY THE DEPARTMENT

Cross references: For the legislative declaration contained in the 1993 act enacting this part 2, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-1-201. Programs administered - services provided - department of human services. (1) This section specifies the programs to be administered and the services to be provided by the department of human services. These programs and services include the following:

- (a) Alcohol and drug abuse programs, as specified in article 80 of title 27, C.R.S.;
- (b) Alcoholism and intoxication treatment programs, as specified in article 81 of title 27, C.R.S.;
- (c) Drug abuse prevention, education, and treatment programs, as specified in article 82 of title 27, C.R.S.;
- (d) Public assistance programs, as specified in article 2 of this title;
- (e) Protective services for adults at risk of mistreatment or self-neglect, as specified in article 3.1 of this title;
- (f) Child welfare services, as specified in article 5 of this title;
- (g) The "Colorado Family Preservation Act", as specified in article 5.5 of this title;

- (h) The “Child Care Licensing Act”, as specified in article 6 of this title;
- (i) The subsidization of adoption program, as specified in article 7 of this title;
- (j) The domestic abuse programs, as specified in article 7.5 of this title;
- (k) The homeless prevention activities program, as specified in article 7.8 of this title;
- (l) The vocational rehabilitation programs, as specified in article 8 of this title;
- (m) Independent living programs, as specified in article 8.1 of this title;
- (n) The products of the rehabilitation center for the visually impaired program, as specified in article 8.2 of this title;
- (o) The blind-made products program, as specified in article 8.3 of this title;
- (p) The vending facilities in state buildings program, as specified in article 8.5 of this title;
- (q) and (r) Repealed.
- (s) The “Older Coloradans’ Act”, as specified in article 11 of this title;
- (t) The “Colorado Long-term Care Ombudsman Act”, as specified in article 11.5 of this title;
- (u) The state homes for the aged, as specified in article 12 of this title;
- (v) The “Colorado Child Support Enforcement Act”, as specified in article 13 of this title;
- (w) The “Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support”, as specified in article 13.5 of this title;
- (x) Programs for the care and treatment of persons with mental illness, as specified in article 65 of title 27, C.R.S.;
- (y) Programs for the care and treatment of the developmentally disabled, as specified in article 10.5 of title 27, C.R.S.;
- (z) Charges for patients, as set forth in article 92 of title 27, C.R.S.;
- (aa) The Colorado mental health institute at Pueblo, as specified in article 93 of title 27, C.R.S.; and
- (bb) The Colorado mental health institute at Fort Logan, as specified in article 94 of title 27, C.R.S.

Source: **L. 93:** Entire part added, p. 1118, § 28, effective July 1, 1994. **L. 96:** (1)(h) amended, p. 267, § 21, effective July 1. **L. 97:** (1)(m) amended, p. 1172, § 2, effective May 28. **L. 2002:** (1)(q) and (1)(r) repealed, p. 360, § 18, effective July 1. **L. 2006:** (1)(d) amended, p. 1993, § 21, effective July 1; (1)(x) amended, p. 1405, § 66, effective August 7. **L. 2010:** (1)(a), (1)(b), (1)(c), (1)(x), (1)(z), (1)(aa), and (1)(bb) amended, (SB 10-175), ch. 188, p. 802, § 72, effective April 29.

Cross references: For the legislative declaration contained in the 2002 act repealing subsections (1)(q) and (1)(r), see section 1 of chapter 121, Session Laws of Colorado 2002.

PART 3

COLORADO TRAUMATIC BRAIN INJURY PROGRAM

26-1-301. Definitions. As used in this part 3, unless the context otherwise requires:

- (1) “Board” means the Colorado traumatic brain injury trust fund board created pursuant to section 26-1-302.
- (2) “Program” means the services provided pursuant to sections 26-1-303 and 26-1-304.
- (3) “Traumatic brain injury” means injury to the brain caused by physical trauma resulting from but not limited to incidents involving motor vehicles, sporting events, falls, blast injuries, and physical assaults. Documentation of traumatic brain injury shall be based on adequate medical history, neurological examination, including mental status testing or neuropsychological evaluation. Where appropriate, neuroimaging may be used to support the diagnosis. A traumatic brain injury shall be of sufficient severity to produce partial or total disability as a result of impaired cognitive ability and physical function.

(4) "Trust fund" means the Colorado traumatic brain injury trust fund created in section 26-1-309.

Source: L. 2002: Entire section added, p. 1604, § 1, effective January 1, 2003. L. 2003: (3) amended, p. 1998, § 48, effective May 22. L. 2009: IP, (1), and (3) amended, (SB 09-005), ch. 135, p. 587, § 1, effective April 20.

Editor's note: This section was enacted as 26-1-202 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-302. Colorado traumatic brain injury trust fund board - creation - powers and duties. (1) There is hereby created the Colorado traumatic brain injury trust fund board within the state department of human services. The board shall exercise its powers and duties as if transferred by a **type 2** transfer.

(2) The board shall be composed of:

(a) The executive director of the state department of human services or the executive director's designee;

(b) The president of a state brain injury association or the president's designee, who shall be appointed by the executive director of the state department of human services;

(c) The executive director of the department of public health and environment or the executive director's designee; and

(d) No more than ten additional persons with an interest and expertise in the area of traumatic brain injury whom the governor shall appoint with the consent of the senate. The additional board members may include, but need not be limited to, any combination of the following professions or associations with traumatic brain injury:

(I) Physicians with experience and strong interest in the provision of care to persons with traumatic brain injuries, including but not limited to neurologists, neuropsychiatrists, physiatrists, or other medical doctors who have direct experience working with persons with traumatic brain injuries;

(II) Social workers, nurses, neuropsychologists, or clinical psychologists who have experience working with persons with traumatic brain injuries;

(III) Rehabilitation specialists, such as speech pathologists, vocational rehabilitation counselors, occupational therapists, or physical therapists, who have experience working with persons with traumatic brain injuries;

(IV) Clinical research scientists who have experience evaluating persons with traumatic brain injuries;

(V) Civilian or military persons with traumatic brain injuries or family members of such persons with traumatic brain injuries;

(VI) Persons whose expertise involves work with children with traumatic brain injuries; or

(VII) Persons who have experience and specific interest in the needs of and services for persons with traumatic brain injuries.

(3) Board members shall not be compensated for serving on the board, but may be reimbursed for all reasonable expenses related to such members' work for the board.

(4) Initial appointments to the board shall be made no later than March 1, 2003. The terms of appointed board members shall be three years; except that the terms of the appointed members who are initially appointed shall be staggered by the governor to end as follows:

(a) Four members on June 30, 2004;

(b) Three members on June 30, 2005; and

(c) Three members on June 30, 2006.

(5) No member may serve more than two consecutive terms.

(6) The appointed members of the board shall, to the extent possible, represent rural and urban areas of the state.

(7) The board shall annually elect, by majority vote, a chairperson from among the board members who shall act as the presiding officer of the board.

(8) (a) The board shall promulgate reasonable policies and procedures pertaining to the operation of the trust fund.

(b) The board may contract with entities to provide all or part of the services described in this part 3 for persons with traumatic brain injuries.

(c) The board may accept and expend gifts, grants, and donations for operation of the program.

(d) The board shall use trust fund moneys collected pursuant to sections 30-15-402 (3), 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., to provide direct services to persons with traumatic brain injuries, support research, and support education grants to increase awareness and understanding of issues and needs related to traumatic brain injury.

(9) Articles 4, 5, and 6 of title 25.5, C.R.S., shall not apply to the promulgation of any policies or procedures authorized by subsection (8) of this section.

Source: L. 2002: Entire section added, p. 1605, § 1, effective January 1, 2003. L. 2006: (9) amended, p. 2016, § 95, effective July 1. L. 2009: (1), (2), and (8) amended, (SB 09-005), ch. 135, p. 587, § 2, effective April 20. L. 2010: (8)(d) amended, (HB 10-1347), ch. 258, p. 1159, § 7, effective July 1.

Editor's note: This section was enacted as 26-1-203 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-303. Administering entity for services for persons with traumatic brain injuries. (1) An administering entity under contract pursuant to section 26-1-302 may perform all or part of the administrative, eligibility, case management, and claims payment functions relating to the program, including:

(a) Assuring timely payment of grants or requests, including:

(I) Making available information relating to the proper manner of submitting a grant or request for benefits to the program and providing forms upon which submissions shall be made;

(II) Evaluating the eligibility of each grant or request for payment pursuant to guidelines established by the board;

(III) Notifying each applicant, within thirty days after receiving a properly completed and executed proof of grant or request, whether the grant or request is accepted or rejected;

(IV) Ensuring that each accepted grant or request is paid within forty-five days after its acceptance;

(b) Paying grant or request expenses from the moneys in the trust fund; and

(c) Determining the expense of administration and the paid and incurred losses for each year and reporting such information to the board.

(2) The administering entity shall be paid in compliance with policies and procedures established by the board.

(3) If the board does not contract with an administering entity to provide all or part of the services described in this part 3 for persons with traumatic brain injuries, the department shall undertake to provide such services to the best of its ability.

Source: L. 2002: Entire section added, p. 1606, § 1, effective January 1, 2003.

Editor's note: This section was enacted as 26-1-204 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-304. Services for persons with traumatic brain injuries - limitations - covered services. (1) The board shall determine the percentage of moneys credited to the trust fund to be spent annually on direct services for persons with traumatic brain injuries; however, no less than fifty-five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to provide direct services to persons with traumatic brain injuries.

(2) To be eligible for assistance from the trust fund, an individual shall have exhausted all other health or rehabilitation benefit funding sources that cover the services provided by the trust fund. An individual shall not be required to exhaust all private funds in order to be eligible for the program. Individuals who have continuing health insurance benefits, including, but not limited to, medical assistance pursuant to articles 4, 5, and 6 of title 25.5, C.R.S., may access the trust fund for services that are necessary but that are not covered by a health benefit plan, as defined in section 10-16-102 (21), C.R.S., or any other funding source.

(3) (a) All individuals receiving assistance from the trust fund shall receive case management services from the designated entity pursuant to section 26-1-303 or the department.

(b) The case management agency, in coordination with the eligible individual, the individual's family or guardian, and the individual's physician, shall include in each case plan a process by which the eligible individual may receive necessary care, which may include respite care, if the eligible individual's service provider is unavailable due to an emergency situation or unforeseen circumstances. The eligible individual and the individual's family or guardian shall be duly informed by the case management agency of these alternative care provisions at the time the case plan is initiated.

(4) The board may monitor, and, if necessary, implement criteria to ensure that there are no abuses in expenditures, including, but not limited to, reasonable and equitable provider's fees and services.

(5) (a) Services covered by the trust fund may include, but shall not be limited to:

- (I) Case management;
- (II) Community residential services;
- (III) Structured day program services;
- (IV) Psychological and mental health services for the individual with the traumatic brain injury and the individual's family;
- (V) Prevocational services;
- (VI) Supported employment;
- (VII) Companion services;
- (VIII) Respite care;
- (IX) Occupational therapy;
- (X) Speech and language therapy;
- (XI) Cognitive rehabilitation;
- (XII) Physical rehabilitation; and
- (XIII) One-time home modifications.

(b) Covered services shall not include institutionalization, hospitalization, or medications.

Source: L. 2002: Entire section added, p. 1607, § 1, effective January 1, 2003. L. 2003: (1) amended, p. 1998, § 49, effective May 22. L. 2004: (3) amended, p. 480, § 2, effective August 4. L. 2006: (2) amended, p. 2016, § 96, effective July 1. L. 2009: (1) amended, (SB 09-005), ch. 135, p. 589, § 3, effective April 20. L. 2010: (1) amended, (HB 10-1347), ch. 258, p. 1160, § 8, effective July 1.

Editor's note: This section was enacted as 26-1-205 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-305. Education about traumatic brain injury. The board shall determine the percentage of moneys credited to the trust fund to be spent annually on education related to traumatic brain injuries; however, no less than five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to provide education related to increasing the understanding of traumatic brain injury.

Source: **L. 2002:** Entire section added, p. 1608, § 1, effective January 1, 2003. **L. 2003:** Entire section amended, p. 1998, § 50, effective May 22. **L. 2009:** Entire section amended, (SB 09-005), ch. 135, p. 590, § 4, effective April 20; entire section amended, (SB 09-292), ch. 369, p. 1986, § 131, effective August 5. **L. 2010:** Entire section amended, (HB 10-1347), ch. 258, p. 1160, § 9, effective July 1.

Editor's note: This section was enacted as 26-1-206 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-306. Research related to treatment of traumatic brain injuries - grants.

(1) The board shall determine the percentage of moneys credited to the trust fund to be spent annually on research related to traumatic brain injuries; however, no less than twenty-five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to support research related to the treatment and understanding of traumatic brain injuries.

(2) The board shall award grants. Persons interested in a grant shall apply to the board in a manner prescribed by the board. The board may consult with educational institutions or other private institutions within Colorado and nationally regarding the merit of an application for a grant. The board shall determine the time frames and administration of the grant program.

Source: **L. 2002:** Entire section added, p. 1608, § 1, effective January 1, 2003. **L. 2003:** (1) amended, p. 1998, § 51, effective May 22. **L. 2009:** (1) amended, (SB 09-005), ch. 135, p. 590, § 5, effective April 20. **L. 2010:** (1) amended, (HB 10-1347), ch. 258, p. 1160, § 10, effective July 1.

Editor's note: This section was enacted as 26-1-207 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-307. Administrative costs. The administrative expenses of the board and the state department shall be paid from moneys in the trust fund. The joint budget committee shall annually appropriate moneys from the trust fund to pay for the administrative expenses of the program.

Source: **L. 2002:** Entire section added, p. 1608, § 1, effective January 1, 2003. **L. 2009:** Entire section amended, (SB 09-005), ch. 135, p. 590, § 6, effective April 20.

Editor's note: This section was enacted as 26-1-208 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-308. General fund moneys. Except for initial computer programing costs for the department of revenue, it is the intent of the general assembly that no general fund moneys be appropriated for the implementation, operation, or administration of the trust fund and the services provided by the trust fund.

Source: **L. 2002:** Entire section added, p. 1608, § 1, effective January 1, 2003.

Editor's note: This section was enacted as 26-1-209 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-309. Trust fund. (1) There is hereby created in the state treasury the Colorado traumatic brain injury trust fund. The trust fund shall consist of any moneys collected from surcharges assessed pursuant to sections 30-15-402 (3), 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S. The moneys in the trust fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this part 3.

(2) Gifts, grants, donations, or any other moneys that may be made available may be accepted by the trust fund or the board for purposes of the trust fund.

(3) The trust fund shall be a continuing trust fund. All interest earned upon moneys in the trust fund and deposited or invested may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(4) The trust fund revenue and its reserves shall be used solely for the purposes and in the manner described in sections 26-1-304 to 26-1-307.

(5) All unexpended and unencumbered moneys remaining in the trust fund shall remain in the trust fund.

Source: **L. 2002:** Entire section added, p. 1609, § 1, effective January 1, 2003. **L. 2003:** (1) amended, p. 1999, § 52, effective May 22. **L. 2009:** (1) amended and (4) and (5) added, (SB 09-005), ch. 135, p. 590, § 7, effective April 20. **L. 2010:** (1) amended, (HB 10-1347), ch. 258, p. 1160, § 11, effective July 1.

Editor's note: This section was enacted as 26-1-210 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-310. Reports to the general assembly. On September 1, 2009, and each September 1 thereafter, the board shall provide a report to the joint budget committee and the health and human services committees of the house of representatives and the senate, or any successor committees, on the operations of the trust fund, the moneys expended, the number of individuals with traumatic brain injuries offered services, the research grants awarded and the progress on such grants, and the educational information provided pursuant to this article.

Source: **L. 2002:** Entire section added, p. 1609, § 1, effective July 1, 2003. **L. 2003:** Entire section amended, p. 2009, § 91, effective May 22. **L. 2007:** Entire section amended, p. 2043, § 75, effective June 1. **L. 2009:** Entire section amended, (SB 09-005), ch. 135, p. 591, § 8, effective April 20.

Editor's note: This section was enacted as 26-1-211 in House Bill 02-1281 but was renumbered on revision for ease of location.

26-1-311. Repeal. (Repealed)

Source: **L. 2002:** Entire section added, p. 1609, § 1, effective January 1, 2003. **L. 2009:** Entire section repealed, (SB 09-005), ch. 135, p. 591, § 9, effective April 20.

Editor's note: This section was enacted as 26-1-212 in House Bill 02-1281 but was renumbered on revision for ease of location.

PART 4

AUTISM COMMISSION

26-1-401 to 26-1-405. (Repealed)

Editor's note: (1) This part 4 was added in 2008 and was not amended prior to its repeal in 2010. For the text of this part 4 prior to 2010, consult the 2009 Colorado Revised Statutes.

(2) Section 26-1-405 provided for the repeal of this part 4, effective July 1, 2010. (See L. 2008, p. 408.)

ARTICLE 2

Public Assistance

Editor's note: This article was numbered as article 3 of chapter 119, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1973, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

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PART 1

COLORADO PUBLIC ASSISTANCE ACT

Law reviews: For article, “Trust Protection of Personal Injury Recoveries from Public Creditors”, see 19 Colo. Law. 2187 (1990).

26-2-101. Short title. This article shall be known and may be cited as the “Colorado Public Assistance Act”.

Source: L. 73: R&RE, p. 1178, § 2. C.R.S. 1963: § 119-3-1.

ANNOTATION

Law reviews. For note, “Aid to Families with Dependent Children — A Study of Welfare Assistance”, see 44 Den. L.J. 102 (1967). For note, “Rural Poverty and the Law in Southern Colorado”, see 47 Den. L.J. 82 (1970).

For constitutionality of former provisions, see City & County of Denver v. Lynch, 92 Colo. 102, 18 P.2d 907, 86 A.L.R. 907 (1932); In re Interrogatories of the Governor, 99 Colo. 591, 65 P.2d 7 (1937).

26-2-102. Legislative declaration. It is the purpose of this article to promote the public health and welfare of the people of Colorado by providing, in cooperation with the federal government or independently, public assistance for needy individuals and families who are residents of the state and whose income and property are insufficient to meet the costs of necessary maintenance and services as determined by the state department and to assist such individuals and families to attain or retain their capabilities for independence, self-care, and self-support, as contemplated by article XXIV of the state constitution and the provisions of the social security act and the food stamp act. The state of Colorado and its various departments, agencies, and political subdivisions are authorized to promote and achieve these ends by any appropriate lawful means through cooperation with and utilization of available resources of the federal government and private individuals and organizations.

Source: L. 73: R&RE, p. 1178, § 2. C.R.S. 1963: § 119-3-2. L. 75: Entire section amended, p. 889, § 3, effective July 28. L. 79: Entire section amended, p. 1085, § 10, effective July 1.

ANNOTATION

Applied in *Jeffrey v. State Dept. of Soc. Services*, 198 Colo. 265, 599 P.2d 874 (1979).

26-2-102.5. Foster care - Title IV-E of the social security act. (1) Eligibility of a child for Title IV-E foster care shall be based on the aid to families with dependent children (AFDC) rules in effect on July 16, 1996.

(2) Such child shall meet all of the following conditions:

(a) The placement and care of such child are the responsibility of the state department of human services or a county department of social services;

(b) Such child has been placed in a foster home or child care institution as a result of a judicial determination or voluntary placement agreement;

(c) Such child:

(I) Would have received aid in or for the month in which such agreement or court proceedings resulting in such judicial determination were initiated; or

(II) Would have received the aid described in subparagraph (I) of this paragraph (c) if application had been made therefor; or

(III) Had been living with a relative within the six months prior to the month in which such agreement or court proceedings resulting in such judicial determination were initiated, and such child would have received the aid described in subparagraph (I) of this paragraph (c) if in such month he or she had been living with such relative and application therefor had been made.

Source: **L. 97:** Entire section added, p. 1228, § 12, effective July 1. **L. 2001:** Entire section amended, p. 742, § 8, effective June 1; entire section amended, p. 752, § 2, effective June 1. **L. 2008:** (1) amended, p. 1910, § 111, effective August 5. **L. 2010:** (1) amended, (HB 10-1043), ch. 92, p. 315, § 7, effective April 15.

26-2-103. Definitions. As used in this article and article 1 of this title, unless the context otherwise requires:

(1) “Applicant” means any individual or family who individually or through a designated representative or someone acting responsibly for him has applied for benefits under the programs of public assistance administered or supervised by the state department pursuant to the provisions of this article.

(1.5) Repealed.

(2) “Assistance payments” means financial assistance (other than medical assistance covered by the “Colorado Medical Assistance Act”) provided pursuant to rules and regulations adopted by the state department and includes pensions, grants, and other money payments to or on behalf of recipients.

(3) “Blind” means any individual who has not more than ten percent visual acuity in the better eye with correction, or not more than 20/200 central visual acuity in the better eye with correction, or a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(4) “Dependent child” means:

(a) A needy child under the age of eighteen who has been deprived of parental support or care by reason of the death, the continued absence from the home, the physical or mental incapacity, or the unemployment of a parent, as determined under standards prescribed by the state department through rules and regulations, and who is living with a person related to such child within the fifth degree in a place of residence maintained by one or more of such relatives as his, her, or their own home, and whose relatives or other person liable under the law for the child’s support are not able to provide adequate care and support of such child without assistance payments under a program for aid to families with dependent children; or

(b) A needy child who would meet the requirements of paragraph (a) of this subsection (4) except for his removal from a home of a relative specified in said paragraph (a) by a

judicial determination that continued residence in such home would be contrary to the best interests of such child, when all of the following conditions are present:

(I) The placement and care of such child are the responsibility of the state department or a county department;

(II) Such child has been placed in a foster care home or child care institution as a result of such judicial determination;

(III) Assistance payments for such child were received under this article in or for the month in which court proceedings leading to such determination were initiated, or such payments would have been received for such month if application had been made therefor, or, in the case of a child who had been living with a relative specified in paragraph (a) of this subsection (4) within six months prior to the month in which such proceedings were initiated, such payments would have been received in or for such month if in such month he had been living with and removed from the home of such relative and application had been made therefor; or

(c) A person otherwise meeting the requirements of paragraph (a) of this subsection (4) who is under the age of nineteen years and a full-time student in regular attendance at a secondary school or enrolled in an equivalent level of vocational or technical training designed to train him for gainful employment and who is reasonably expected to complete the program of such secondary school or such technical or vocational training before reaching the age of nineteen.

(5) "Essential person" means a person who resides with a recipient of assistance payments under a program for aid to the blind or aid to the needy disabled and, pursuant to rules and regulations adopted by the state department, is determined to be rendering a service to the recipient which, if the recipient were living alone, would have to be provided for him.

(5.5) (Deleted by amendment, L. 97, p. 1230, § 14, effective July 1, 1997.)

(5.7) "Legal immigrant" means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the immigration and naturalization service, or any successor agency, as an actual or prospective permanent resident or whose extended physical presence in the United States is known to and allowed by the immigration and naturalization service, or any successor agency.

(6) (Deleted by amendment, L. 2006, p. 1504, § 47, effective June 1, 2006.)

(7) "Public assistance" means assistance payments, food stamps, and social services provided to or on behalf of eligible recipients through programs administered or supervised by the state department, either in cooperation with the federal government or independently without federal aid, pursuant to the provisions of this article. Public assistance includes programs for old age pensions except for the old age pension health and medical care program, and also includes the Colorado works program, aid to the needy disabled, aid to the blind, child welfare services, food stamps supplementation to households not receiving public assistance found eligible for food stamps under rules adopted by the state board, expenses of treatment to prevent blindness or restore eyesight as defined in section 26-2-121, and funeral and burial expenses as defined in section 26-2-129.

(7.5) "Qualified alien" shall have the meaning ascribed to that term in section 431 (b) of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, as amended.

(8) "Recipient" means any individual or family who is receiving or has received benefits from the programs of public assistance administered or supervised by the state department pursuant to the provisions of this article.

(9) "Resident" means any individual who is living, other than temporarily, within the state of Colorado, or a particular county therein, voluntarily and with the intention of making his home there. "Resident" includes any unemancipated child whose parents, or other person entitled to custody, live within such state or county. Temporary absences from such state or county shall not cause an individual to lose his status as a resident if he has an intent to return and has not abandoned his residence.

(10) "Social security act" means the federal "Social Security Act" and amendments thereto.

(11) (a) "Social services" means services and payments for services available, directly or indirectly, through the staff of the state department of human services and county departments of social services or through state designated agencies, where applicable, for the benefit of eligible persons, which services are provided pursuant to rules adopted by the state board. "Social services" may include but need not be limited to day care, homemaker services, foster care, and other services to individuals or families for the purpose of attaining or retaining capabilities for maximum self-care, self-support, and personal independence and services to families or members of families for the purpose of preserving, rehabilitating, reuniting, or strengthening the family. At such time as Title XX of the social security act becomes effective with respect to federal reimbursements, "social services" may include but need not be limited to child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services, and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, persons with physical disabilities, and alcoholics and drug addicts.

(b) "Social services" does not include medicaid services unless those services are delegated to the state department. "Social services" does not include medical services covered by the old age pension health and medical care program, the children's basic health plan, or the Colorado indigent care program.

(12) and (13) Repealed.

(14) (a) "Total disability", for the purpose of providing public assistance to persons not receiving federal financial benefits pursuant to Title XVI of the social security act, means a physical or mental impairment which is disabling and which, because of other factors such as age, training, experience, and social setting, substantially precludes the person having such disability from engaging in a useful occupation as a homemaker or as a wage earner in any employment which exists in the community for which he has competence.

(b) For the purpose of the state-funded supplement to persons receiving federal financial benefits pursuant to Title XVI of the social security act, federal definitions promulgated pursuant to the said Title XVI shall apply.

Source: L. 73: R&RE, p. 1178, § 2. C.R.S. 1963: § 119-3-3. L. 75: (11) amended, p. 898, § 1, effective June 26; (6) amended, p. 889, § 4, effective July 28. L. 77: (6) amended, p. 1343, § 1, effective May 26; (1.5), (12), and (13) added, p. 1339, § 2, effective July 1. L. 79: (7) amended, p. 1086, § 11, effective July 1. L. 82: (4)(c) amended, p. 426, § 1, effective July 1. L. 84: (4)(a) amended, p. 793, § 1, effective March 1, 1985. L. 85: (13) amended, p. 348, § 2, effective April 5. L. 89, 1st Ex. Sess.: (1.5), (12), and (13) amended and (5.5) added, p. 38, § 4, effective July 25. L. 90: (4)(a) amended, p. 1358, § 1, effective October 1. L. 91: (11) amended, p. 1896, § 7, effective July 1. L. 93: (11) amended, p. 1665, § 74, effective July 1. L. 94: (4)(a) amended, p. 451, § 1, effective March 29; (11) amended, p. 2703, § 260, effective July 1. L. 97: (5.5) and (7) amended, p. 1230, § 14, effective July 1; (5.7) and (7.5) added, p. 1251, § 1, effective July 1. L. 2003: (7) and (11) amended, p. 2585, § 8, effective July 1. L. 2006: (6) amended and (14) added, p. 1504, § 47, effective June 1; (11) amended, p. 1996, § 26, effective July 1. L. 2011: (5.7) amended, (HB 11-1303), ch. 264, p. 1169, § 71, effective August 10; (7) and (11)(b) amended, (SB 11-210), ch. 187, p. 722, § 10, effective July 15, 2012.

Editor's note: (1) Title XX of the social security act became effective with respect to federal reimbursements on October 1, 1975.

(2) Subsection (12)(b) provided for the repeal of subsection (12), effective January 1, 1990. (See L. 89, 1st Ex. Sess., p. 38.) Subsections (1.5)(b) and (13)(b) provided for the repeal of subsections (1.5) and (13), respectively, effective October 1, 1992. (See L. 89, 1st Ex. Sess., p. 38.)

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsection (11), see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the "Colorado Medical Assistance Act", see articles 4, 5, and 6 of title 25.5.

ANNOTATION

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Servs., 198 Colo. 265, 599 P.2d 874 (1979); Garcia v. Dept. of Soc. Servs., 765 P.2d 1055 (Colo. App. 1988).

Applied in Jeffrey v. State Dept. of Soc.

26-2-104. Public assistance programs - electronic benefits transfer service - rules.

(1) (a) The state department is hereby designated as the single state agency to administer or supervise the administration of public assistance programs in this state in cooperation with the federal government pursuant to the social security act and this article. The state department shall establish public assistance programs consisting of assistance payments and social services to be made available to eligible individuals, including but not limited to old age pensions, the Colorado works program, aid to the needy disabled, and aid to the blind.

(b) The state department may review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time to determine the propriety of the action or failure to take timely action on an application for public assistance. The state department shall make such additional investigation as it deems necessary and shall, after giving the county department an opportunity to rebut any findings or conclusions of the state department that the action or delay in taking action was a violation of or contrary to state department rules, make such decision as to the granting of assistance payments and the amount thereof as in its opinion is justifiable pursuant to the provisions of this article and the rules of the state department. Applicants or recipients affected by such decisions of the state department, upon request, shall be given reasonable notice and opportunity for a fair hearing by the state department.

(2) (a) The state department is authorized to implement an electronic benefits transfer service for administering the delivery of public assistance payments and food stamps to recipients. The electronic benefits transfer service shall be designed to allow clients access to cash benefits through automated teller machines or similar electronic technology. The electronic benefits transfer service shall allow clients eligible for food stamps access to food items through the use of point of sale terminals at retail outlets. Only those businesses that offer products or services related to the purpose of the public assistance benefits shall be allowed to participate in the electronic benefits transfer service through the use of point of sale terminals. Clients shall not be allowed to access cash benefits through the electronic benefits transfer service from automated teller machines in this state located in licensed gaming establishments as defined in section 12-47.1-103 (15), C.R.S., in-state simulcast facilities as defined in section 12-60-102 (14), C.R.S., tracks for racing as defined in section 12-60-102 (26), C.R.S., commercial bingo facilities as defined in section 12-9-102 (2.3), C.R.S., stores or establishments in which the principal business is the sale of firearms, or retail establishments licensed to sell malt, vinous, or spirituous liquors pursuant to part 3 of article 47 of title 12, C.R.S. In the development and implementation of the service, the state department shall consult with representatives of those persons, agencies, and organizations that will use or be affected by the electronic benefits transfer service, including program clients, to assure that the service is as workable, effective, and efficient as possible. The electronic benefits transfer service shall be applicable to the public assistance programs described in subsection (1) of this section and to food stamps as described in part 3 of this article. The state department shall contract in accordance with state purchasing requirements with any entity for the development and administration of the electronic benefits transfer service. In order to ensure the integrity of the electronic benefits transfer service, the system developed pursuant to this section shall use, but is not limited to, security measures such as individual personal identification numbers, photo identification, or fingerprint identification. The security method or methods selected shall be those that are most efficient and effective. The state board shall establish by rule a policy and procedure to limit losses to a client after the client reports that the electronic benefits transfer card or benefits have been lost or stolen. The state department may authorize county departments of social services to charge a fee to a client to cover the costs related to issuing a replacement electronic benefits transfer card.

(b) The state board is authorized to promulgate rules necessary to implement and administer the electronic benefits transfer service created in this subsection (2). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(c) The state department is authorized to request federal waivers as necessary to administer the electronic benefits transfer service.

(d) and (e) Repealed.

Source: L. 73: R&RE, p. 1180, § 2. C.R.S. 1963: § 119-3-4. L. 95: Entire section amended, p. 593, § 3, effective May 22. L. 96: (2) amended, p. 138, § 1, effective April 2. L. 97: (1) amended, p. 1230, § 15, effective July 1; (1) amended, p. 1320, § 3, effective July 1; (2)(a) amended, p. 303, § 17, effective July 1. L. 98: (2)(a) amended, p. 80, § 1, effective March 23. L. 2003: (2)(d) added, p. 1593, § 1, effective May 2. L. 2005: (2)(d) repealed, p. 568, § 1, effective July 1. L. 2006: (2)(e) added, p. 336, § 1, effective April 4.

Editor's note: (1) Amendments to subsection (1) by House Bill 97-1344 and Senate Bill 97-120 were harmonized.

(2) Subsection (2)(e)(II) provided for the repeal of subsection (2)(e), effective January 1, 2007. (See L. 2006, p. 336.)

Cross references: For the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 161, Session Laws of Colorado 1995.

ANNOTATION

Duty of state department. The state department of social services is required to take such action as may be necessary or desirable for

carrying out the provisions of the welfare laws. State Bd. of Soc. Servs. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

26-2-105. Federal requirements. Nothing in this article shall be construed to prevent the state department from complying with federal requirements for public assistance programs expressly provided by law in order for the state of Colorado to qualify for federal funds under the social security act and to maintain said programs within the limits of available appropriations.

Source: L. 73: R&RE, p. 1180, § 2. C.R.S. 1963: § 119-3-5.

26-2-106. Applications for public assistance. (1) Any individual wishing to make application for any of the public assistance programs administered or supervised by the state department under this article shall have the opportunity to do so, and, except as otherwise provided in part 7 of this article, such public assistance shall be furnished with reasonable promptness to each eligible individual in accordance with rules of the state department. The county department shall consider an application for public assistance to be for any category of public assistance for which the applicant may be eligible.

(1.5) All applications for public assistance shall contain the citizenship of the applicant, the number of years the applicant has resided in the United States, and, if the applicant is an alien, the name and the social security number or federal tax number of the person, or persons or organization, if any, who sponsored the applicant's entry into the United States.

(2) The rules of the state department may provide for a simplified application in order that public assistance may be furnished to eligible persons as soon as possible and shall provide adequate safeguards and controls to insure that only eligible persons receive public assistance under this article.

(3) Applications and requests for public assistance under this article shall be made to the county department of the county or the state designated agency, where applicable, for the county in which the applicant is a resident. The state department by its rules shall prescribe the form and procedure for applications or requests for social services. The application for assistance payments shall be in writing or reduced to writing in the manner

and upon the form prescribed by the state department, shall contain the name, age, and residence of the applicant, the category or type of assistance payments sought, a statement of the amount of property, both real and personal, in which the applicant has an interest and of all income which he or she may have at the time of the filing of the application, and such other information as may be required by rules of the state department, and shall be verified by the signature of the applicant or his or her legally appointed guardian. In addition, an applicant who is eighteen years of age or older shall be required to supply a form of personal photographic identification either by providing a valid Colorado driver's license or a valid identification card issued by the department of revenue pursuant to section 42-2-302, C.R.S. The state department may adopt rules that exempt applicants from the requirement of supplying a form of personal photographic identification if such requirement causes an unreasonable hardship or if such requirement is in conflict with federal law. The state department shall also adopt rules that allow for assistance to be provided on an emergency basis until the applicant is able to obtain or to qualify for a driver's license or identification card; however, a county department is not required to recover emergency assistance from an applicant who fails, upon recertification, to meet the photographic identification requirement.

(4) (a) (Deleted by amendment, L. 97, p. 1230, § 16, effective July 1, 1997.)

(b) If the public assistance sought is aid to the needy disabled or aid to the blind, the application shall be signed by the applicant and his natural guardian or legally appointed guardian, if any.

(5) For the purpose of providing public assistance to persons not receiving federal financial benefits pursuant to Title XVI of the social security act:

(a) No application for aid to the blind shall be approved until the applicant has been examined by an ophthalmologist duly licensed to practice in this state and actively engaged in the treatment of diseases of the human eye or by an optometrist duly licensed to practice in this state. The examining ophthalmologist or optometrist shall certify in writing upon forms prescribed by the state department as to diagnosis, prognosis, and visual acuity of the applicant.

(b) Determination of blindness shall be made by the county department in accordance with the provisions of section 26-2-103 (3) and state department rules and regulations.

(c) The county department shall fix the fees to be paid for examination of applicants for and reexamination of recipients of aid to the blind. Such fees shall be allowed and paid to the vendor in the same manner as assistance payments under the program for aid to the blind, pursuant to the rules and regulations of the state department. Payments to such vendors shall be subject to reimbursement by the state in the same manner as said assistance payments for aid to the blind.

(6) (a) No application for aid to the needy disabled shall be approved until the applicant's medical condition has been certified by a physician licensed to practice medicine in this state or an advanced practice nurse licensed in this state. In addition to a physician, an applicant may be examined by a physician assistant licensed in this state, by an advanced practice nurse, or by a registered nurse licensed in this state who is functioning within the scope of such nurse's license and training. The supervising physician or the physician or nurse who conducted the examination shall certify in writing upon forms prescribed by the state department as to the diagnosis, prognosis, and other relevant medical or mental factors relating to the disability of the applicant. No applicant disabled as a result of a primary diagnosis of alcoholism or a controlled substance addiction shall be approved for aid to the needy disabled except as provided in section 26-2-111 (4) (e).

(b) Determination of the existence of total disability shall be made by the county department after consideration of the factors under the provisions of section 26-2-103 (14) and on the basis of the medical examination or from medical and social data collected and verified by the county departments under the rules and regulations of the state department.

(c) The county department shall fix the fees to be paid to competent medical personnel for examination of applicants for and reexamination of recipients of aid to the needy disabled and for special medical examinations when deemed necessary by the state department pursuant to rules and regulations of the state department. Such fees shall be allowed and paid to the medical vendor in the same manner as assistance payments under

the program for aid to the needy disabled, pursuant to the rules and regulations of the state department. Payments to such vendors shall be subject to reimbursement by the state in the same manner as said assistance payments for aid to the needy disabled.

Source: **L. 73:** R&RE, p. 1180, § 2. **C.R.S. 1963:** § 119-3-6. **L. 75:** (6)(b) amended, p. 889, § 5, effective July 28. **L. 77:** (5) R&RE, p. 1343, § 2, effective May 26. **L. 83:** (5)(b), (5)(c), (6)(b), and (6)(c) amended, p. 1117, § 1, effective March 15. **L. 88:** (1.5) added, p. 1053, § 1, effective April 16. **L. 91:** (3) amended, p. 1897, § 8, effective July 1. **L. 96:** (6)(a) amended, p. 992, § 1, effective May 23. **L. 97:** (1) and (4)(a) amended, p. 1230, § 16, effective July 1. **L. 98:** (3) amended, p. 933, § 1, effective August 5. **L. 99:** (6)(a) amended, p. 97 § 1, effective March 24; (6)(a) amended, p. 626, § 28, effective August 4. **L. 2001:** (6)(a) amended, p. 185, § 17, effective August 8. **L. 2006:** (6)(b) amended, p. 1505, § 48, effective June 1. **L. 2008:** (6)(a) amended, p. 134, § 25, effective January 1, 2009.

Editor's note: Amendments made to subsection (6)(a) by House Bill 99-1360 and Senate Bill 99-010 were harmonized.

ANNOTATION

Amounts held by fiduciary not excludable. Where an applicant for a pension is required by statute to make disclosure of "the amount of property, both real and personal, in which the applicant has an interest", the supreme court cannot read into those words a limitation that

such statute does not include \$10,500 in bonds and money claimed by the applicant to be her own and held by a fiduciary who refuses to account therefor. *Ankorn v. Boulder County Welfare Dept.*, 135 Colo. 51, 307 P.2d 1110 (1957).

26-2-107. Verification - record. (1) (a) (I) Whenever a county department receives an application for public assistance, it shall promptly make a record concerning the circumstances of the applicant to verify the facts supporting the application and shall examine all pertinent records and shall make a diligent effort to examine all records prior to granting assistance. The records include the following:

(A) Records of the division of unemployment insurance, including unemployment compensation records;

(B) School attendance records;

(C) Vital statistics records;

(D) Records of the department of revenue.

(II) The county department shall also verify such other information as may be required by the rules and regulations of the state department.

(b) If such information is reasonably available, the verification shall be completed prior to approval of any assistance or for continuation of assistance. The provisions of this paragraph (b) shall not apply to those persons receiving old age pensions, aid to the needy disabled, or aid to the blind during the period for which such assistance is continued.

(c) Within ten working days after a discrepancy relating to a fraudulent or suspected fraudulent act affecting eligibility is discovered, it shall be referred to the appropriate investigatory agency for investigation. The investigatory agency shall take action within thirty days following receipt of the information from the county department.

(2) The county department, the state department, and the officers and authorized employees of each may conduct visits to the home of the applicant at reasonable times, make investigations and require the attendance and testimony of witnesses and the production of books, records, and papers by subpoena, and make application to the district court to compel and enforce such attendance and testimony of witnesses and the production of such books, records, and papers. Officers and employees designated by the county department or the state department may administer oaths and affirmations.

Source: **L. 73:** R&RE, p. 1182, § 2. **C.R.S. 1963:** § 119-3-7. **L. 77:** (1) amended, p. 1334, § 4, effective January 1, 1978. **L. 79:** (1)(a)(I) amended, p. 1086, § 12, effective

July 1. **L. 2000:** (1)(a)(I)(D) amended, p. 1637, § 14, effective June 1. **L. 2012:** IP(1)(a)(I) and (1)(a)(I)(A) amended, (HB 12-1120), ch. 27, p. 110, § 27, effective June 1.

Editor's note: The effective date for amendments to the introductory portion of subsection (1)(a)(I) and subsection (1)(a)(I)(A) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

26-2-108. Granting of assistance payments and social services. (1) (a) Upon completion of the verification and record of each application for assistance payments, the county department, pursuant to the rules of the state department, shall determine whether the applicant is eligible for assistance payments, the amount of such assistance payments to be granted, and the date upon which such assistance payments shall begin.

(b) In determining the amount of assistance payments to be granted, due account shall be taken of any income or property available to the applicant and any support, either in cash or in kind, that the applicant may receive from other sources, pursuant to rules of the state department. Effective July 1, 2000, a county may pay families that are eligible for temporary assistance for needy families (TANF), as defined in section 26-2-703 (19), an amount that is equal to the state and county share of child support collections as described in section 26-13-108 (1). Such payments shall not be considered income for the purpose of grant calculation. However, such income shall be considered income for purposes of determining eligibility. If a county chooses to pay child support collections directly to a family that is eligible for temporary assistance for needy families (TANF), as defined in section 26-2-703 (19), the county shall report such payments to the state department for the month in which they occur and indicate the choice of this option in its performance contract for Colorado works. For the purposes of determining eligibility for public assistance or the amount of assistance payments, compensation received by the applicant pursuant to the "Colorado Crime Victim Compensation Act", part 1 of article 4.1 of title 24, C.R.S., shall not be considered as income, property, or support available to such applicant.

(c) When the eligibility, amount, and date for beginning assistance payments have been established, the county department shall make an award to or on behalf of the applicant in accordance with rules of the state department, which award shall be binding upon the county and shall be complied with by the county until it is modified or vacated.

(d) (I) Except as provided in subparagraph (II) of this paragraph (d) and part 7 of this article, assistance payments under public assistance programs shall be paid at least monthly to or on behalf of the applicant upon order of the county department from funds appropriated to the county department for this purpose and pursuant to the rules of the state department.

(II) Assistance in the form of aid to the needy disabled for persons who are disabled as a result of a primary diagnosis of alcoholism or a controlled substance addiction shall be paid on the person's behalf to the treatment program in which the person is participating as required pursuant to section 26-2-111 (4) (e) (I) or to the person directly upon the person providing the documentation required pursuant to section 26-2-111 (4) (e) (II).

(e) The county department shall at once notify the applicant and the state department, in writing, of its decisions on assistance payments and the reasons therefor.

(2) The state department, by its rules, shall prescribe procedures for handling applications or requests for social services. Such rules may include, but need not be limited to, the determination of eligibility for social services, the services to be provided, the verification and record, and notice to applicants and the state department.

Source: **L. 73:** R&RE, p. 1182, § 2. **C.R.S. 1963:** § 119-3-8. **L. 83:** (1)(b) amended, p. 856, § 2, effective July 1. **L. 85:** (1)(b) amended, p. 1362, § 25, effective June 28. **L. 96:** (1)(d) amended, p. 992, § 2, effective May 23. **L. 97:** Entire section amended, p. 1231, § 17, effective July 1. **L. 99:** (1)(d)(II) amended, p. 626, § 29, effective August 4. **L. 2000:** (1)(b) amended, p. 1711, § 7, effective July 1. **L. 2008:** (1)(b) amended, p. 1910, § 112, effective August 5.

ANNOTATION

Law reviews. For note, "Aid to Families with Dependent Children — A Study of Welfare Assistance", see 44 Den. L.J. 102 (1967).

The legislative intent was to treat personal property and income differently. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

The intention of the general assembly was to exclude annuities and other income from personal property. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

The department, pursuant to its rule-making authority, may require an applicant to provide a social security number and may deny benefits if the applicant refuses to provide

a social security number because of religious beliefs. *Peister v. State Dept. of Soc. Servs.*, 849 P.2d 894 (Colo. App. 1992).

Department lacks authority to determine placement of neglected child. While the state department has the authority to prescribe procedures for handling requests and applications for social services through its rules and regulations, it may not encroach upon the court's exclusive jurisdiction to determine placement of a child adjudicated neglected, dependent, or delinquent. *State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs.*, 642 P.2d 16 (Colo. App. 1981).

26-2-109. Right to own certain property. (1) No person otherwise qualified to receive public assistance shall be denied public assistance by reason of the fact that he is the owner of real estate occupied by him as a residence.

(2) No person otherwise qualified shall be denied public assistance by reason of the fact that he is the owner of personal property which is exempt by the laws of Colorado from execution or attachment.

(3) (a) The state department, by its rules and regulations, may establish limitations on the value of real and personal property and other resources, not included in subsections (1) and (2) of this section, which may be available to an applicant or recipient without affecting his eligibility for public assistance.

(b) For public assistance purposes, the value of residential or other real property shall be equal to the actual value of the property, as determined by the county assessor pursuant to article 1 of title 39, C.R.S.

Source: L. 73: R&RE, p. 1183, § 2. C.R.S. 1963: § 119-3-9. L. 87: (3)(b) amended, p. 1157, § 1, effective May 1.

ANNOTATION

The legislative intent was to treat personal property and income differently. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

The intention of the general assembly was to exclude annuities and other income from personal property. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

Continuing eligibility depends on an absence of assets in excess of the maximum value fixed by statute, by whatever means acquired, including an accretion in value. *Denver Dept. of Pub. Welfare v. Wysowatcky*, 133 Colo. 153, 292 P.2d 735 (1956).

Excess assets must be expended in self-support. A recipient who acquires a sum in excess of the amount which determined his need for aid becomes immediately ineligible for benefits until the excess which determines his need for aid is expended in self-support. *Denver Dept. of Pub. Welfare v. Wysowatcky*, 133 Colo. 153, 292 P.2d 735 (1956).

There being no presumption of equal ownership between spouses, evidence may be received to establish that half or more of the assets owned by one spouse belong to the other, but in the absence of such determination, the rule in Colorado is that one spouse may own property separate and apart from the other. *Flavell v. Dept. of Welfare*, 144 Colo. 203, 355 P.2d 941 (1960).

There is no rule of law, statutory or otherwise, which permits the department of social services to indulge in the presumption that every person owns one-half of his spouse's assets. *Flavell v. Dept. of Welfare*, 144 Colo. 203, 355 P.2d 941 (1960).

Railroad retirement annuities are immune from execution and attachment. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

26-2-110. Repayment not required. No person shall be required, in order to receive public assistance, to repay or promise to repay the state of Colorado any money properly paid to him or her as public assistance pursuant to the provisions of this article and the rules of the state department; except that the state may recoup interim assistance authorized under section 26-2-206, concerning blind and disabled individuals.

Source: L. 73: R&RE, p. 1183, § 2. C.R.S. 1963: § 119-3-10. L. 77: Entire section amended, p. 1344, § 3, effective May 26. L. 87: Entire section amended, p. 1158, § 1, effective May 28. L. 97: Entire section amended, p. 1232, § 18, effective July 1.

26-2-111. Eligibility for public assistance. (1) No person shall be granted public assistance in the form of assistance payments under this article unless such person meets all of the following requirements:

(a) The person is a resident of the state of Colorado or, if a dependent child, the parent or other relatives with whom said child is living is a resident of the state of Colorado or the person is a legal immigrant who would be otherwise eligible in all respects except for citizenship;

(b) The person has insufficient income, property, or other resources to meet his or her needs as determined pursuant to rules and regulations of the state department; except that resource eligibility for the program of aid to the needy disabled shall be as specified in paragraph (d) of subsection (4) of this section, resource eligibility for the program of aid to the blind shall be as specified in subparagraph (III) of paragraph (a) of subsection (5) of this section, and resource eligibility requirements for the old age pension program shall be as specified in paragraph (a) of subsection (2) of this section;

(c) (I) The person has not made a voluntary assignment or transfer of property without fair and valuable consideration for the purpose of rendering himself or herself eligible for public assistance under this article at any time within thirty-six months immediately prior to the filing of application for such assistance pursuant to the provisions of this article; or, in the case of a person already receiving public assistance under this article, the person has not made any such transfer during the time the person has been receiving such public assistance; but, if any such assignment or transfer is made during such thirty-six month period or during such time that public assistance is being received, there is a rebuttable presumption that the assignment or transfer was made for such purpose; but, within such period of time, a person may assign or transfer the ownership of real property owned and used as a residence by such person if:

(A) The transfer or assignment is made for reasons other than to become or remain eligible for public assistance under this article;

(B) The primary purpose of the transfer or assignment is not to acquire moneys or profit but is for some other legitimate reason such as estate planning.

(II) Nothing in this paragraph (c) shall be construed to prohibit a person from selling, transferring, or assigning his or her real estate in a bona fide transaction for good and valuable consideration.

(d) The person is not an inmate of a public institution, except as a patient in a public medical institution, or is not a patient in any institution for tuberculosis or mental diseases, or is not a patient in any medical institution as a result of having been diagnosed as having tuberculosis or psychosis; but the provisions of this paragraph (d) shall not be applicable to or in any way affect the class of old age pension recipients provided for in subsection (2) (a) (III) of this section.

(2) **Old age pension.** (a) Except as provided in paragraphs (c) and (d) of this subsection (2), public assistance in the form of the old age pension shall be granted to any person who meets the requirements of subsection (1) of this section and any one of the following requirements:

(I) The person is a United States citizen or a qualified alien, has attained the age of sixty years or more, and meets the resource eligibility requirements of the federal supplemental security income program; or

(II) Repealed.

(III) The person is an inmate of an institution, not penal in character, maintained by the state or by a municipality therein or county thereof, and the person has attained the age of sixty years or more. The period of confinement as a patient in such institution shall be considered as residence in the state of Colorado.

(b) No person otherwise qualified shall be denied the old age pension by reason of the fact that relatives may be financially able to contribute to his support and maintenance, but income and property of the spouse of an applicant or recipient of the old age pension shall be considered in determining eligibility pursuant to rules and regulations of the state department, which rules and regulations shall be based upon and relate to the need of the applicant or recipient.

Editor's note: This version of paragraph (b) is effective until January 1, 2014, or the date that notification to the revisor of statutes is received, whichever is earlier. See the editor's note following the section.

(b) An applicant or recipient of the old age pension who is otherwise qualified shall not be denied the old age pension by reason of the fact that relatives may be financially able to contribute to his or her support and maintenance; except that income and resources of the spouse of an applicant or recipient of the old age pension or of a sponsor of an applicant or recipient of the old age pension who is a qualified alien shall be considered in determining eligibility pursuant to rules of the state department.

Editor's note: This version of paragraph (b) is effective upon the earlier of January 1, 2014, or when notification to the revisor of statutes is received. See the editor's note following the section.

(c) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (c), a qualified alien shall not be granted the old age pension under the provisions of this subsection (2) unless it is shown that:

(A) The person, other than a relative, who sponsored the alien's entry into the United States and who satisfied sponsorship financial requirements at the time of initial sponsorship now has insufficient income, property, or other resources to meet the needs of the alien as determined pursuant to rules and regulations of the state department; and

(B) The qualified alien meets the requirements specified in section 26-2-111.8 (2) (a) relating to entry into the United States prior to August 22, 1996, or the requirements specified in section 26-2-111.8 (2) (b) regarding the five-year bar on receipt of benefits.

(II) The requirements in subparagraph (I) of this paragraph (c) do not apply to a qualified alien who meets the eligibility criteria for the old age pension in paragraph (a) of this subsection (2) if it is determined pursuant to rules of the state department that:

(A) The qualified alien has been abandoned by or is a victim of mistreatment by his or her sponsor or is an abused spouse and would incur a significant financial hardship; or

(B) The qualified alien who does not have a sponsor would have insufficient income to support himself or herself or would otherwise incur a significant financial hardship.

(III) The requirements in subparagraph (I) of this paragraph (c) do not apply to a qualified alien who meets the eligibility criteria for the old age pension in paragraph (a) of this subsection (2) and who is also eligible for federal financial benefits pursuant to Title XVI of the federal "Social Security Act".

Editor's note: This version of paragraph (c) is effective until January 1, 2014, or the date that notification to the revisor of statutes is received, whichever is earlier. See the editor's note following the section.

(c) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (c), a qualified alien shall not be granted the old age pension under the provisions of this subsection (2) unless it is shown that:

(A) (Deleted by amendment, L. 2010, (HB 10-1384), ch. 218, p. 954, § 4. (See editor's note following this section.))

(B) The qualified alien meets the requirements specified in section 26-2-111.8 (2) (a) relating to entry into the United States prior to August 22, 1996, or the requirements specified in section 26-2-111.8 (2) (b) regarding the five-year bar on receipt of benefits; and

(C) The qualified alien meets the requirements specified in section 26-2-111.8 (2) (c) regarding the deeming of sponsor income and resources.

(II) The requirements in subparagraph (I) of this paragraph (c) do not apply to a qualified alien who meets the eligibility criteria for the old age pension in paragraph (a) of this subsection (2) if it is determined pursuant to rules of the state department that:

(A) The qualified alien has been abandoned by or is a victim of mistreatment by his or her sponsor or is an abused spouse and would incur a significant financial hardship; or

(B) The qualified alien who does not have a sponsor would have insufficient income to support himself or herself or would otherwise incur a significant financial hardship; or

(C) The person who sponsored the qualified alien's entry into the United States and who satisfied sponsorship financial requirements at the time of initial sponsorship now has insufficient income and resources to meet the needs of the qualified alien.

(III) The requirements in subparagraph (I) of this paragraph (c) do not apply to a qualified alien who meets the eligibility criteria for the old age pension in paragraph (a) of this subsection (2) and who is also eligible for federal financial benefits pursuant to Title XVI of the federal "Social Security Act".

Editor's note: This version of paragraph (c) is effective upon the earlier of January 1, 2014, or when notification to the revisor of statutes is received. See the editor's note following the section.

(d) (I) A person who is a member of a household that is receiving public assistance under the Colorado works program pursuant to part 7 of this article shall not be eligible to receive public assistance pursuant to this subsection (2).

(II) (Deleted by amendment, L. 2010, (HB 10-1043), ch. 92, p. 315, § 8, effective April 15, 2010.)

(3) **Colorado works program.** (a) By signing an application for the works program created in part 7 of this article, a person assigns, by operation of law, to the state department all rights the applicant may have to support from any other person on his or her own behalf or on behalf of any other family member for whom application is made. For the purposes of this subsection (3), the assignment:

(I) Is effective for current support due and owing during the period of time the person is receiving public assistance under the works program;

(II) Takes effect upon a determination that the applicant is eligible for the works program; and

(III) Shall remain in effect with respect to any unpaid support that accrues under the assignment, up to the amount of the cost of assistance provided.

(IV) (Deleted by amendment, L. 2009, (SB 09-053), ch. 137, p. 594, § 1, effective October 1, 2009.)

(b) The application shall contain a statement explaining this assignment.

(c) Notwithstanding any provision of paragraph (a) of this subsection (3), assignments made prior to October 1, 2009, may include support arrearages that accrued prior to the date the applicant is determined to be eligible for the works program.

(3.5) (a) Repealed.

(b) (Deleted by amendment, L. 97, p. 1232, § 19, effective July 1, 1997.)

(4) **Aid to the needy disabled.** Public assistance in the form of aid to the needy disabled shall be granted to any person who meets the requirements of subsection (1) of this section and all of the following requirements:

(a) He or she has a total disability, as defined by section 26-2-103 (14) and the rules and regulations of the state department, that has lasted or can be expected to last for a period of six months or more or he or she is determined to be disabled and eligible for social security disability insurance benefits under Title II of the social security act.

(b) He or she is eighteen years of age or older.

(b.5) He or she has applied for supplemental security income benefits and complied with any recommendations for referrals made by the county department except for good cause shown.

(c) (I) The person is not a member of a household receiving public assistance under the aid to families with dependent children program set forth in this article. For the purposes

of this paragraph (c), “household” has the same meaning as “assistance unit” as used in 45 CFR, 205.40 (a) (1), as amended.

(II) (A) The provisions of subparagraph (I) of this paragraph (c) notwithstanding, on and after January 1, 1992, a supplemental payment funded by state and county funds shall be paid to households that have received public assistance payments for the month of December 1991, under both the aid to families with dependent children program set forth in this article and the aid to the needy disabled program set forth in this subsection (4). The supplemental payment shall be in an amount as will maintain the household’s total income at the same level as in December 1991.

(B) The supplemental payment shall be paid only if the household remains continuously eligible to receive public assistance under both the aid to families with dependent children program set forth in this article and the aid to the needy disabled program set forth in this subsection (4).

(d) He or she meets the resource eligibility requirements of the federal supplemental security income program.

(e) If the applicant is disabled as a result of a primary diagnosis of alcoholism or a controlled substance addiction, he or she, as conditions of eligibility, shall be required to:

(I) Participate in treatment services approved by the unit in the state department that administers behavioral health programs and services, including those related to mental health and substance abuse; and

(II) Demonstrate on a periodic and random basis that he or she remains free of the use of alcohol or any nonprescribed controlled substance on a form verified by the treatment program. Any person whose random test results are positive two times in any three-month period shall be denied eligibility.

(f) A person who is disabled as a result of a primary diagnosis of alcoholism or a controlled substance addiction shall not be eligible for aid to the needy disabled based upon that primary diagnosis if the person has received aid to the needy disabled based upon such diagnosis for any cumulative twelve-month period in the person’s lifetime.

(5) **Aid to the blind.** (a) For the purpose of providing public assistance to those not receiving federal financial benefits pursuant to Title XVI of the social security act, public assistance in the form of aid to the blind shall be granted to any person who meets the requirements of subsection (1) of this section and who:

(I) Is blind as defined by section 26-2-103 (3) or is determined to be blind and eligible for social security disability insurance benefits under Title II of the social security act; except that any person who is a member of a household that is receiving public assistance under the aid to families with dependent children program set forth in this article shall not be eligible to receive public assistance pursuant to this subsection (5);

(II) Has applied for supplemental security income benefits and complied with any recommendations for referrals made by the county department except for good cause shown; and

(III) Meets the resource eligibility requirements of the federal supplemental security program.

(b) For the purposes of this subsection (5), “household” has the same meaning as “assistance unit” as used in 45 CFR 205.40 (b) (1), as amended.

(6) The provisions of section 26-2-111.8 shall apply in addition to the provisions of this section in determining the eligibility for public assistance of persons who are not citizens of the United States.

Source: L. 73: R&RE, p. 1183, § 2. C.R.S. 1963: § 119-3-11. L. 75: (4)(a) amended, p. 889, § 6, effective July 28. L. 76: (2)(b) amended, p. 309, § 51, effective May 20. L. 77: IP(1)(c), (4)(a), and (5) amended, p. 1344, § 4, effective May 26; (3)(c) to (3)(e) R&RE and (3)(f) repealed, pp. 1339, 1341, §§ 3, 5, effective July 1. L. 82: (3)(g) added, p. 281, § 6, effective April 2; (3)(b) amended, p. 426, § 2, effective July 1. L. 83: (2)(a)(I) and (2)(a)(III) amended and (2)(a)(II) repealed, p. 1119, §§ 1, 2, effective May 10. L. 88: (2)(c) added, p. 1053, § 2, effective April 16. L. 89, 1st Ex. Sess.: (3)(c) to (3)(e) amended and (3.5) added, p. 39, § 5, effective July 25. L. 90: (3)(h) added, p. 1358, § 2, effective October 1. L. 91: (3)(d) and (3)(e) repealed, p. 1861, § 3, effective July 1.

L. 91, 2nd Ex. Sess.: IP(2)(a), (4), and (5) amended and (2)(d) added, pp. 92-94, §§ 1-3, effective January 1, 1992. **L. 92:** (3)(h) amended, p. 2143, § 1, effective July 1. **L. 96:** IP(1), (1)(b), (4), and (5) amended, p. 832, § 1, effective May 23; (4)(e) and (4)(f) added, p. 993, § 3, effective May 23; (1) and (2)(a) amended, p. 1297, § 1, effective June 1. **L. 97:** (1)(a) amended and (6) added, p. 1252, § 2, effective July 1; (3) and (3.5)(b) amended, p. 1232, § 19, effective July 1; (3)(a) amended, p. 1287, § 32, effective July 1. **L. 2004:** (3)(a)(III) amended, p. 387, § 4, effective July 1. **L. 2006:** (4)(a) amended, p. 1505, § 49, effective June 1. **L. 2009:** (3)(a) amended and (3)(c) added, (SB 09-053), ch. 137, p. 594, § 1, effective October 1. **L. 2010:** (2)(d) amended, (HB 10-1043), ch. 92, p. 315, § 8, effective April 15; (2)(a) and (2)(c) amended, (HB 10-1384), ch. 218, p. 951, § 1, effective July 1; (2)(b) and (2)(c) amended, (HB 10-1384), ch. 218, p. 954, §§ 3, 4, effective (see editor's note (5)). **L. 2011:** (4)(e)(I) amended, (HB 11-1303), ch. 264, p. 1169, § 72, effective August 10.

Editor's note: (1) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective January 1, 1990. (See L. 89, 1st Ex. Sess., p. 39.)

(2) Subsection (3.5)(a)(II) provided for the repeal of subsection (3.5)(a), effective October 1, 1992. (See L. 89, 1st Ex. Sess., p. 39.)

(3) Amendments to subsection (1) by House Bill 96-1233 and House Bill 96-1253 were harmonized.

(4) Subsection (4)(e) and (4)(f) were enacted as subsection (4)(d) and (4)(e), respectively, by Senate Bill 96-164, but have been renumbered on revision for ease of location and were harmonized with House Bill 96-1253.

(5) Section 7 of chapter 218, Session Laws of Colorado 2010, provides that amendments to subsections (2)(b) and (2)(c) in sections 3 and 4 of House Bill 10-1384 are effective upon the earlier of: (1) January 1, 2014, or (2) the date upon which the revisor of statutes receives notification from the executive director of the department of health care policy and financing that the federal centers for medicare and medicaid services, having taken into consideration the requirement for maintenance of effort for medicaid eligibility contained in the federal "American Reinvestment and Recovery Act", Pub.L. 111-5, or any amendment thereto, and in the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or any amendment thereto, has authorized Colorado to reduce eligibility for its medicaid program consistent with the provisions of House Bill 10-1384 without federal penalty.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (3)(a), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For note, "Aid to Families with Dependent Children — A Study of Welfare Assistance", see 44 Den. L.J. 102 (1967). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For article, "Taxation", which discusses Tenth Circuit decisions dealing with interception of tax refunds for reimbursement of state child support, see 63 Den. U. L. Rev. 455 (1986).

Portion of repealed subsection (2)(a)(II) unconstitutional. All words in repealed subsection (2)(a)(II) after the words "sixty years", commencing with the word "but" through the end of the sentence, were inoperable and unconstitutional. *Jeffrey v. State Dept. of Soc. Servs.*, 198 Colo. 265, 599 P.2d 874 (1979).

The establishment of two classes of needy citizens between the ages of 60 and 65, indistinguishable from each other except that one was composed of residents who had resided continuously in Colorado for 35 years and the second of residents who had resided in Colorado less than 35 continuous years, which worked to

deny critically needed old-age pension benefits to those who had resided in Colorado less than 35 continuous years, was unconstitutional as violative of equal protection. *Jeffrey v. State Dept. of Soc. Servs.*, 198 Colo. 265, 599 P.2d 874 (1979).

One-year residency requirement held unconstitutional. Colorado statutes which required residence of one year as a condition of receiving aid to families with dependent children and aid to the needy disabled were unconstitutional and deprived plaintiffs of the right to equal protection of the laws and the right to travel interstate under the federal constitution. *Passmore v. Birkins*, 311 F. Supp. 588 (D. Colo. 1969).

The legislative intent was to treat personal property and income differently. *Francis v. State Bd. of Soc. Servs.*, 184 Colo. 136, 518 P.2d 1174 (1974).

The intention of the general assembly was to exclude annuities and other income from personal property. *Francis v. State Bd. of Soc.*

Servs., 184 Colo. 136, 518 P.2d 1174 (1974).

Where applicants for aid to the needy disabled are capable of performing self-supporting jobs which result in income sufficient to exceed the eligibility limits of the program, they are not eligible for benefits. Dept. of Soc. Servs. v. Davis, 796 P.2d 494 (Colo. App. 1990).

The assignment under subsection (3)(g)(I) is effective for both current and accrued support and remains in effect with respect to any unpaid support even after the termination of aid to families with dependent children (AFDC) benefits. In re Cespedes, 895 P.2d 1172 (Colo. App. 1995).

This section provides specific statutory authorization for a custodial parent receiving AFDC benefits to seek an increase in child support and makes the mother under the facts of the case a real party in interest. In re Cespedes, 895 P.2d 1172 (Colo. App. 1995).

Trial court was correct in concluding that the Colorado statutory and regulatory scheme authorizes the inclusion of garnished social security benefits in calculating income for old age pension eligibility. Ramseyer v. Colo.

Dept. of Soc. Servs., 895 P.2d 1188 (Colo. App. 1995).

A rational basis exists for using the federal criteria and for including garnished income in determining eligibility for old age pension benefits. Ramseyer v. Colo. Dept. of Soc. Servs., 895 P.2d 1188 (Colo. App. 1995).

Regulation did not improperly impose a new condition for eligibility for aid to the needy disabled benefits or fundamentally change legislative policy by requiring applicant to sign an authorization verifying that applicant had applied for federal supplemental security income benefits and allowing the social security administration to send his federal benefits check directly to the department of human services. Martinez v. Dept. of Human Servs., 97 P.3d 152 (Colo. App. 2003).

State laws passed for public welfare should be applied to federal enclaves within the state, and to citizens living therein, for the state is best fitted to know the requirements of its particular locality and to deal with them. Bd. of County Comm'rs v. Donoho, 144 Colo. 321, 356 P.2d 267 (1960).

26-2-111.1. Eligibility for assistance - immunization of children. (Repealed)

Source: L. 77: Entire section added, p. 1340, § 4, effective July 1. L. 86: (3) amended, p. 1040, § 2, effective April 30. L. 89, 1st Ex. Sess.: (4) added, p. 40, § 6, effective July 25. L. 97: Entire section RC&RE, p. 356, § 1, effective July 1. L. 98: Entire section amended, p. 21, § 4, effective August 5. L. 2007: Entire section amended, p. 665, § 9, effective April 26. L. 2010: Entire section amended, (HB 10-1043), ch. 92, p. 315, § 9, effective April 15; entire section repealed, (SB 10-068), ch. 160, p. 555, § 6, effective January 1, 2011.

26-2-111.2. Community work experience program. (Repealed)

Source: L. 77: Entire section added, p. 1340, § 4, effective July 1. L. 86: (1) amended and (2) repealed, pp. 987, 988, §§1, 3, effective April 17; (1) amended, p. 1040, § 3, effective April 30. L. 89, 1st Ex. Sess.: (1) amended and (3) added, p. 40, § 7, effective July 25. L. 91: Entire section repealed, p. 1861, § 4, effective July 1.

26-2-111.3. Work supplementation program. (Repealed)

Source: L. 86: Entire section added, p. 988, § 2, effective April 17. L. 89, 1st Ex. Sess.: (6) added, p. 41, § 8, effective July 25. L. 90: (2)(a), (2)(b), and (5) amended, p. 1359, § 3, effective June 8. L. 91: Entire section repealed, p. 1862, § 5, effective July 1.

26-2-111.4. Employment search program. (Repealed)

Source: L. 86: Entire section added, p. 989, § 1, effective April 24. L. 89, 1st Ex. Sess.: (5) added, p. 41, § 9, effective July 25. L. 91: Entire section repealed, p. 1862, § 6, effective July 1.

26-2-111.5. Access to supplemental security income program benefits for old age pension applicants and recipients. The state department shall require old age pension applicants or recipients who may be eligible for supplemental security income to apply for benefits authorized by Title XVI of the federal social security act and to comply with any recommendations for referrals made by the county department except for good cause shown. With funds appropriated by the general assembly, the state department may develop a statewide cost-effective program to assist old age pension applicants or recipients in obtaining such benefits.

Source: L. 96: Entire section added, p. 1299, § 2, effective June 1.

26-2-111.6. Old age pension work incentive program. (1) The state department is authorized to implement a work incentive program for persons receiving old age pension benefits, which program shall be called the old age pension work incentive program. Under this program, a person who is already eligible for and receiving old age pension benefits would be allowed to retain sixty-five dollars of earned income in a month and one-half of the remaining earned income in a month without such moneys being counted as income for purposes of eligibility for the old age pension. In addition, the receipt and retention of such earned income shall not affect the person's eligibility for medical assistance as provided by articles 4, 5, and 6 of title 25.5, C.R.S.

(2) and (3) Repealed.

Source: L. 96: Entire section added, p. 1299, § 2, effective June 1. L. 2000: (3) repealed, p. 899, § 1, effective May 24. L. 2006: (1) amended, p. 2016, § 97, effective July 1. L. 2008: (2) repealed, p. 1910, § 113, effective August 5.

26-2-111.7. Study of old age pension program - repeal. (Repealed)

Source: L. 96: Entire section added, p. 1299, § 2, effective June 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1997. (See L. 96, p. 1299.)

26-2-111.8. Eligibility of noncitizens for public assistance. (1) (a) The general assembly hereby finds and declares that passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, requires the states to make certain decisions concerning qualified aliens and their eligibility for certain types of public assistance.

(b) The goal of this section is to recognize that foreign-born legal residents of the state of Colorado contribute to our society by working in our communities, supporting local businesses, and paying taxes and should receive certain types of public assistance for certain types of situations. Moreover, the state goal is to provide the types of assistance that will enhance the state's ability to receive federal financial participation, thereby reducing the ultimate burden on the state and local government for emergency health and welfare needs.

(c) This section is also intended to encourage and support efforts to help foreign-born legal residents of the state of Colorado to become citizens of the United States.

(2) (a) **Entry requirements.** A qualified alien who entered the United States before August 22, 1996, and who meets the eligibility criteria specified for a particular public assistance program shall be eligible to receive public assistance under the following programs as described in this article:

- (I) The Colorado works program;
- (II) The old age pension;
- (III) Aid to the needy disabled; or
- (IV) Aid to the blind.

(b) **Five-year bar on receipt of benefits.** A qualified alien who entered the United States on or after August 22, 1996, shall be barred from receiving the benefits described in

paragraph (a) of this subsection (2) for a period of five years after the date of entry into the United States, unless he or she meets the exceptions set forth in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, as amended.

(c) **Deeming of sponsor income and resources.** After five years, a qualified alien described in paragraph (b) of this subsection (2) shall be eligible for benefits under this article, but shall have sponsor income and resources deemed to the individual or family under rules established by the state department pursuant to section 26-2-137 (2).

(3) (Deleted by amendment, L. 2010, (HB 10-1384), ch. 218, p. 952, § 2, effective July 1, 2010.)

(3.5) For benefits provided on and after the effective date of this subsection (3.5), the state department may pursue repayment from the qualified alien's sponsor for old age pension benefits provided to the qualified alien during the time that the sponsorship affidavit of support is in effect as determined by United States citizenship and immigration services, or its successor agency.

Editor's note: Subsection (3.5) is effective upon the earlier of January 1, 2014, or when notification to the revisor of statutes is received. See the editor's note following the section.

(4) A qualified alien may receive benefits under section 26-2-122.3 pursuant to rules promulgated by the state department.

(5) As a condition of eligibility for public assistance under this article, a qualified alien shall agree to refrain from executing an affidavit of support for the purpose of sponsoring an alien on or after July 1, 1997, under rules promulgated by the immigration and naturalization service or its successor agency during the pendency of the qualified alien's receipt of public assistance. Nothing in this subsection (5) shall be construed to affect a qualified alien's eligibility for public assistance under this article based upon the qualified alien's responsibilities under an affidavit of support entered into before July 1, 1997.

(6) The state department shall encourage a qualified alien who is eligible to submit an application for citizenship to submit such an application.

Source: L. 97: Entire section added, p. 1252, § 3, effective July 1. L. 2010: (1), (2), (3), (4), and (5) amended, (HB 10-1384), ch. 218, p. 952, § 2, effective July 1; (4) amended, (HB 10-1422), ch. 419, p. 2116, § 154, effective August 11; (3.5) added, (HB 10-1384), ch. 218, p. 955, § 5, effective (see editor's note).

Editor's note: (1) Subsection (4) was amended in House Bill 10-1422, effective August 11, 2010. However, those amendments were superseded by the amendment of subsection (4) in House Bill 10-1384, effective July 1, 2010.

(2) Section 7 of chapter 218, Session Laws of Colorado 2010, provides that subsection (3.5) is effective upon the earlier of: (1) January 1, 2014, or (2) the date upon which the revisor of statutes receives notification from the executive director of the department of health care policy and financing that the federal centers for medicare and medicaid services, having taken into consideration the requirement for maintenance of effort for medicaid eligibility contained in the federal "American Reinvestment and Recovery Act", Pub.L. 111-5, or any amendment thereto, and in the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or any amendment thereto, has authorized Colorado to reduce eligibility for its medicaid program consistent with the provisions of House Bill 10-1384 without federal penalty.

26-2-112. Old age pensions for inmates of public institutions. (1) Except as otherwise provided in this section, the application procedure, the investigation of applications, the procedure for granting of pensions, and all other provisions of this article relating to the administration of old age pensions shall apply to the class of old age pensions provided in section 26-2-111 (2) (a) (III).

(2) Where an inmate of an institution, not penal in character, maintained by the state or by a municipality therein or county thereof, meets the requirements for the class of old age pensions provided in section 26-2-111 (2) (a) (III) and has been committed to said public institution by order of the district or probate court, the superintendent or chief administra-

tive officer of such institution shall make application for such pension for and in behalf of said inmate in the same manner as provided in section 26-2-106.

(3) (a) (I) Assistance payments under the old age pension granted to an inmate of the Colorado mental health institute at Pueblo, Colorado, or the Wheat Ridge regional center, the Pueblo regional center, or the Grand Junction regional center shall be paid to the chief financial officer of the institution within which the inmate is confined. Such chief financial officer shall receive and disburse such pension funds as trustee for such inmate and shall account for the same to the state controller in the manner now prescribed by law for the handling and accounting of trust or quasi-trust funds.

(II) Such chief financial officer shall be required to furnish, at the state's expense, a surety bond in such amount as the department of human services shall from time to time deem sufficient in the premises to protect such funds.

(III) It is the duty of such chief financial officer to pay monthly from the assistance payments under the old age pension, as prior claim therefrom, all lawful claims of said public institution for the care, support, maintenance, education, and treatment of said inmate in accordance with article 92 of title 27, C.R.S.

(b) Where assistance payments under the old age pension are granted to an inmate of an institution maintained by any county or municipality, such payments shall be paid to such conservator or guardian as the district or probate court of such county may appoint, and under and amendable to the statutes applicable to conservators and guardians when so appointed.

Source: L. 73: R&RE, p. 1186, § 2. C.R.S. 1963: § 119-3-12. L. 83: (3)(a)(I) amended, p. 1160, § 19, effective April 26. L. 91: (3)(a)(I) amended, p. 1145, § 13, effective May 18. L. 94: (3)(a)(II) amended, p. 2703, § 261, effective July 1. L. 2010: (3)(a)(III) amended, (SB 10-175), ch. 188, p. 803, § 73, effective April 29.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Inmates have absolute right to participate in fund. This section gives the inmates of the institutions mentioned therein an absolute right to participate with others entitled to the benefits of the old age pension fund. *Higgins v. Sinnock*, 129 Colo. 66, 266 P.2d 1112 (1954).

Old age pension fund benefits may be used to cover a patient's costs while at the Colorado Mental Health Institute at Pueblo. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

26-2-113. Funds for old age pensions. (1) The state old age pension fund and the moneys allocated thereto pursuant to the provisions of article XXIV of the state constitution shall include amounts received from the incorporation fees and inheritance taxes imposed pursuant to subsection (2) of this section.

(2) (a) In addition to all other fees, charges, and impositions now fixed by law, there shall be assessed and collected, by the governmental department, person, or party in charge under whose jurisdiction the present collection is now required by law, the following fees, charges, sums, and impositions, which fees, charges, sums, and impositions shall be set aside, allocated, and allotted to the old age pension fund:

(I) Ten percent additional amount of the fees which are due and paid to the secretary of state upon incorporation of any corporation or association for profit; and

(II) Ten percent additional upon the amount of any tax payable under the provisions of the inheritance tax laws of this state.

(b) In computing the amount of the additional tax or fee as provided in paragraph (a) of this subsection (2), the nearest multiple to five cents shall be taken in all cases.

(3) Any and all of such funds collected by any state official or state department pursuant to subsection (2) of this section shall be paid over by such official or department to the state treasurer, who on the first day of each month shall divide and pay the same into each of the

county old age pension accounts of the county social services funds in this state on the pro rata basis which the population of the respective county has to the population of the entire state according to the last official United States census.

Source: L. 73: R&RE, p. 1187, § 2. C.R.S. 1963: § 119-3-13.

ANNOTATION

Law reviews. For article, "Federal and Colorado Death and Gift Taxes: A Comparison", see 35 Dicta 105 (1958).

Constitutionality. This section does not violate the "due process", "equal protection", and "uniformity" clauses of the constitution. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

Where 85 percent of certain revenue has been allocated by constitutional amendment to the old age pension fund, whatever constitutional prohibition, if any, theretofore existed as to the places of business producing that revenue, is

suspended until a substitute revenue is provided. Golden v. People ex rel. Baker, 101 Colo. 381, 74 P.2d 715 (1937).

Subsection (2)(a)(II) tax valid. The tax imposed by subsection (2)(a)(II) is an additional, not a separate and distinct, tax to that provided by the inheritance tax laws. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

The tax imposed by subsection (2)(a)(II) is not vulnerable to the objection that it lays an additional tax to that already authorized without amending the existing law. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

26-2-114. Amount of assistance payments - old age pension. (1) The basic minimum award payable to those persons qualified to receive an old age pension shall be one hundred dollars monthly; but the state board may adjust the said basic minimum award above one hundred dollars if, in its discretion, living costs have changed sufficiently to justify such adjustment.

(2) (a) and (a.5) Repealed.

(b) (I) The amount of net income from whatever source, either in cash or in kind, which any person qualified for an old age pension may receive shall be deducted from the amount of monthly pension which such person would otherwise receive. The rules and regulations of the state department may require an applicant or recipient who may be eligible for benefits under another federal or state program or who may have a right to receive or recover other income or resources to take reasonable steps to apply for, otherwise pursue, and accept such benefits, income, or resources.

(II) In computing said net income, the county department shall not consider the ownership of real estate occupied as a residence by the recipient as income. In addition, in computing said net income, the county department shall not consider as income funds received by or on behalf of the recipient from the federal government for rent supplementation or relocation payments or income earned by the recipient up to the maximum extent allowed by Title I, section 2, of the social security act.

(III) Whenever the United States congress shall provide by law for a retroactive increase in monthly benefits under the old age, survivors, and disability provisions of the social security act, or for a retroactive increase in monthly benefits under the railroad retirement act, and the amount of such retroactive increase in monthly benefits shall be subsequently paid to an old age pension recipient in a lump sum, then the amount of such lump sum payment shall not be considered as income and shall not be deducted from the amount of monthly pension otherwise payable to such recipient for the month in which such lump sum payment is received.

(IV) Any special payment by the federal government in the form of a one-time-only credit against or refund of federal income taxes shall not be considered as income for purposes of this title unless required by federal law.

Source: L. 73: p. 1188, § 2. C.R.S. 1963: § 119-3-14. L. 75: (2)(b)(I) amended, p. 889, § 7, effective July 28. L. 77: (2)(b)(IV) added, p. 1346, § 1, effective May 26. L. 78: (2)(a) R&RE, p. 436, § 1, effective May 4. L. 79: (2)(a.5) added, p. 1439, § 24, effective July 3. L. 83: (2)(a) amended, p. 1130, § 6, effective June 3; (2)(a.5) amended, p. 2101,

§ 17, effective October 13. **L. 87:** (2)(a.5) repealed, p. 1159, § 1, effective July 1. **L. 91:** (2)(a) amended, p. 1857, § 16, effective April 11; (2)(a) amended, p. 1897, § 9, effective July 1. **L. 91, 2nd Ex. Sess.:** (2)(a) amended, p. 81, § 2, effective October 16. **L. 93:** (2)(a)(II)(B) repealed, p. 333, § 2, effective April 12; (2)(a)(I) and (2)(a)(II)(A) amended, p. 1147, § 87, effective July 1, 1994. **L. 94:** (2)(a) amended, p. 1561, § 9, effective July 1; (2)(a)(I) and (2)(a)(II)(A) amended, p. 2625, § 47, effective July 1. **L. 2006:** (2)(a) amended, p. 1994, § 22, effective July 1. **L. 2010:** (2)(a)(I) and (2)(a)(II)(A) repealed, (HB 10-1146), ch. 281, p. 1302, § 1, effective January 1, 2011.

Editor's note: Amendments to subsection (2)(a) by Senate Bill 91-105 and House Bill 91-1287 were harmonized. Amendments to subsection (2)(a) by House Bill 94-1029 and Senate Bill 94-133 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (2)(a)(I) and (2)(a)(II)(A), see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act amending subsection (2)(a)(I) and (2)(a)(II)(A), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

One of primary purposes of home care allowance program is to keep recipients independent and, if possible, to prevent their placement in nursing homes. Department of social services' new eligibility rules, which changed agency's longstanding interpretation of subsection (2)(a), conflicted with both the letter and the intent of home care allowance statutes and were therefore ineffective. *Adams v. Colo. Dept. of Soc. Servs.*, 824 P.2d 83 (Colo. App. 1991) (decided prior to 1991 amendment of subsection (2)(a)).

This section deals with income and does not apply to the ownership of property. *Flavell v. Dept. of Welfare*, 144 Colo. 203, 355 P.2d 941 (1960).

Applicant living with an employed spouse or with a spouse of ample means who is sharing family necessities for which the income of such spouse would be chargeable can be said to be receiving income in kind. The value thereof can be determined and the amount deducted from any pension to which the recipient may be entitled. *State Bd. of Pub. Welfare v. Champion*, 141 Colo. 375, 348 P.2d 256 (1960).

One who has incidentals provided for him receives benefits. One who is sharing in or having paid for him shelter, taxes, interest, repairs, property insurance, water, fuel, gas, electricity, ice, telephone, food, medicines, household equipment, and other incidentals normally necessary to every-day existence, through the income of a spouse, is in receipt of benefits within the realm of inquiry of the department. *State Bd. of Pub. Welfare v. Champion*, 141 Colo. 375, 348 P.2d 256 (1960).

Department cannot determine by regulation net income of spouse. The department cannot substitute by regulation a fixed calcula-

tion of the income of the spouse, less limited deductions, for evidence without regard to the variable circumstances that might be present in each case. *State Bd. of Pub. Welfare v. Champion*, 141 Colo. 375, 348 P.2d 256 (1960).

A regulation of the department of public welfare staff manual offends this section by usurping a legislative function where it attempts to define, without statutory authority, the net cash income of a spouse over whom the department has no jurisdiction. *State Bd. of Pub. Welfare v. Champion*, 141 Colo. 375, 348 P.2d 256 (1960).

Evidence insufficient to establish deduction from pension. The production of records of the gross earnings of one other than the old age pension applicant and nothing more falls far short of evidence to establish the amount, if any, to be deducted from the pension of the applicant. *State Bd. of Pub. Welfare v. Champion*, 141 Colo. 375, 348 P.2d 256 (1960).

Trial court was correct in concluding that the Colorado statutory and regulatory scheme authorizes the inclusion of garnished social security benefits in calculating income for old age pension eligibility. *Ramseyer v. Colo. Dept. of Soc. Servs.*, 895 P.2d 1188 (Colo. App. 1995).

A rational basis exists for using the federal criteria and for including garnished income in determining eligibility for old age pension benefits. *Ramseyer v. Colo. Dept. of Soc. Servs.*, 895 P.2d 1188 (Colo. App. 1995).

Reimbursement of interim assistance payments made to applicants under the state's aid to the needy and disabled program, pending awards of federal supplemental security income benefits, is proper. *Gillens v. State Dept. of Soc. Servs.*, 644 P.2d 97 (Colo. App. 1982).

Applied in *Jeffrey v. State Dept. of Soc. Servs.*, 198 Colo. 265, 599 P.2d 874 (1979).

26-2-115. State old age pension fund - priority. All moneys deposited in the state old age pension fund shall be first available for payment of basic minimum awards to qualified old age pension recipients, and no part of said fund shall be transferred to any other fund until such basic minimum awards shall have been paid. Moneys in the state old age pension fund shall be subject to annual appropriation by the general assembly.

Source: L. 73: R&RE, p. 1188, § 2. C.R.S. 1963: § 119-3-15. L. 93: Entire section amended, p. 1507, § 6, effective June 6.

26-2-116. Old age pension stabilization fund. Any moneys remaining in the old age pension fund after full payment of basic minimum awards to qualified old age pension recipients shall be transferred to a fund to be known as the old age pension stabilization fund, which fund shall be maintained at the amount of five million dollars and restored to that amount after any disbursements therefrom. The state board shall use the moneys in such fund only to stabilize payments of old age pension basic minimum awards. Moneys in the old age pension stabilization fund shall be subject to annual appropriation by the general assembly.

Source: L. 73: R&RE, p. 1188, § 2. C.R.S. 1963: § 119-3-16. L. 93: Entire section amended, p. 1507, § 7, effective June 6.

26-2-117. Old age pension health and medical care fund - supplemental old age pension health and medical care fund. (Repealed)

Source: L. 73: R&RE, p. 1188, § 2. C.R.S. 1963: § 119-3-17. L. 93: Entire section amended, p. 1507, § 8, effective June 6. L. 2002: Entire section amended, p. 912, § 1, effective May 31. L. 2003: Entire section amended, p. 2586, § 9, effective July 1. L. 2006: Entire section repealed, p. 1994, § 23, effective July 1.

Cross references: For current provisions concerning the old age pension health and medical care fund and the supplemental old age pension health and medical care fund, see § 25.5-2-101.

26-2-118. Amount of assistance payments - aid to families with dependent children. (Repealed)

Source: L. 73: R&RE, p. 1189, § 2. C.R.S. 1963: § 119-3-18. L. 77: (3) added, p. 1346, § 2, effective May 26. L. 97: Entire section repealed, p. 1233, § 20, effective July 1.

26-2-119. Amount of assistance payments - aid to the needy disabled. (1) The amount of assistance payments that shall be granted to a recipient under the program for aid to the needy disabled shall be on the basis of budgetary need, as determined by the county department with due regard to any income, property, or other resources available to the recipient, within available appropriations, and in accordance with rules of the state department. The rules of the state department may require an applicant or recipient who may be eligible for benefits under another federal or state program or who may have a right to receive or recover other income or resources to take reasonable steps to apply for, otherwise pursue, and accept such benefits, income, or resources.

(1.5) and (2) (Deleted by amendment, L. 2010, (HB 10-1146), ch. 281, p. 1302, § 2, effective January 1, 2011.)

(3) and (4) Repealed.

(5) Any special payment by the federal government in the form of a one-time-only credit against or refund of federal income taxes shall not be considered as income for purposes of this title unless required by federal law.

Source: **L. 73:** R&RE, p. 1189, § 2. **C.R.S. 1963:** § 119-3-19. **L. 75:** (1) amended, (3) and (4) repealed, and (5) added, pp. 890, 893, §§ 8, 14, 9, effective July 28. **L. 77:** (5) R&RE, p. 1346, § 3, effective May 26. **L. 91, 2nd Ex. Sess.:** (1.5) added, p. 82, § 3, effective October 16. **L. 93:** (1.5)(a)(II)(B) repealed, p. 333, § 3, effective April 12; (1.5)(a)(I) and (1.5)(a)(II)(A) amended, p. 1147, § 88, effective July 1, 1994. **L. 94:** (1.5) amended, p. 1561, § 10, effective July 1; (1.5)(a)(I) and (1.5)(a)(II)(A) amended, p. 2625, § 48, effective July 1. **L. 2006:** (1.5) amended, p. 2017, § 98, effective July 1. **L. 2010:** (1), (1.5), and (2) amended, (HB 10-1146), ch. 281, p. 1302, § 2, effective January 1, 2011.

Editor's note: Amendments made to subsection (1.5) by House Bill 94-1029 and Senate Bill 94-133 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (1.5)(a)(I) and (1.5)(a)(II)(A), see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act amending subsection (1.5)(a)(I) and (1.5)(a)(II)(A), see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the "Colorado Medical Assistance Act", see articles 4, 5, and 6 of title 25.5.

ANNOTATION

No right to withhold special need payment. The statutory mandate of the department under this section to consider the special needs of a needy disabled recipient when computing his budgetary needs does not include the right of the department to withhold special need payment. *Rodgers v. Atencio*, 43 Colo. App. 268, 608 P.2d 813 (1979).

State regulation void. A regulation which, in effect, amends the mandatory language of subsection (2), by directing the department to link "special needs" only to federal supplementary security income act benefits, is void. *Rodgers v. Atencio*, 43 Colo. App. 268, 608 P.2d 813 (1979).

26-2-119.5. Health and medical care program - aid to the needy disabled. (Repealed)

Source: **L. 99:** Entire section added, p. 700, § 5, effective July 1. **L. 2004:** (1) amended, p. 204, § 23, effective August 4. **L. 2006:** Entire section repealed, p. 1994, § 23, effective July 1.

26-2-120. Amount of assistance payments - aid to the blind. (1) The amount of assistance payments that shall be granted to a recipient under the program for aid to the blind shall be on the basis of budgetary need, as determined by the county department with due regard to any income, property, or other resources available to the recipient, within available appropriations, and in accordance with rules of the state department. The rules of the state department may require an applicant or recipient who may be eligible for benefits under another federal or state program or who may have a right to receive or recover other income or resources to take reasonable steps to apply for, otherwise pursue, and accept such benefits, income, or resources.

(1.5) and (2) (Deleted by amendment, L. 2010, (HB 10-1146), ch. 281, p. 1303, § 3, effective January 1, 2011.)

(3) Repealed.

(4) Every recipient of aid to the blind shall submit to a reexamination as to his eyesight at least once every three years, unless excused therefrom by the state department, and at other times when required to do so by the county department or the state department. He shall furnish any medical information required by the county department or the state department.

(5) Repealed.

(6) Any special payment by the federal government in the form of a one-time-only credit against or refund of federal income taxes shall not be considered as income for purposes of this title unless required by federal law.

Source: **L. 73:** R&RE, p. 1190, § 2. **C.R.S. 1963:** § 119-3-20. **L. 75:** (1) amended, (3)

and (5) repealed, and (6) added, pp. 890, 893, 891, §§ 10, 14, 11, effective July 28. **L. 77:** (6) R&RE, p. 1347, § 4, effective May 26. **L. 91, 2nd Ex. Sess.:** (1.5) added, p. 82, § 4, effective October 16. **L. 93:** (1.5)(a)(II)(B) repealed, p. 333, § 4, effective April 12. **L. 94:** (1.5) amended, p. 1561, § 11, effective July 1; (1.5)(a)(I) amended, p. 2704, § 262, effective July 1. **L. 2006:** (1.5) amended, p. 2017, § 99, effective July 1. **L. 2010:** (1), (1.5), and (2) amended, (HB 10-1146), ch. 281, p. 1303, § 3, effective January 1, 2011.

Editor's note: Amendments to subsection (1.5) by House Bill 94-1029 and Senate Bill 94-133 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1.5)(a)(I), see section 1 of chapter 345, Session Laws of Colorado 1994.

26-2-121. Expenses of treatment to prevent blindness or restore eyesight. Temporary assistance may be granted by the county department to any applicant for aid to the blind or additional assistance granted to any recipient of aid to the blind who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind as defined by section 26-2-103 (3) and the rules and regulations of the state department, if he is otherwise qualified for aid to the blind under this article. The temporary assistance may include necessary traveling expenses and other expenses to receive treatment from a hospital or clinic designated by the state department. Such payment shall be allowed and paid in the same manner as aid to the blind provided by this article and shall be subject to reimbursement by the state in the same manner as such aid to the blind.

Source: **L. 73:** R&RE, p. 1190, § 2. **C.R.S. 1963:** § 119-3-21.

26-2-122. Public assistance in the form of social services. (1) Subject to available appropriations, the state department may provide those services required by the social security act and applicable federal regulations. Subject to available appropriations, the state department may, by regulation, elect to provide those services which are optional under the social security act.

(2) Eligible persons shall include those required to be eligible for services by the social security act and federal regulations. Subject to available appropriations, eligible persons may include those persons who are optionally eligible under federal law and regulations whom the state department, by regulation, includes as eligible persons.

(3) The state department shall adopt budgetary standards from which a graduated schedule of fees shall be determined. Said fees shall be paid by persons who receive social services and who have the financial ability to pay in accordance with the schedule of fees established by the state department.

(4) The state department shall prepare and submit to the secretary of the federal department of health and human services a state plan for services that meets the requirements of the social security act, federal regulations, and this section. The state department shall administer the program for services in accordance with the social security act, federal regulations, and this section.

Source: **L. 73:** R&RE, p. 1191, § 2. **C.R.S. 1963:** § 119-3-22. **L. 75:** Entire section R&RE, p. 899, § 2, effective June 26. **L. 97:** (4) amended, p. 1233, § 21, effective July 1.

26-2-122.3. Adult foster care and home care allowance. (1) (a) (I) The state department, subject to available appropriations, may provide adult foster care for persons eligible to receive old age pension, aid to the needy disabled, or aid to the blind. For purposes of this paragraph (a), "adult foster care" means care and services that, in addition to room and board, may include, but are not limited to, personal services, recreational opportunities, transportation, utilization of volunteer services, and special diets. Such care and services are provided to recipients of federal supplemental security income benefits who are also eligible for the Colorado supplement program for aid to the needy disabled or aid to the blind and who do not require skilled nursing care or intermediate health care and

cannot remain in or return to their residences but who need to reside in a supervised nonmedical setting on a twenty-four-hour basis. Those persons with developmental disabilities as defined in section 27-10.5-102, C.R.S., or who are receiving or are eligible to receive services pursuant to any provision of title 27, C.R.S., do not qualify for adult foster care under this paragraph (a).

(II) Adult foster care facilities shall be licensed by the department of public health and environment pursuant to section 25-27-105, C.R.S.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the state department, subject to available appropriations, may provide home care allowance for persons who meet the functional impairment and financial eligibility criteria as established by the state department by rule and are receiving old age pension, aid to the needy disabled, aid to the blind, or supplemental social security income benefits.

Editor's note: This version of subparagraph (I) is effective until January 1, 2014, or the date that notification to the revisor of statutes is received, whichever is earlier. See the editor's note following the section.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the state department, subject to available appropriations, may provide home care allowance for persons who meet the functional impairment and financial eligibility criteria as established by the state department by rule and:

(A) Were receiving old age pension benefits and home care allowance on the day prior to the effective date of this sub-subparagraph (A) and remain continuously eligible for such benefits; or

(B) Are receiving aid to the needy disabled, aid to the blind, or supplemental social security income benefits.

Editor's note: This version of subparagraph (I) is effective upon the earlier of January 1, 2014, or when notification to the revisor of statutes is received. See the editor's note following the section.

(II) Persons eligible to receive home- and community-based services pursuant to article 6 of title 25.5, C.R.S., shall not be eligible for home care allowance under this paragraph (b).

(III) For the purposes of this paragraph (b), "home care allowance" is a program that provides payments, subject to available appropriations, to functionally impaired persons who meet the criteria specified in subparagraph (I) of this paragraph (b) as determined in accordance with rules. The payments allow recipients who are in need of long-term care to purchase community-based services as defined in rules adopted by the state department. These services may include, but need not be limited to, the supervision of self-administered medications, assistance with activities of daily living as defined in section 25.5-6-104 (2) (a), C.R.S., and assistance with instrumental activities of daily living as defined in section 25.5-6-104 (2) (g), C.R.S. The rules adopted by the state department shall specify, in accordance with the provisions of this section, the services available under the program and shall specify eligibility criteria for the home care allowance program. In addition, the rules shall specifically provide for a determination as to the person's functional impairment and the person's unmet need for paid care and shall address amounts awarded to persons eligible for home care allowance. The state department shall specify in the rules the methods for determining the unmet need for paid care and the amount of a home care allowance that may be awarded to eligible persons. Such methods may be based on how often a person experiences unmet need for paid care or any other method that the state board determines is valid in correlating unmet need for paid care with an amount of a home care allowance award. The state department shall require that eligibility and unmet need for paid care be determined through the use of a comprehensive and uniform client assessment instrument prescribed by the state department. The state department may adjust income eligibility criteria, including any functional impairment standard, or the amounts awarded to eligible persons or may limit or suspend enrollments as necessary to manage the home care allowance program within the funds appropriated by the general assembly. In addition, the state department may adjust which services are available under the program; except that the adjustment shall be consistent with the provisions of this subsection (1).

(c) The state department is authorized to implement pilot programs that it deems feasible to assess the overall impact, if any, of using alternatives to the method described in paragraph (b) of this subsection (1) for determining an eligible person's unmet need for paid care and the amount of a home care allowance awarded to an eligible person.

(2) The state department shall administer the adult foster care program and the home care allowance program. The executive director or the state board, as appropriate, shall promulgate rules necessary for the implementation of this section.

(3) (Deleted by amendment, L. 2010, (HB 10-1146), ch. 281, p. 1304, § 4, effective January 1, 2011.)

(4) Repealed.

(5) The state department shall contract with the single entry point agencies for functions of the home care allowance and adult foster care programs pursuant to the terms of the contract or rule of the state department.

Source: L. 93: Entire section added, p. 1114, § 25, effective July 1, 1994. L. 94: Entire section amended, p. 1562, § 12, effective July 1; (1)(a) amended, p. 2612, § 16, effective July 1. L. 95: (1)(b) amended and (1)(c) added, p. 904, § 4, effective May 25. L. 2001: (1)(b) amended, p. 126, § 1, effective March 23. L. 2006: Entire section amended, p. 1994, § 24, effective July 1. L. 2008: (1) amended, p. 438, § 2, effective August 5. L. 2010: (5) amended, (HB 10-1146), ch. 281, p. 1305, § 5, effective July 1; (1)(a)(I), (1)(b), and (3) amended, (HB 10-1146), ch. 281, p. 1304, § 4, effective January 1, 2011; (1)(b)(I) amended, (HB 10-1146), ch. 281, p. 1305, § 6, effective (see editor's note (3)).

Editor's note: (1) Amendments made to subsection (1)(a) by House Bill 94-1029 and Senate Bill 94-133 were harmonized.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2007. (See L. 2006, p. 1994.)

(3) Section 8 of chapter 281, Session Laws of Colorado 2010, provides that the amendments to subsection (1)(b)(I) in section 6 of said chapter 281 shall take effect upon the earlier of: (1) January 1, 2014; or (2) the date upon which the revisor of statutes receives notification from the executive director of the department of health care policy and financing that the federal centers for medicare and medicaid services, having taken into consideration the requirement for maintenance of effort for medicaid eligibility contained in the federal "American Reinvestment and Recovery Act", Pub.L. 111-5, or any amendment thereto, and in the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or any amendment thereto, has authorized Colorado to reduce eligibility for its medicaid program consistent with the provisions of House Bill 10-1146 without federal penalty.

Cross references: For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act amending subsection (1)(a), see section 1 of chapter 345, Session Laws of Colorado 1994.

26-2-122.4. Home care allowance grant program - rules - report - repeal.

(1) There is hereby established in the state department the home care allowance grant program, referred to in this section as the "program", to provide assistance to certain individuals who were receiving home care allowance but are no longer eligible to receive such assistance. To be eligible for a grant under the program, an individual shall:

(a) Have been receiving home care allowance under section 26-2-122.3 at any time during the period beginning September 1, 2011, and ending December 31, 2011;

(b) No longer be eligible to receive home care allowance because the individual is on either the home- and community-based supported living services waiver or the children's extensive services waiver, or any successor waiver;

(c) Have been within one thousand dollars of his or her maximum benefit under the applicable waiver at any time during the period beginning September 1, 2011, and ending December 31, 2011;

(d) Meet any other eligibility requirements established by the state board by rule; and

(e) Submit an application to the state department.

(2) (a) As soon as practicable after March 22, 2012, the state board shall adopt rules governing the program, including but not limited to information required in an application,

standards for eligibility, requirements for eligibility redeterminations, and the amount of any grant.

(b) Subject to available appropriations, the state department may provide to an individual eligible pursuant to subsection (1) of this section a grant in an amount consistent with the benefits available for an eligible person under the home care allowance program. For eligible individuals, the grants may be made retroactive to January 1, 2012. The state department shall administer the program in a manner that will facilitate rapid implementation and minimize administrative costs.

(3) It is the intent of the general assembly that moneys for the program come from the moneys appropriated for home care allowance benefits and that any moneys appropriated for the program that are unused may be used to provide additional benefits under the home care allowance program.

(4) (a) On or before October 15, 2016, the state department shall submit a written report on the program to the health and human services committee of the senate, or any successor committee, the health and environment committee of the house of representatives, or any successor committee, and to the joint budget committee of the general assembly. As part of the report, the state department shall solicit feedback from grant recipients and their families. The report shall include information on the number of grant recipients, the cost of the program, and the effect of repeal of the program on grant recipients and their families.

(b) This section is repealed, effective July 1, 2017, unless extended by the general assembly.

Source: L. 2012: Entire section added, (HB 12-1177), ch. 45, p. 159, § 1, effective March 22.

26-2-122.5. Acceptance of available moneys to finance the low-income energy assistance program - rules.

(1) (Deleted by amendment, L. 97, p. 1234, § 22, effective July 1, 1997.)

(2) The executive director of the state department, or said director's designee, is hereby authorized to accept any private contributions, including contributions from the fund created in section 40-8.5-104, C.R.S., and any federal grants, and to expend the same, subject to appropriation, for the purpose of increasing available funds under the low-income energy assistance program.

(3) Notwithstanding the availability of additional moneys pursuant to subsection (2) of this section, the low-income energy assistance program shall be administered within the staffing structure, in existence on July 1, 1991, of the state department of human services and county departments of social services, without additional FTE.

Source: L. 91: Entire section added, p. 1900, § 1, effective July 1. **L. 94:** (3) amended, p. 2704, § 263, effective July 1. **L. 97:** Entire section amended, p. 1234, § 22, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-2-123. Removal to another county. (1) Any recipient who becomes a resident of another county in this state shall be entitled to receive all forms of public assistance that are provided in the county to which the recipient transfers and for which he or she is eligible, and the county department of the county from which the recipient has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he or she has moved, pursuant to the rules of the state department.

(2) The county to which a recipient moves is required to provide only those services and benefits under the Colorado works program created in part 7 of this article as are stipulated in the receiving county's performance contract.

Source: L. 73: R&RE, p. 1191, § 2. **C.R.S. 1963:** § 119-3-23. **L. 77:** Entire section amended, p. 1348, § 1, effective April 25. **L. 97:** Entire section amended, p. 1234, § 23, effective July 1.

26-2-124. Reconsideration and changes. (1) All assistance payments and social services provided under this article shall be reconsidered as frequently as and in the manner required by rules and regulations of the state department. After such further verification and record as the county department may deem necessary or the rules and regulations of the state department may require, the amount of assistance payments or the social services provided may be changed, or public assistance may be terminated, if the state department or the county department finds that the recipient's circumstances have altered sufficiently to warrant such action or if changes in state or federal law have been made which would warrant such action.

(2) In accordance with the rules and regulations of the state department, the county department may terminate public assistance at any time for cause, or it may, for cause, suspend public assistance for such period as it may deem proper. Timely notice to persons receiving public assistance, when in fact they are not eligible due to fraudulent acts, may be given five days before the date of a proposed action, in accordance with federal regulations.

(3) Whenever assistance payments are terminated, suspended, or in any way changed, the county department shall at once report such decision to the recipient and to the state department setting forth the reason for such action. All such decisions shall be subject to review by the state department in accordance with the rules and regulations of the state department.

Source: L. 73: R&RE, p. 1191, § 2. C.R.S. 1963: § 119-3-24. L. 77: (2) amended, p. 1335, § 5, effective July 15. L. 83: (1) amended, p. 1120, § 1, effective April 29.

ANNOTATION

Specific finding required for termination of benefits. Where the state department fails to make a specific finding of a change of circumstances sufficient to warrant the termination of a recipient's benefits, those benefits may not be terminated. *Herrera v. State Dept. of Soc. Servs.*, 643 P.2d 782 (Colo. App. 1981).

Subsection (1) had the effect of "grandfathering" previously eligible recipients whose disabling conditions have not changed despite subsequent changes in regulations. *Herrera v. State Dept. of Soc. Servs.*, 643 P.2d 782 (Colo. App. 1981) (decided prior to 1983 amendment).

26-2-125. Colorado works cases - vendor payments. The county department, upon reconsideration in cases involving the Colorado works program as provided in section 26-2-124, may authorize direct payment to vendors of the portion of the assistance grant budgeted for essential services and subsistence items for the children, if evidence has been accumulated that the relative payee is using that portion of the grant provided for the care, maintenance, and welfare of the children for other purposes.

Source: L. 73: R&RE, p. 1192, § 2. C.R.S. 1963: § 119-3-25. L. 97: Entire section amended, p. 1235, § 24, effective July 1.

26-2-126. Evidentiary conference. (Repealed)

Source: L. 73: R&RE, p. 1192, § 2. C.R.S. 1963: § 119-3-26. L. 97: Entire section repealed, p. 1321, § 4, effective July 1.

26-2-127. Appeals. (1) (a) (I) Except as provided in part 7 of this article, if an application for assistance payments is not acted upon by the county department within a reasonable time after filing of the same, or if an application is denied in whole or in part, or if a grant of assistance payments is suspended, terminated, or modified, the applicant or recipient, as the case may be, may appeal to the state department in the manner and form prescribed by the rules of the state department. Every county department or service delivery agency shall adopt procedures for the resolution of disputes arising between the county department or the service delivery agency and any applicant for or recipient of public

assistance prior to appeal to the state department. Such procedures are referred to in this section as the “dispute resolution process”. Two or more counties may jointly establish the dispute resolution process. The dispute resolution process shall be consistent with rules promulgated by the state board pursuant to article 4 of title 24, C.R.S. The dispute resolution process shall include an opportunity for all clients to have a county conference, upon the client’s request, and such requirement may be met through a telephonic conference upon the agreement of the client and the county department. The dispute resolution process need not conform to the requirements of section 24-4-105, C.R.S., as long as the rules adopted by the state board include provisions specifically setting forth expeditious time frames, notice, and an opportunity to be heard and to present information. If the dispute is not resolved, the applicant or recipient may appeal to the state department in the manner and form prescribed by the rules of the state department. Whether at the county level, state level, or both, disputes related to the delivery of assistance under the Colorado works program established pursuant to part 7 of this article shall be decided in accordance with the rules promulgated by the state board pursuant to this subparagraph (I) and with the county’s official written policies adopted pursuant to section 26-2-716 (2.5), which policies govern delivery of assistance under such program. The state board shall adopt rules setting forth what other issues, if any, may be appealed by an applicant or recipient to the state department. County notices to applicants or recipients shall inform them of the basis for the county’s decision or action and shall inform them of their rights to a county conference under the dispute resolution process and of their rights to state level appeal and the process of making such appeal. A hearing need not be granted when either state or federal law requires or results in an automatic grant adjustment for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

(II) Upon receipt of an appeal, the state department shall give the appellant reasonable notice and an opportunity for a fair hearing in accordance with rules of the state department. Any such fair hearing shall comply with section 24-4-105, C.R.S., and the state department’s administrative law judge shall preside.

(III) The appellant shall have an opportunity to examine all applications and pertinent records concerning said appellant that constitute a basis for the denial, suspension, termination, or modification of assistance payments.

(IV) The appellant may represent himself or herself or he or she may be represented by legal counsel, or by a relative, friend, or other spokesman, and such representation by nonlawyers shall not be considered to be the practice of law.

(b) The state department, by its rules, may provide for fair hearings and appeals for applicants for and recipients of social services.

(c) (Deleted by amendment, L. 97, p. 1317, § 1, effective July 1, 1997.)

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

(3) The state department, the department of health care policy and financing, and the office of administrative courts in the department of personnel shall work together to streamline the process for the appeal of disputes that are not resolved at the county level and shall consider proposed legislative changes or federal waivers for the Colorado works program pursuant to part 7 of this article in order to address changes in the appeals process to avoid or mitigate expenses to counties of maintaining benefits during the pendency of state-level appeals.

(4) The state department is authorized to apply to the United States department of agriculture and the health care financing administration for waivers to develop a process for appeals that ensures that issues may be consolidated at the local and state levels. In applying for the waiver, the state department shall demonstrate that due process considerations are addressed through other appeal mechanisms.

Source: L. 73: R&RE, p. 1192, § 2. **C.R.S. 1963:** § 119-3-27. **L. 77:** (1)(a)(I) amended, p. 1349, § 1, effective May 16. **L. 87:** (1)(a)(II) amended, p. 973, § 89, effective March 13. **L. 97:** (1)(a)(I) amended, p. 1235, § 25, effective July 1; entire section

amended, p. 1317, § 1, effective July 1. **L. 99:** (1)(a)(I) amended, p. 303, § 2, effective April 15. **L. 2005:** (3) amended, p. 859, § 27, effective June 1. **L. 2010:** (3) amended, (HB 10-1043), ch. 92, p. 315, § 10, effective April 15.

Editor's note: Amendments to subsection (1)(a)(I) by House Bill 97-1344 and Senate Bill 97-120 were harmonized.

26-2-128. Recovery from recipient - estate. (1) If, at any time during the continuance of public assistance, the recipient thereof becomes possessed of any property having a value in excess of that amount set pursuant to the provisions of section 26-2-109 and the rules of the state department or receives any increase in income, it shall be the duty of the recipient to notify the county department of the possession of such property or receipt of such income, and the county department may either terminate the public assistance or alter the amount of assistance payments in accordance with the circumstances and the rules of the state department. To the extent not otherwise prohibited by state or federal law, if the recipient is found to have committed an intentional program violation, the recipient is disqualified from participation in any public assistance program under this article for twelve months for the first incident, twenty-four months for a second incident, and permanently for a third or subsequent incident. Such disqualification is mandatory and is in addition to any other penalty imposed by law. Except as provided in subsections (3) and (4) of this section, any previously paid excess public assistance to which the recipient was not entitled shall be recoverable by the county as a debt due to the state and the county in proportion to the amount of public assistance paid by each respectively; except that any fraudulently obtained public assistance or fraudulently obtained overpayments of public assistance shall be recoverable and payable in proportionate shares as provided in section 26-1-112 (2) (b), and interest shall be charged and paid to the county department on any sum fraudulently obtained, calculated at the legal rate and calculated from the date the recipient obtained such sum to the date such sum is recovered. The following remedies apply for the enforcement and collection of a debt for fraudulently obtained public assistance or fraudulently obtained overpayments of public assistance:

(a) If the debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible has been reduced to a judgment in a court of record in this state, the county department may seek a continuing garnishment to collect the debt under article 54.5 of title 13, C.R.S.

(b) If the person has received an overissuance of food stamp benefits resulting from fraud or willful misrepresentation that has not been recovered by repayment under section 13 (b) (1) of the federal "Food Stamp Act", as amended, the state shall recover the overissuance by withholding unemployment compensation to which the person is entitled pursuant to section 8-73-102 (6), C.R.S.

(2) If, upon the death or mental incompetency of any recipient, the inventory of the recipient's estate shows assets in excess of the amount that the recipient was allowed to have in order to receive public assistance, or if it be shown that the recipient was otherwise ineligible for public assistance, then the claim of the county and state for the excess public assistance paid for which the recipient was ineligible, if filed as required by section 15-12-804, C.R.S., shall have priority as a debt given preference under section 15-12-805 (1) (f.7), C.R.S.

(3) Except as provided in subsection (4) of this section, when a recipient was ineligible for assistance payments solely because of property in excess of that permitted by state department rules and regulations adopted pursuant to section 26-2-109, the amount for which he shall be liable shall be the amount by which his property exceeded the amount allowable under such rules and regulations or the total amount of assistance payments thus received by him, whichever is the lesser amount. Actions for the recovery of such sums shall be prosecuted by the county or state department in any court of record having jurisdiction thereof.

(4) Notwithstanding subsections (1), (2), and (3) of this section, in any assistance case in which more than the correct amount of payment has been made, there shall be no

adjustment of payments to the county or state department or recovery by the county or state department from any person who is without fault and who has reported to the state department any increase in income or changes in resources or property, if such adjustment or recovery would deprive a person of income required for ordinary and necessary living expenses or would be against equity and good conscience. Overpayments in all cases involving a grant of aid to families with dependent children shall be recovered from the caretaker relative in the assistance unit who fraudulently obtained the public assistance or who was the direct payee of the overpayments or from such individual's estate. The state department and the county departments shall pursue all available overpayment recovery options against the caretaker relative in the assistance unit first and during this time all overpayment collection activities against the other overpaid members of the assistance unit shall be suspended. On March 26, 2002, the state department and the county departments shall cease any collection efforts being made against the children of an assistance unit in which public assistance was overpaid or fraudulently obtained by a caretaker relative if the caretaker relative has been located. The state and the county departments may elect not to attempt recovery of an overpayment from an individual no longer receiving public assistance where the overpayment amount is less than thirty-five dollars. Where the overpayment amount owed by an individual no longer receiving public assistance is thirty-five dollars or more, the state department and the county departments may determine, consistent with the six-year time limitation for the execution on judgments involving state debt, that it is no longer cost-effective to continue to pursue recovery of the overpayment. The state department and the county departments shall not pursue overpayment collection activities against children who have been part of a Colorado works program assistance unit.

(5) (a) When a recipient, during or because of continuance of public assistance, receives excess assistance through fraudulent acts, the county department shall make regular deductions consistent with federal regulations from said recipient's monthly grant until the excess payment is fully recovered.

(b) Repealed.

(6) (a) The state department shall have a right to recover any amount of public assistance paid to a recipient because:

(I) The trustee of a trust for the benefit of the recipient has used the trust property in a manner contrary to the terms of the trust;

(II) A person holding the recipient's power of attorney has used the power for purposes other than the benefit of the recipient.

(b) To enforce the right under this subsection (6), the county or state department may institute or intervene in legal proceedings against the trustee or person holding the power of attorney. Any amount of public assistance recovered pursuant to this subsection (6) shall be distributed between the state and county in proportion to the amount of public assistance paid by each respectively.

(c) No action taken by the county or state department pursuant to this subsection (6) or any judgment rendered in such action or proceeding shall be a bar to any action upon the claim or cause of action of the recipient or his guardian, personal representative, estate, dependent, or survivors against the trustee or person holding the power of attorney.

Source: **L. 73:** R&RE, pp. 1193, 1649, §§ 2, 12. **C.R.S. 1963:** § 119-3-28. **L. 75:** (1) and (3) amended and (4) added, p. 896, § 1, effective June 23. **L. 77:** (1) amended and (5) added, p. 1335, § 6, effective January 1, 1978. **L. 79:** (5)(b) repealed, p. 1093, § 2, effective June 21. **L. 81:** (6) added, p. 1373, § 1, effective May 18; (1) amended, p. 1371, § 2, effective June 5. **L. 91:** (4) amended, p. 1863, § 7, effective July 1. **L. 94:** (1) amended, p. 2063, § 5, effective July 1. **L. 2002:** (4) amended, p. 114, § 1, effective March 26. **L. 2006:** (1) and (2) amended, p. 946, § 1, effective August 7.

Cross references: For the legislative intent contained in the 2006 act amending subsections (1) and (2), see section 8(2) of chapter 208, Session Laws of Colorado 2006.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Public policy. To sanction the channeling of fraudulently obtained moneys to undeserving heirs and permitting them to profit from illegal and fraudulent actions would be against public policy. *State v. Estate of Griffith*, 130 Colo. 312, 275 P.2d 945 (1954); *Kostelc v. Lake County Dept. of Pub. Welfare*, 122 Colo. 481, 223 P.2d 614 (1950); *Denver Dept. of Pub. Welfare v. Wysowatcky*, 133 Colo. 153, 292 P.2d 735 (1956).

Recovery permitted if payment made by mistake. If it is disclosed that the pensioner was in possession of property or securities that exceeded the maximum allowed, then there need be no showing of fraud in order to recover, if there has been a mistake either on the part of the pensioner or the department. The mistake may be unilateral, but if there was an excess of assets in the hands of the pensioner, it is recoverable. *Denver Dept. of Pub. Welfare v. Wysowatcky*, 133 Colo. 153, 292 P.2d 735 (1956).

As part of restitution for fraudulently obtained food stamps in violation of this section,

the court, pursuant to § 16-11-204.5, properly included interest calculated in accordance with § 5-12-102. It was error, however, for the court to consider only the victim's pecuniary loss and not the defendant's ability to pay. *People v. Valenzuela*, 874 P.2d 420 (Colo. App. 1994), *aff'd in part and rev'd in part on other grounds*, 893 P.2d 97 (Colo. 1995).

Interest payable for fraudulently obtained food stamps accrues from the time the state reimburses the federal government for the fraudulently obtained food stamps. Interest should accrue only from the time of the actual injury, and the state suffers actual loss only when it reimburses the federal government. *Valenzuela v. People*, 893 P.2d 97 (Colo. 1995).

The prosecution is not required to show that the state actually lost interest or had to pay interest as a result of defendant's conduct. Where the defendant wrongfully deprived the state of the funds, statutory law requires that she repay the amount with interest to compensate the state for the loss of use of the funds. *Valenzuela v. People*, 893 P.2d 97 (Colo. 1995).

Applied in Adams County Dept. of Soc. Servs. v. Frederick, 44 Colo. App. 378, 613 P.2d 642 (1980).

26-2-129. Funeral - burial - cremation expenses - death reimbursement - definitions. (1) The general assembly hereby finds and declares that, subject to available appropriations, the purposes of this section are the following:

(a) To provide appropriate and equitable reimbursement of funeral, cremation, or burial expenses or any combination thereof associated with the final disposition of any deceased public assistance or medical assistance recipient;

(b) To consider the religious and cultural preferences of the decedent and the decedent's family;

(c) To assure that final disposition of a decedent is provided with dignity;

(d) To ensure that reimbursement of a provider of funeral, cremation, or burial services is appropriately disbursed by the county department;

(e) To provide that public funds are made available for reimbursement pursuant to this section only after it has been determined that there are insufficient resources from the estate of the decedent or the decedent's legally responsible family members to cover the funeral, cremation, or burial expenses;

(f) To allow family members and friends of a decedent to contribute towards the charges of funeral, cremation, or burial expenses to the extent such contributions do not exceed the specified maximum combined charges for such expenses.

(2) For purposes of this section, unless the context otherwise requires:

(a) "Contributions" means any monetary payment or donation made directly to the service provider or providers by a nonresponsible person to defray the expenses of a deceased public assistance or medical assistance recipient's funeral, cremation, or burial or any combination thereof.

(b) "Death reimbursement" means the payment made by the county department to the provider of funeral, cremation, or burial services when adequate resources are not available from legally responsible persons or from the personal resources or income of the decedent or from contributions to cover the charges for funeral, cremation, or burial expenses of a deceased public assistance or medical assistance recipient.

(c) "Decedent" means a deceased recipient of or applicant for public assistance or medical assistance who was receiving or was eligible to receive benefits at the time of death.

(d) "Final resting place" means a space, either below or above the surface of the ground, for the interment or entombment of the remains of human bodies.

(e) "Legally responsible person" means a person who:

(I) Is the decedent's spouse or the decedent's parent if the decedent is an unemancipated minor who is under the age of eighteen; and

(II) Bears legal responsibility for the charges associated with the decedent's funeral, cremation, or burial expenses.

(f) "Maximum combined charges" means the total of all charges from all providers but in an amount not to exceed two thousand five hundred dollars.

(g) "Mortuary science practitioner" means one engaged in, or holding himself or herself out as being engaged in or conducting, embalming or final disposition of dead human bodies.

(h) "Nonresponsible person" means one of the following who makes a contribution to the charges for a funeral, cremation, or burial or any combination thereof:

(I) A relative of the decedent who is not a legally responsible person; or

(II) Any other person or party.

(3) Subject to available appropriations, a death reimbursement covering reasonable funeral expenses or reasonable cremation or burial expenses or any combination thereof shall be paid by the county department for a decedent if the estate of the deceased is insufficient to pay such reasonable expenses and if the persons legally responsible for the support of the deceased are unable to pay such reasonable expenses. The county department shall be reimbursed eighty percent of the amount of the death reimbursement paid for recipients of aid to the needy disabled and assistance under the Colorado works program pursuant to part 7 of this article and shall be reimbursed one hundred percent of the amount of the death reimbursement for recipients of old age pensions. If the state department determines that the level of appropriation is insufficient to meet the demand for death reimbursements, the state department shall reduce the amount of the death reimbursement level to meet the amount appropriated by the general assembly for death reimbursements. In the event that such a reduction is made, the county department shall have no additional responsibility beyond the reimbursement level as defined in the state department's rules.

(4) The total amount of a death reimbursement paid by the county department or state department pursuant to this section shall not exceed one thousand five hundred dollars and the combined charge of a funeral or cremation or burial or any combination thereof shall not exceed two thousand five hundred dollars. Contributions from nonresponsible persons may be made without jeopardizing payment under this section and shall be counted as an offset to the maximum combined charges of the providers. If the combined charges from the providers exceed two thousand five hundred dollars, no death reimbursement shall be paid by the state or county department. Providers may seek contributions from nonresponsible persons only to the extent that moneys are available from such parties.

(5) A legally responsible person shall be required to participate financially towards the charges for final disposition through a contribution to the maximum death reimbursement if his or her resources are above the federal supplemental security income resource limits. A legally responsible person shall not be required to participate if he or she has fewer resources than the supplemental security income resource limits or if participation would result in fewer resources than the supplemental security income resource limits. Any financial participation from a legally responsible person shall be deducted from the maximum death reimbursement in the same manner as the personal resources of the decedent and shall not include the survivor's home or other excluded resources as provided for in the state department's rules. Any financial participation by a legally responsible person in excess of the legally required amount shall be used to reduce the amount of the maximum death reimbursement. Social security lump-sum death benefits payable to a legally responsible person shall not be an automatic deduction from the maximum death reimbursement. For purposes of this section, "resources" means:

(a) Those assets or income that are accessible and available to the legally responsible person;

(b) Disbursement of funds from any insurance policy of the decedent to a legally responsible person or nonresponsible person who is named as a beneficiary or a joint beneficiary of the decedent's policy. Nothing in this paragraph (b) shall grant authority to the county department to attach a lien against such funds or otherwise obtain or access these funds for payment of the final disposition of the decedent.

(6) In calculating the amount of the death reimbursement, any personal resources or income of the decedent shall be counted as a deduction from the maximum allowable death reimbursement. For purposes of this section, personal resources or income of the decedent includes the following:

(a) Any preneed contract for merchandise or services to be provided or performed in connection with the decedent's final disposition;

(b) Any other resources or income accessible and available in the name of the decedent, including jointly owned resources or income but only to the extent of the decedent's share of such jointly owned resources or income;

(c) Any death benefit in which reimbursement is directly paid to a provider of funeral, cremation, or burial services in connection with the decedent's final disposition.

(7) (a) Ownership by a public assistance or medical assistance recipient of a final resting place, or the purchase thereof during the time the recipient is receiving that assistance, shall not disqualify the recipient from receiving that assistance, nor shall such ownership be deemed cause for any reduction in the amount of the recipient's assistance.

(b) Any portion of the purchase price of a final resting place owned by the decedent in excess of two thousand dollars shall be counted as a personal resource of the decedent in calculating the amount of a death reimbursement pursuant to this section.

(c) A final resting place previously acquired by someone other than the decedent and donated for final disposition of that decedent shall not be counted as a personal resource of the decedent or a legally responsible person in calculating the amount of a death reimbursement pursuant to this section.

(8) A statement of agreement between the providers that shall be on a form prescribed by the state department that sets forth the charges and the amounts of any payments or contributions shall be completed prior to any disbursement of funds by the county. The agreement shall assure that the charges of all providers have been equitably addressed and shall ascertain that the maximum combined charges do not exceed two thousand five hundred dollars and that the combined contributions from all sources do not exceed two thousand five hundred dollars. All payments from a decedent's estate, payments from legally responsible persons, and contributions from nonresponsible persons shall be paid directly to the provider of services. After the provision of all services, the providers shall bill the county department directly for reimbursement for appropriate costs that have not been covered by the resources from or contributions made by the decedent's estate, legally responsible persons, or nonresponsible persons. The county department shall reimburse the appropriate providers directly, based upon the statement of agreement.

(9) (a) Notwithstanding any other provision of law to the contrary, the disposition of a deceased public assistance or medical assistance recipient shall be in accordance with subparagraph (I) or (II) of this paragraph (a), as follows:

(I) A public assistance or medical assistance recipient may express, in writing and in accordance with a procedure established by the state department, a preference to be buried or cremated or both. Such expression shall be honored by the county department within the limits of costs and reimbursements specified in this section.

(II) The disposition of a public assistance or medical assistance recipient who has not expressed a preference shall be determined respectively by such recipient's spouse, adult children, parents, or siblings. Upon the death of a recipient, the county department shall use reasonable effort to contact such an authorized person to determine the disposition of the deceased recipient. If such effort does not result in contact with an authorized relative within twenty-four hours, the county shall immediately have the deceased recipient's body refrigerated or embalmed. If such effort does not result in contact with and decision by an authorized relative within seven days of the recipient's death, the county department shall determine whether to bury or cremate the deceased recipient on the basis of which option is less costly.

(b) The disposition of any public assistance or medical assistance recipient in accordance with this subsection (9) shall be in a timely and dignified manner.

(c) A mortuary science practitioner or any operator of any cemetery who has contracted for cremation services pursuant to this subsection (9) may dispose of the remains of any public assistance or medical assistance recipient cremated pursuant to this section that are not claimed within one hundred twenty days from the date of cremation. For the purposes of this paragraph (c), disposal of remains shall include, but need not be limited to, placing such remains in a cemetery, scattering grounds, or columbarium.

(10) The state department shall:

(a) Adopt rules and regulations necessary for the implementation of this section; and

(b) (Deleted by amendment, L. 96, p. 1114, § 1, effective August 7, 1996.)

(c) Annually review reimbursement levels to determine whether such levels are adequate to purchase funeral, cremation, or burial services for deceased public assistance or medical assistance recipients.

(11) Notwithstanding any other provision of law to the contrary, any person who, in good faith, disposes of a deceased recipient or the remains of a deceased recipient in accordance with this section shall be immune from any civil or criminal liability.

Source: L. 73: R&RE, p. 1193, § 2. C.R.S. 1963: § 119-3-29. L. 75: Entire section amended, p. 886, § 3, effective July 1. L. 83: (4) amended, p. 1121, § 1, effective June 10. L. 86: (2) and (4) amended, p. 991, § 1, effective April 21. L. 90: (1) and (3) amended, (2) R&RE, and (5) to (7) added, pp. 1365, 1366, §§ 1, 2, effective July 1. L. 93: (5)(a)(I) and IP(6) amended, p. 1148, § 89, effective July 1, 1994. L. 96: Entire section amended, p. 1114, § 1, effective August 7. L. 2003: (2)(g) amended, p. 1924, § 4, effective July 1. L. 2010: (3) amended, (HB 10-1043), ch. 92, p. 316, § 11, effective April 15.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

For constitutionality of prior section, see (1946) (decided under repealed CSA, C. 119, Redmon v. Davis, 115 Colo. 415, 174 P.2d 945 § 28).

26-2-130. Fraudulent acts. (Repealed)

Source: L. 73: R&RE, p. 1194, § 2. C.R.S. 1963: § 119-3-30. L. 77: Entire section repealed, p. 1335, § 7, effective January 1, 1978.

Cross references: For present provisions relating to fraudulent acts in obtaining public assistance, see § 26-1-127.

26-2-131. Public assistance not assignable. No assistance payments made to an eligible recipient under this article shall be transferable or assignable at law or in equity, and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

Source: L. 73: R&RE, p. 1195, § 2. C.R.S. 1963: § 119-3-31.

ANNOTATION

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

Social security funds were not subject to garnishment where creditor did not present any evidence that the representative payee was using

the funds for the beneficiary's current maintenance. *Anderson Boneless Beef v. Sunshine*

Health Care Center, Inc., 852 P.2d 1340 (Colo. App. 1993).

26-2-132. Limitation. All public assistance granted under this article shall be granted and held subject to the provisions of any amending or repealing law that may be passed after July 1, 1973, and no recipient shall have any claim for compensation or otherwise by reason of his public assistance being affected in any way by any amending or repealing law.

Source: L. 73: R&RE, p. 1195, § 2. C.R.S. 1963: § 119-3-32.

26-2-133. State income tax refund offset. (1) (a) At any time prescribed by the department of revenue, but not less frequently than annually, the state department shall certify to the department of revenue information regarding persons who are obligated to the state for overpayment of benefits pursuant to the "Colorado Social Services Code". Such information shall include certification of the amount of overpayment which has been determined by final agency action or has been ordered by a court as restitution or has been reduced to judgment.

(b) Such information shall also include the name and the social security number of the person obligated to the state for the overpayment, the amount of same, and any other identifying information required by the department of revenue.

(2) As a condition of certifying an overpayment to the department of revenue as provided in subsection (1) of this section, the state department shall ensure that the obligated person has been afforded the opportunity for a conference at the county department level pursuant to section 26-2-127 or 25.5-4-207, C.R.S., and the opportunity for an appeal to the state department pursuant to section 26-2-127 or 26-2-304. In addition, the state department, prior to final certification of the information specified in subsection (1) of this section to the department of revenue, shall notify the obligated person, in writing, at his last known address, that the state intends to refer the person's name to the department of revenue in an attempt to offset the obligation against the person's state income tax refund. Such notification shall inform the obligated person of the opportunity for a conference with the county department pursuant to section 26-2-127 or 25.5-4-207, C.R.S., and of the opportunity for an appeal to the state department pursuant to section 26-2-127 or 26-2-304. In addition, the notice shall specify issues that may be raised at an evidentiary conference or on appeal, as provided by this subsection (2), by the obligated person in objecting to the offset and shall specify that the obligated person may not object to the fact that an overpayment occurred. A person who has received a notice pursuant to this subsection (2) shall request, within thirty days from the date such notice was mailed, an administrative review or evidentiary conference, as provided in this subsection (2).

(3) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 39-21-108, C.R.S., the state department shall disburse such amounts to the appropriate county for processing for distribution to the federal, state, or local agency to whom the person is obligated.

(4) The state department shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section.

(5) The home addresses and social security numbers of persons subject to the income tax refund offset, provided to the state department by the department of revenue, shall be sent to the respective county department of social services.

Source: L. 89: Entire section added, p. 1192, § 1, effective June 7. L. 91: (2) amended, p. 1885, § 1, effective April 20. L. 93: (2) amended, p. 1788, § 71, effective June 6. L. 97: (2) amended, p. 1321, § 6, effective July 1; (5) amended, p. 1235, § 26, effective July 1. L. 2006: (2) amended, p. 2017, § 100, effective July 1.

26-2-134. Checks, drafts, or orders for payment of moneys for public assistance - identification of bearer. (1) To prevent the fraudulent obtainment of public assistance, a person receiving any check, draft, or order for the payment of money issued for any

payment for a public assistance program under this article may not cash or accept the check, draft, or order unless the bearer of the check, draft, or order presents proof of identification demonstrating that the bearer is the proper recipient of the public assistance payment. The recipient of the check, draft, or order shall provide notation on the check, draft, or order regarding the identification provided by the bearer.

(2) Proof of identification for a public assistance payment under subsection (1) of this section may be demonstrated only by the presentation of one of the following documents:

- (a) A valid driver's license issued by any state;
- (b) A valid identification card issued by any state or federal agency;
- (c) A social security card;
- (d) A military identification card issued by the armed forces of the United States;
- (e) A valid passport issued by the United States;
- (f) A valid county social services identification card; or
- (g) A valid identification card issued by an employer.

(3) If any person cashes or accepts a check, draft, or order for the payment of money without proper identification in violation of the provisions of this section, the appropriate state agency may determine not to make payment on the check, draft, or order if there is an allegation of fraud regarding the check, draft, or order for the payment of money, and, if there is a determination that payment should not be made, the state and any state agency are not liable for payment of the check, draft, or order.

Source: L. 94: Entire section added, p. 2064, § 6, effective July 1.

26-2-135. Medically correctable program - fund established - rules. (1) On or before January 1, 1997, the state department shall make preparations for the implementation of a statewide medically correctable program, referred to in this section as the "program". Such preparations shall include but are not limited to staff training, policy development, and rule-making pursuant to article 4 of title 24, C.R.S.

(2) On and after January 1, 1997, the program shall be applicable to a person who:

- (a) Has been approved for state aid to the needy disabled;
- (b) Is determined to be unlikely to meet the disability criteria for supplemental security income;
- (c) Has a disability that can be corrected with medical treatment at a cost that does not exceed twenty thousand dollars so that the person can return to employment; and
- (d) Is not otherwise receiving workers' compensation benefits.

(3) The program shall consist of the following features:

- (a) A process by which the state department shall determine whether a person qualifies to receive medical treatment so that the person can return to work;
- (b) A set of procedures for monitoring a person's recovery from the medical treatment and return to work after participating in the program; and
- (c) Annual reports to the joint budget committee and the house and senate committees on health and human services, or any successor committees, that identify the number of persons who received medical treatment pursuant to the program in the preceding fiscal year, their recovery rates and return to the workforce, and the amount of moneys spent on the program.

(4) The cost of the medical treatment identified in paragraph (c) of subsection (2) of this section shall not be a benefit for purposes of articles 40 to 47 of title 8, C.R.S.

(5) (Deleted by amendment, L. 99, p. 699, § 4, effective July 1, 1999.)

Source: L. 96: Entire section added, p. 1438, § 8, effective July 1. **L. 99:** Entire section amended, p. 699, § 4, effective July 1. **L. 2007:** (3)(c) amended, p. 2044, § 76, effective June 1.

Cross references: For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 203, Session Laws of Colorado 1999.

26-2-136. Personal identification systems for public assistance - committee to select methods.

(1) Repealed.

(2) The personal identification committee shall study and recommend what security measures, such as individual personal identification numbers, photo identification, fingerprint identification, or retinal scanning, should be used to identify applicants for purposes of determining whether a person applying for public assistance is eligible to receive such benefits. In making such recommendations, the committee shall consider the extent of the security problem, the cost of possible security measures, which measures, if any, will be most cost-effective, and which will be the most successful at preventing and detecting fraud and duplicate participation.

(3) In addition to the security measures selected pursuant to subsection (2) of this section, the state department shall use social security numbers to the extent allowable under federal law as a method of personal identification for every person applying for public assistance.

Source: **L. 97:** Entire section added, p. 345, § 2, effective April 19. **L. 2001:** (2) amended, p. 1169, § 2, effective August 8. **L. 2006:** (2) and (3) amended, p. 1996, § 25, effective July 1.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 1998. (See L. 97, p. 345.)

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 99, Session Laws of Colorado 1997.

26-2-137. Noncitizens programs. (1) **Emergency assistance.** (a) (I) A general assistance fund is hereby established that shall consist of state general funds appropriated thereto by the general assembly. Moneys in the fund shall be used only for the purpose of providing emergency assistance pursuant to the provisions of this subsection (1) and shall be subject to annual appropriation by the general assembly.

(II) The state department shall allocate moneys in the fund described in subparagraph (I) of this paragraph (a) to the counties for the implementation of the emergency assistance program pursuant to the provisions of this subsection (1) and rules of the state department.

(b) The state department shall promulgate rules for the delivery of emergency assistance to a person who:

(I) Is a legal immigrant and a resident of the state of Colorado;

(II) Is not a citizen of the United States; and

(III) Meets the eligibility requirements for public assistance under this article other than citizen status and is not receiving any other public assistance under this article.

(c) Such emergency assistance may include but need not be limited to the following forms of assistance:

(I) Housing;

(II) Food;

(III) Short-term cash assistance; and

(IV) Clothing and social services for children.

(2) **Sponsor responsibility policies.** (a) The general assembly finds and declares that sponsors shall be expected to meet their moral and financial commitments to the immigrants whom they sponsor and for whom they sign affidavits of support.

(b) The state department shall promulgate rules consistent with this section and federal law to enforce sponsor commitments for noncitizen applicants for or recipients of public assistance or medical assistance.

(c) Enforcement mechanisms shall include but not be limited to the following:

(I) Income assignment;

(II) State income tax refund offset;

(III) State lottery winnings offset; and

(IV) Administrative lien and attachment.

(d) A recipient shall assign rights to any support under affidavits of support to the state of Colorado as a condition of receipt of public assistance or medical assistance under this title.

(e) To the extent not preempted by federal law, the state department shall commence a proceeding or an action to enforce duties under an affidavit of support within a period of time to be determined by the state board after a recipient for whom an affidavit of support has been signed has been approved for public assistance or medical assistance under this title.

Source: L. 97: Entire section added, p. 1252, § 3, effective July 1.

PART 2

COLORADO SUPPLEMENTAL SECURITY INCOME ACT

26-2-201. Short title. This part 2 shall be known and may be cited as the “Colorado Supplemental Security Income Act”.

Source: L. 75: Entire part added, p. 891, § 12, effective July 28.

26-2-202. Legislative declaration. (1) It is the intent of this part 2 to implement a state supplementation program pursuant to Title XVI of the social security act. It is the object and purpose of this part 2 to promote the public health and welfare of individuals who are residents of Colorado and whose need results from age, blindness, or disability with assistance and services to assist such individuals to attain or retain their capabilities for independence, self-care, and self-support.

(2) The state supplementation shall be accomplished by providing mandatory assistance, as defined in this part 2, where required and by providing optional supplementation in accordance with Title XVI of the social security act and regulations adopted by the state board, within available appropriations. Title XVI of the social security act currently permits, in the determination of eligibility for benefits under that title, the disregard of certain payments which a Title XVI recipient receives from a state or a political subdivision of a state. Those persons receiving benefits under Title XVI of the social security act who also meet the eligibility requirements fixed under part 1 of this article may receive a state supplement to their Title XVI benefits in the form of benefits provided under such part 1.

Source: L. 75: Entire part added, p. 891, § 12, effective July 28.

26-2-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) “December 1973 income” means the amount of assistance payment which an individual received for December, 1973, plus income used in computing such payment, according to the state plan approved by the United States department of health, education, and welfare for the state of Colorado as in effect for June, 1973.

(2) “Mandatory minimum state supplementation” means minimum payments required by the social security act to be made by the state to maintain certain former adult assistance recipients at their December 1973 income level.

(3) “Optional state supplement” means cash payments or special needs or both which are paid or provided to or on behalf of a supplemental security income recipient pursuant to the rules and regulations of the state board pursuant to part 1 of this article.

(4) “Special needs” means an amount to be paid to or on behalf of aged, blind, or disabled individuals in specified circumstances, as determined by the state board, for specified individualized needs.

(5) “SSI benefits” means cash payments made by the federal government to eligible aged, blind, or disabled individuals pursuant to Title XVI of the social security act.

Source: L. 75: Entire part added, p. 891, § 12, effective July 28.

26-2-204. Mandatory minimum state supplementation of SSI benefits. The state department, with the approval of the state board, is authorized to enter into an agreement with the secretary of the United States department of health, education, and welfare whereby the state department will provide to qualified individuals residing in the state, within available appropriations, mandatory minimum state supplementation of SSI benefits in accordance with the requirements of Title XVI of the social security act and rules and regulations of the state department.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28.

26-2-205. Optional state supplementation. The state department is authorized to adopt rules and regulations for the provision of optional state supplementation to recipients of SSI benefits residing in the state, within available appropriations, in accordance with Title XVI of the social security act and this part 2. Such benefits may be provided pursuant to part 1 of this article if the individual meets the eligibility requirements established under such part 1. SSI benefits received must be considered as income in determining eligibility under part 1 of this article. Eligibility for and the amount of such payments shall be fixed by the state board. If the federal government makes a final determination that any such payments must be considered as income in determining eligibility for SSI benefits, the state board shall terminate such payments.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28.

ANNOTATION

Applied in *Rodgers v. Atencio*, 43 Colo. App. 268, 608 P.2d 813 (1979).

26-2-206. Interim assistance. (1) The state department, with the approval of the state board and in accordance with the rules and regulations of the state department, is authorized to enter into an agreement with the secretary of the United States department of health, education, and welfare for implementation of arrangements for interim assistance as authorized by Title XVI of the social security act.

(2) Payment of legal, professional, or other fees by a recipient of public assistance who is seeking supplemental security income benefits shall be made in accordance with the policies and procedures of the social security act.

(3) Neither the state department nor any county shall pay any portion of costs associated with obtaining supplemental security income, including any legal, professional, or other fees paid by a recipient of public assistance in seeking supplemental security income benefits or any other federal benefit. The interim assistance reimbursement payment authorized under this section shall be used to reimburse the state aid to the needy disabled program, described in section 26-2-111 (4), for benefits paid to the recipient as interim assistance in accordance with the agreement between the state department and the social security administration. Any moneys received by a county in excess of the interim assistance paid by the state department and any county on behalf of the recipient shall be paid to the recipient.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28. **L. 2008:** Entire section amended, p. 223, § 1, effective March 26.

ANNOTATION

Reimbursement of interim assistance payments made to applicants under the state's aid to the needy and disabled program, pending awards of federal supplemental security income

benefits, is proper. *Gillens v. State Dept. of Soc. Servs.*, 644 P.2d 97 (Colo. App. 1982).

Court rejected plaintiff's contention that the authorization verifying application for

federal supplemental security income benefits and allowing the social security administration to send applicant's federal benefits check directly to the department of human services as reimbursement of interim assistance payments is void and unenforceable because it

was a product of duress or coercion. Requiring compliance with a valid regulation does not amount to duress or coercion. *Martinez v. Dept. of Human Servs.*, 97 P.3d 152 (Colo. App. 2003).

26-2-207. Administration. (1) The provisions of article 1 of this title and, where not inconsistent with this part 2, the provisions of part 1 of this article shall apply to state supplementation under this part 2.

(2) The state department, with the approval of the state board and in accordance with the rules and regulations of the state department, may enter into agreements with the secretary of the United States department of health, education, and welfare to assist in the administration of Title XVI of the social security act and this part 2.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28.

26-2-208. Federal requirements. Nothing in this part 2 shall be construed to prevent the state department from complying with federal requirements expressly provided by federal law in order for the state of Colorado to qualify for federal funds under the social security act.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28.

26-2-209. Limitations. All benefits granted under this part 2 shall be granted and held subject to the provisions of any amending or repealing law that may be passed after July 1, 1975, and no recipient shall have any claim for compensation or otherwise by reason of his supplementation benefits being affected in any way by any amending or repealing law.

Source: L. 75: Entire part added, p. 892, § 12, effective July 28.

26-2-210. State supplemental security income stabilization fund - creation. (1) There is hereby created in the state treasury the state supplemental security income stabilization fund, referred to in this section as the "stabilization fund", for the purpose of stabilizing the source of funding required to meet the federal requirements for maintenance of effort for the state-funded supplement to persons receiving SSI benefits. The stabilization fund shall consist of any excess moneys recovered due to overpayment of recipients, including regular, fraud, and interim assistance reimbursement recoveries, and any appropriations made to the stabilization fund by the general assembly. The moneys in the stabilization fund are hereby continuously appropriated to the state department to be expended on programs that count toward the maintenance of effort for the state supplemental security income as specified in the state plan when the state department determines that the state is at risk of not meeting the federal maintenance of effort for that calendar year. All interest and income derived from the investment and deposit of moneys in the stabilization fund shall be credited to the stabilization fund. At the end of any fiscal year, an amount not exceeding one million five hundred thousand dollars shall remain in the stabilization fund as a continuous appropriation to be used to meet the state's maintenance of effort requirements under this part 2, and any unexpended and unencumbered moneys remaining in the stabilization fund at the end of any fiscal year in excess of one million five hundred thousand dollars shall revert to the general fund.

(2) The state department shall submit a report to the joint budget committee by February 15 of each year. The report shall indicate whether expenditures were made from the stabilization fund, the aggregate monthly amount of any expenditures, and the particular programs for which the expenditures were made.

Source: L. 2009: Entire section added, (HB 09-1215), ch. 70, p. 239, § 1, effective March 25.

PART 3
FOOD STAMPS

Cross references: For the federal “Food Stamp Act”, now known as the “Food and Nutrition Act of 2008”, see 7 U.S.C. sec. 2011 et seq. (Section 4001 of the “Food, Conservation, and Energy Act of 2008”, Pub.L. 110-234, changed the name of the federal “Food Stamp Act of 1977” to the “Food and Nutrition Act of 2008” and changed the name of the federal food stamp program to the “supplemental nutrition assistance program”).

26-2-301. Food stamps - administration. (1) The state department is hereby designated as the single state agency to administer or supervise the administration of the food stamp program in this state in cooperation with the federal government pursuant to the federal “Food Stamp Act”, as amended, and this part 3.

(2) The state department, with the approval of the state board, may enter into an agreement with the secretary of the United States department of agriculture to accept federal food assistance benefits for disbursement to qualified households in accordance with federal law. Under state department supervision, the responsibility for disbursement may be delegated, under agreement, to county departments, United States postal service facilities, or other commercial facilities such as but not limited to banks.

(3) The food stamp program shall be implemented and administered in every county in the state by the respective county departments or by the state department pursuant to an agreement with one or more counties. If a county can demonstrate to the satisfaction of the state department that it is impossible or impractical for the county department to administer the program, the state department shall ensure that the program is implemented and administered within such county, and the county shall continue to meet the requirements of section 26-1-122.

(4) (a) The state department shall develop a state outreach plan, referred to in this section as the “outreach plan”, to promote access by eligible persons to benefits through the supplemental nutrition assistance program. The outreach plan shall meet the criteria established by the food and nutrition services agency of the United States department of agriculture for approval of state outreach plans. The state department is authorized to seek and accept gifts, grants, and donations to develop and implement the outreach plan.

(b) For purposes of developing and implementing an outreach plan, the state department shall partner with one or more counties and nonprofit organizations for the development and implementation of the outreach plan. If the state department enters into a contract with a nonprofit organization relating to the outreach plan, the contract may specify that the nonprofit organization is responsible for seeking sufficient gifts, grants, or donations necessary for the development and implementation of the outreach plan, and may additionally specify that any costs to the state associated with the award and management of the contract or the implementation or administration of the outreach plan shall be paid out of any private or federal moneys raised for the development and implementation of the outreach plan. The state department shall submit the outreach plan to the food and nutrition services agency for approval by September 1, 2010, and shall request any federal matching moneys that may be available upon approval of the outreach plan. The general assembly strongly encourages the state department to use any additional public or private moneys, including moneys from the federal 2010 department of defense appropriations bill to offset costs associated with increased caseload resulting from the implementation of an outreach plan.

(c) Notwithstanding the provisions of paragraph (a) or (b) of this subsection (4), the state department shall be exempt from implementing or administering an outreach plan, but not from developing an outreach plan, if the state department will not be receiving private or federal moneys sufficient to cover the state’s costs associated with the implementation and administration of the outreach plan, including any state or county costs associated with increased caseload resulting from the implementation of the outreach plan.

(5) The provisions of article 1 of this title and, where not inconsistent with this part 3, the provisions of part 1 of this article shall apply to federal food assistance benefits under this part 3.

Source: L. 79: Entire part added, p. 1086, § 13, effective July 1. **L. 2010:** Entire section amended, (HB 10-1022), ch. 414, p. 2042, § 1, effective June 10.

26-2-302. Federal requirements. Nothing in this article shall be construed to prevent the state department from complying with federal requirements for the food stamp program expressly provided by federal statute and regulation in order for the state of Colorado to qualify for federal funds under the federal "Food Stamp Act", as amended, and to maintain the food stamp program within the limits of available appropriations.

Source: L. 79: Entire part added, p. 1087, § 13, effective July 1.

26-2-303. Evidentiary conference. (Repealed)

Source: L. 79: Entire part added, p. 1087, § 13, effective July 1. **L. 97:** Entire section repealed, p. 1321, § 5, effective July 1.

26-2-304. Appeals - recoveries. The provisions of section 26-2-127, relating to appeals, and section 26-2-128, relating to recoveries, shall apply to the food stamp program, except when such sections conflict with federal statute or regulation or when a specific conflict with federal statute or regulation is not clearly present and the state department elects by regulation to follow federal statute or regulation.

Source: L. 79: Entire part added, p. 1087, § 13, effective July 1.

26-2-305. Fraudulent acts - penalties. (1) (a) Any person who obtains, or any person who aids or abets another to obtain, food stamp coupons or authorization to purchase cards or an electronic benefits transfer card or similar credit card-type device through which food stamp benefits may be delivered to which the person is not entitled, or food stamp coupons or authorization to purchase cards or an electronic benefits transfer card or similar credit card-type device through which food stamp benefits may be delivered the value of which is greater than that to which the person is justly entitled by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device with intent to defeat the purposes of the food stamp program commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor. Any person violating the provisions of this subsection (1) is disqualified from participation in the food stamp program for one year for a first offense, two years for a second offense, and permanently for a third or subsequent offense. Any person convicted of trafficking in food stamp coupons as described in this subsection (1) having a value of five hundred dollars or more shall be permanently disqualified from the food stamp program.

(b) Any person found by the agency or convicted in a court of law of having made a fraudulent statement or representation with respect to the identity or place of residence of the person in order to receive multiple benefits simultaneously under the food stamp program shall be disqualified from participating for a ten-year period.

(c) Any person found guilty by a court of law of purchasing controlled substances, as defined in section 18-18-102 (5), C.R.S., with food stamp benefits shall be disqualified from participation in the food stamp program for two years for a first offense and permanently disqualified for the second offense. The disqualification periods shall apply also to individuals with a felony conviction entered on or after July 1, 1997, for possession, use, or distribution of controlled substances if the conviction is directly related to the misuse of food stamp benefits. An individual shall not be ineligible due to a drug conviction unless misuse of food stamp benefits is part of the court findings.

(d) Any person who is found guilty by a court of law of trading ammunition or explosives for food stamp benefits is disqualified permanently from participating in the food stamp program.

(e) A state or federal court may extend a disqualification for up to an additional eighteen months. Such disqualifications are mandatory and are in addition to any other penalty imposed by law.

(1.5) Any person against whom a county department of social services or the state department obtains a civil judgment in a state or federal court of record in this state based on allegations that the person obtained or willfully aided and abetted another to obtain food stamp coupons or authorization to purchase cards or an electronic benefits transfer card or similar credit card-type device through which food stamp benefits may be delivered the value of which is greater than that to which the person is justly entitled by means of a willfully false statement or representation, or by impersonation, or by any other fraudulent device with intent to defeat the purposes of the food stamp program, is disqualified from participation in the food stamp program for one year for a first incident, two years for a second incident, and permanently for a third or subsequent incident. Such disqualifications are mandatory and are in addition to any other remedy available to a judgment creditor.

(2) If, at any time during the continuance of participation in the food stamp program, the recipient of food stamp coupons or authorization to purchase cards knowingly acquires any property or receives any increase in income or property, or both, in excess of that declared at the time of determination or redetermination of eligibility or if there is any other change in circumstances affecting the recipient's eligibility or the amount of food stamp coupons or authorization to purchase cards to which he or she is entitled, it is the duty of the recipient to notify the county department, or the state department in food stamp districts administered by the state department, of any such acquisition, receipt, or change in accordance with state department regulations; and any recipient of food stamp coupons or authorization to purchase cards who knowingly fails to do so, and who by such failure receives benefits in excess of those to which he or she was in fact entitled, commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) The county department, or the state department in food stamp districts administered by the state department, shall use an application form which contains appropriate and conspicuous notice of the penalties for fraud and shall deliver to each recipient with the first issuance of food stamp coupons or authorization to purchase cards and each redetermination thereafter a written notice explaining what changes in circumstances require notification to the county department or state department under subsection (2) of this section.

(4) Additional costs incurred by district attorneys in enforcing this section, in accordance with the rules of the state department, shall be billed to county departments in the judicial district in the proportion to each county as specified in section 20-1-302, C.R.S., and the county departments shall pay such costs as an expense of food stamp administration.

Source: L. 79: Entire part added, p. 1087, § 13, effective July 1. L. 89: (1) amended, p. 846, § 119, effective July 1. L. 94: (1) amended and (1.5) added, p. 2064, § 7, effective July 1. L. 97: (1) and (1.5) amended, p. 1235, § 27, effective July 1. L. 2002: (1)(a) and (2) amended, p. 1538, § 273, effective October 1.

Cross references: (1) For other fraudulent acts relating to public assistance, see § 26-1-127.

(2) For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Criminal Law", with food stamp fraud, see 61 Den. L.J. 269 (1984).

26-2-305.5. Categorical eligibility - repeal. (1) As used in this section, unless the context otherwise requires, "federal law" means the federal "Food and Nutrition Act of 2008", and any amendments to the act and any federal regulations adopted for the implementation of the act.

(2) (a) No later than October 1, 2010, the state department shall create a program or policy that, in compliance with federal law, establishes broad-based categorical eligibility

for federal food assistance benefits pursuant to the supplemental nutrition assistance program.

(b) At a minimum, the program or policy shall, to the extent authorized pursuant to federal law, eliminate the asset test for eligibility for federal food assistance benefits.

(3) Notwithstanding any provisions of subsection (2) of this section to the contrary, the provisions of this section shall take effect only if the state department receives moneys pursuant to the federal 2010 department of defense appropriations bill that may be used to implement this section.

Source: L. 2010: Entire section added, (HB 10-1022), ch. 414, p. 2043, § 2, effective June 10.

26-2-306. Trafficking in food stamps. (1) Any person who obtains, uses, transfers, or disposes of food stamps in the manner specified in paragraphs (a) to (c) of this subsection (1) commits the offense of trafficking in food stamps. A person who traffics in food stamps includes:

(a) Any bona fide recipient of food stamps, or his authorized representative who knowingly transfers food stamps to another who does not, or does not intend to, use the said food stamps for the benefit of the food stamp household for whom the food stamps were intended as the same is defined in the rules and regulations of the state department;

(b) Any person who knowingly acquires, accepts, uses, or transfers to another for consideration food stamps not issued to him or an authorized representative or to a member of a food stamp household of which he is a member by the state department or another authorized issuing agency in another state;

(c) Any person who knowingly receives, possesses, alters, transfers, or redeems food stamps received, used, or transferred in violation of any federal statute.

(2) Trafficking in food stamps is:

(a) (Deleted by amendment, L. 2007, p. 1696, § 15, effective July 1, 2007.)

(b) A class 2 misdemeanor under section 18-1.3-501, C.R.S., if the value of the food stamps is less than five hundred dollars;

(b.5) A class 1 misdemeanor under section 18-1.3-501, C.R.S., if the value of the food stamps is five hundred dollars or more but less than one thousand dollars;

(c) A class 4 felony under section 18-1.3-401, C.R.S., if the value of the food stamps is one thousand dollars or more but less than twenty thousand dollars;

(d) A class 3 felony under section 18-1.3-401, C.R.S., if the value of the food stamps is twenty thousand dollars or more.

(3) When a person commits the offense of trafficking in food stamps twice or more within a period of six months, two or more of the offenses may be aggregated and charged in a single count, in which event the offenses so aggregated and charged shall constitute a single offense, and, if the aggregate value of the food stamps involved is one thousand dollars or more but less than twenty thousand dollars, it is a class 4 felony; however, if the aggregate value of the food stamps involved is twenty thousand dollars or more, it is a class 3 felony.

(4) As used in this section, “food stamps” means coupons issued pursuant to the federal “Food Stamp Act”, 7 U.S.C. 2011 to 2029, as amended.

Source: L. 88: Entire section added, p. 714, § 24, effective July 1. **L. 93:** (2) and (3) amended, p. 1737, § 31, effective July 1. **L. 98:** (2)(b) and (2)(c) amended, p. 1440, § 20, effective July 1; (2)(b), (2)(c), and (3) amended, p. 798, § 14, effective July 1. **L. 2002:** (2) amended, p. 1539, § 274, effective October 1. **L. 2007:** (2) and (3) amended, p. 1696, § 15, effective July 1. **L. 2009:** (3) amended, (HB 09-1334), ch. 244, p. 1100, § 5, effective May 11.

Cross references: (1) For other fraudulent acts relating to public assistance, see § 26-1-127.

(2) For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002; for the legislative declaration contained in the 2007

act amending subsections (2) and (3), see section 1 of chapter 384, Session Laws of Colorado 2007; for the legislative declaration contained in the 2009 act amending subsection (3), see section 5 of chapter 244, Session Laws of Colorado 2009.

ANNOTATION

Law reviews. For article, “Criminal Law”, with food stamp fraud, see 61 Den. L.J. 269 (1984).
which discusses a Tenth Circuit decision dealing

PART 4

WELFARE REFORM

26-2-401 to 26-2-413. (Repealed)

Source: L. 97: Entire part repealed, p. 1239, § 31, effective July 1.

Editor’s note: This part 4 was added in 1989. For amendments to this part 4 prior to its repeal in 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 5

PERSONAL RESPONSIBILITY AND EMPLOYMENT DEMONSTRATION PROGRAM

26-2-501 to 26-2-510. (Repealed)

Source: L. 97: Entire part repealed, p. 1239, § 31, effective July 1.

Editor’s note: This part 5 was added in 1993. For amendments to this part 5 prior to its repeal in 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 6

CHILD CARE TRAINING AND EDUCATION PILOT PROGRAM

26-2-601 to 26-2-607. (Repealed)

Editor’s note: (1) Section 26-2-607 provided for the repeal of this part 6, effective July 1, 1999. (See L. 96, p. 1102.)

(2) This part 6 was added in 1996 and was not amended prior to its repeal in 1999. For the text of this part 6 prior to 1999, consult the 1998 Colorado Revised Statutes.

PART 7

COLORADO WORKS PROGRAM

26-2-701. Short title. This part 7 shall be known and may be cited as the “Colorado Works Program Act”.

Source: L. 97: Entire part added, p. 1194, § 1, effective June 3.

ANNOTATION

Law reviews. For article, "The State's Approach to Welfare Reform: 'Colorado Works'", see 27 Colo. Law. 37 (January 1998).

26-2-702. Legislative intent. (1) The general assembly hereby finds and declares that:

(a) Passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Pub.L. 104-193, and the federal "Deficit Reduction Omnibus Reconciliation Act of 2005", Pub.L. 109-171, gives the state a unique opportunity to develop and maintain a public assistance program that emphasizes placing recipients in work and supporting them in sustained employment with food stamps, child care assistance, and medicaid;

(b) The federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Pub.L. 104-193, and the federal "Deficit Reduction Omnibus Reconciliation Act of 2005", Pub.L. 109-171, require increased local input in developing the state plan for public assistance under these laws and allow increased local control over the implementation of such state plan;

(c) The federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Pub.L. 104-193, and the federal "Deficit Reduction Omnibus Reconciliation Act of 2005", Pub.L. 109-171, require additional training for local employees in the area of case management to assist in making recipients self-sufficient.

(2) Therefore, the general assembly finds and declares that it is in the state's best interests to adopt the Colorado works program set forth in this part 7.

Source: L. 97: Entire part added, p. 1194, § 1, effective June 3. **L. 2008:** (1) amended, p. 1949, § 1, effective January 1, 2009.

26-2-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) Repealed.

(2) "Assistance" means any ongoing assistance payment or short-term assistance payment as those terms are described in section 26-2-706.6.

(2.5) "Assistance unit" means those family members who are participants in the Colorado works program and who are receiving cash assistance.

(3) "Basic cash assistance grant" means cash assistance provided to a participant in the Colorado works program pursuant to section 26-2-709.

(3.5) (a) "Cash assistance" means cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. "Cash assistance" includes such benefits even when they are:

(I) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual participants; and

(II) Conditioned on participation in a work activity or community service.

(b) Except as otherwise excluded in paragraph (c) of this subsection (3.5), "cash assistance" also includes supportive services provided to families who are not employed such as transportation and child care.

(c) "Cash assistance" does not include:

(I) Nonrecurrent, short-term benefits that:

(A) Are designed to address a specific crisis situation or episode of need;

(B) Are not intended to meet recurrent or ongoing needs; and

(C) Will not extend beyond four months;

(II) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(III) Supportive services such as child care and transportation provided to families who are employed;

(IV) Refundable earned income tax credits;

(V) Contributions to, and distributions from, individual development accounts;

(VI) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(VII) Transportation benefits provided under a job access or reverse commute project to an individual who is not otherwise receiving assistance.

(4) "Colorado child care assistance program" means the state program of child care assistance implemented pursuant to the provisions of part 8 of this article and rules of the state department.

(5) "Colorado works program" or "works program" means the program of public assistance created in this part 7.

(5.5) "Controlled substance" means a substance, a drug, or an immediate precursor included in schedules I to V of part 2 of article 18 of title 18, C.R.S., and any "alcohol beverage" as defined in section 12-47-103 (2), C.R.S.

(5.7) "Countable income" means the receipt by an individual of a gain or benefit in cash or in kind during a calendar month that is used to determine eligibility and the benefit amount for the Colorado works program as specified by the state board.

(6) "County" means a county or a city and county.

(7) "County block grant" means a block grant provided to a county pursuant to the provisions of section 26-2-712.

(8) "County department" means:

(a) The department of social services, human services, or health and human services of a county or a city and county; or

(b) Any combination of departments of social services of a county or a city and county that are approved by the state department to implement a county block grant jointly pursuant to the provisions of section 26-2-718.

(8.5) "Deficit reduction omnibus reconciliation act" means the federal "Deficit Reduction Omnibus Reconciliation Act of 2005", Pub.L. 109-171, as amended.

(9) "Dependent child" means a person who resides with a parent or a specified caretaker and who is under the age of eighteen years or, if the person is a full-time student at a secondary school or vocational or technical equivalent and is reasonably expected to complete the school or vocational or technical equivalent before attaining the age of nineteen years, is under nineteen years.

(9.5) "Disqualified or excluded person" means a person who would otherwise be a member of an assistance unit but who is rendered ineligible to participate due to program prohibitions.

(10) "Federal law" means the personal responsibility and work opportunity reconciliation act, the deficit reduction omnibus reconciliation act, and any federal regulations adopted for the implementation of either act.

(10.2) "Guardian" means a person appointed by court order to be the guardian of another person.

(10.5) "Income" means any cash, payments, wages, in-kind receipts, inheritance, gifts, prizes, rents, dividends, interest, and other gain or benefit in cash or in kind received by members of an assistance unit.

(11) "Indian tribe" means a federally recognized Indian tribe with part or all of its reservation located in the state of Colorado.

(12) "Individual responsibility contract" or "IRC" means the contract entered into by the participant and the county department pursuant to section 26-2-708.

(13) Repealed.

(13.5) "Noncustodial parent", as defined in 45 CFR 260.30, means a person who:

(a) Is the parent of a minor child; and

(b) Lives in Colorado; and

(c) Does not live in the same household as the minor child.

(13.7) "Ongoing assistance" means any cash grant, benefit, service, or other form of temporary assistance designed to meet an eligible family's ongoing needs.

(14) "Parent" means either a biological parent or a parent by adoption.

(15) "Participant" means an individual who receives any assistance or who participates in a specific component of the Colorado works program.

(16) "Performance contract" means the performance-based contract executed by the state department and the board of county commissioners of each county or the boards of county commissioners of a group of counties pursuant to section 26-2-715.

(17) "Personal responsibility and work opportunity reconciliation act" means the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Pub.L. 104-193, as amended.

(17.5) "Program prohibitions" means a circumstance that, pursuant to this part 7 or federal law, renders an individual unable to participate in the Colorado works program.

(17.7) "Qualified alien" means a qualified alien as defined by rule of the state board in conformance with the personal responsibility and work opportunity reconciliation act.

(17.8) "Receipt" or "receipt of income" means the date on which income is actually received by or becomes legally available to a member of an assistance unit.

(18) "Reservation" means the Ute Mountain Ute Indian Reservation and the Southern Ute Indian Reservation in Colorado.

(18.2) "Short-term assistance" means a nonrecurrent, short-term benefit that is designed to deal with a specific crisis situation or episode of need, is not intended to meet recurrent or ongoing needs, and does not extend beyond four months.

(18.3) "Specified caretaker" means:

(a) A person who exercises responsibility for a dependent child and who is:

(I) A relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child; or

(II) Appointed by the court to be the guardian or the legal custodian of the dependent child; or

(b) A person who exercises responsibility for a dependent child within the person's home if there is no person described in paragraph (a) of this subsection (18.3).

(18.5) "Targeted spending level" means the amount of county funds that a county shall appropriate pursuant to the provisions of section 26-1-122 for the purpose of defraying the county's maintenance of effort requirement for the works program.

(19) "Temporary assistance for needy families" or "TANF" means the program of block grants from the federal government to the states to implement assistance programs pursuant to federal law.

(20) "Tribal member" means an enrolled member of either the Ute Mountain Ute or Southern Ute Indian tribes.

(21) "Work activities" shall have the same definition as is provided in federal law. The state board shall promulgate rules as necessary to further define "work activities" in accordance with the definition provided in federal law. Participants shall be considered to be engaged in work if they are participating in work activities as described in the federal law or if they are participating in other work activities designed to lead to self-sufficiency as determined by the county and as outlined in their IRC.

(22) "Work participation rate" means the percentage of participants who are involved in work activities as required statewide under federal law.

(23) "Works allocation committee" means the committee created pursuant to section 26-2-714 (6).

Source: **L. 97:** Entire part added, p. 1195, § 1, effective June 3. **L. 98:** (18.5) and (23) added, p. 1192, § 1, effective June 1. **L. 99:** (5.5) added, p. 1361, § 5, effective June 3; (2.5), (9.5), and (17.5) added, p. 48, § 1, effective July 1; (3.5) added, p. 31, § 1, effective July 1. **L. 2000:** (3.5) amended, p. 24, § 1, effective March 10. **L. 2001:** (13.5) added, p. 723, § 6, effective May 31. **L. 2003:** (5.7), (10.5), (17.7), (17.8), and (18.3) added, p. 799, § 1, effective August 6. **L. 2004:** (17.7) amended, p. 1086, § 1, effective May 27. **L. 2008:** (3), (8), (10), (17), (17.5), (17.7), (19), (21), and (22) amended and (8.5), (13.7), and (18.2) added, p. 1950, § 2, effective January 1, 2009. **L. 2009:** (13.5) amended, (SB 09-100), ch. 192, p. 837, § 1, effective April 30. **L. 2010:** (1) and (13) repealed, (HB 10-1043), ch. 92, p. 316, § 12, effective April 15; (2), (9), and (18.3) amended and (10.2) added, (SB 10-068), ch. 160, p. 548, § 2, effective January 1, 2011.

26-2-704. No individual entitlement. (1) Nothing in this part 7 or in any rules promulgated pursuant to this part 7 shall be interpreted to create a legal entitlement in any participant to assistance provided pursuant to the works program.

(2) No county administering or implementing the works program with moneys from a county block grant as provided in section 26-2-714 may create or shall be deemed to create a legal entitlement in any participant to assistance provided pursuant to the works program.

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3.

ANNOTATION

Although the “no entitlement” language under this section modifies the unconditional entitlement to welfare benefits previously available under the AFDC program, the lan-

guage under § 26-2-709 (1)(a)(I) does not violate all forms of property rights in welfare benefits. *Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001).

26-2-705. Works program - purposes. (1) (a) Effective July 1, 1997, the Colorado works program is implemented pursuant to the personal responsibility and work opportunity reconciliation act and is intended to comply with the express requirements for participation in the TANF block grant program.

(b) Effective January 1, 2009, the Colorado works program is amended to ensure implementation in compliance with the deficit reduction omnibus reconciliation act.

(2) The purposes of the works program are to:

(a) Assist participants to terminate their dependence on government benefits by promoting job preparation, work, and marriage;

(b) Provide assistance to needy families so that children may be cared for in their homes or in the homes of family members;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and to establish annual numerical goals for preventing and reducing the incidences of these pregnancies;

(d) Encourage the formation and maintenance of two-parent families;

(e) Develop strategies and policies that focus on ensuring that participants are in work activities as soon as possible so that the state is able to meet or exceed work participation rates specified in the federal law; and

(f) Allow the counties increased responsibility for the administration of the works program.

(3) Nothing in this part 7 is intended to prevent a county or municipality from implementing a public assistance or general assistance program with local funds.

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3. **L. 2008:** (1) and (2) amended, p. 1953, § 3, effective January 1, 2009.

26-2-706. Target populations. (1) (a) Subject to the provisions of this section and restrictions in the federal law, those persons or families who may receive assistance under the Colorado works program include:

(I) Dependent children under the age of eighteen;

(II) (A) Dependent children between the ages of eighteen and nineteen who are full-time students in a secondary school, home school, or in the equivalent level of vocational or technical training and expected to complete the program before age nineteen. Such children are eligible for assistance through the end of the month in which they complete the program. A dependent child is still considered to be a student in regular attendance during official school or training program vacation periods, absences due to illness, convalescence, or family emergency, or the month in which the child completes a school or training program.

(B) For purposes of this subparagraph (II), “regular attendance” means that the student is enrolled in a program of study or training leading to a certificate or diploma and is physically attending such program or training; “full-time attendance” means that the

student is attending school for a minimum of twenty-five hours per week, or an amount of time as specified by the school; and "half-time attendance" means that the student is attending school for a minimum of twelve hours per week, or an amount of time as specified by the school; and

(III) The parents of a dependent child, including expectant parents, or a specified caretaker with whom the dependent child is living.

(a.5) In addition to the eligibility requirements set forth in paragraph (a) of this subsection (1), in order to receive Colorado works benefits and assistance, the assistance unit shall include a dependent child who lives in the home of a parent or other specified caretaker. A dependent child is considered to be living in the home of a specified caretaker as long as the parent or other specified caretaker exercises responsibility for the care of the child even though one or more of the following occurs:

(I) The child is under the jurisdiction of the court; or

(II) Legal custody is held by an agency that does not have physical possession of the child; or

(III) The child is in regular attendance at school away from home; or

(IV) Either the child or the specified caretaker is temporarily absent from the home to receive medical treatment; or

(V) The child is in a voluntary foster care placement for a period not expected to exceed three months.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the state board shall promulgate rules to provide that two-parent families shall be treated the same as single-parent families under the provisions of this section.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), the state board shall promulgate rules to provide that half siblings residing in the same household not be required to be in the same assistance unit if at least one of the half siblings is receiving child support. In such circumstance, the half sibling receiving child support shall be given the option to not participate in Colorado works.

(d) The state board shall promulgate rules to provide that a noncustodial parent may be allowed to receive services under the Colorado works program, but not assistance, at a county's option and in accordance with the county's plan. Such services provided to a noncustodial parent pursuant to this paragraph (d) shall be intended to promote the sustainable employment of the noncustodial parent and enable such parent to pay child support. Provision of such services shall not negatively impact the eligibility for benefits or services of the custodial parent.

(1.5) To participate in the Colorado works program an applicant or person shall:

(a) Be a resident of Colorado;

(b) Be a citizen of the United States, a qualified alien who entered the United States prior to August 22, 1996, or a qualified alien who entered the United States on or after August 22, 1996, who has been in a qualified alien status for a period of five years or, if less than five years, is in a federal exempt category pursuant to 8 U.S.C. sec. 1613 (b), as amended;

(c) Not be receiving financial assistance from other financial assistance programs administered by the state of Colorado;

(d) Not be an inmate of a public institution, except as a patient in a public medical institution;

(e) Not be an inmate of any institution as a patient admitted for tuberculosis or mental disease, unless the person is a child under the age of twenty-one years receiving psychiatric care under medicaid;

(f) Not be participating in a labor strike;

(g) Provide a social security number or proof of application for a social security number if the social security number is unknown or if the applicant does not have a social security number;

(h) Provide verification of earned income received in the thirty days immediately prior to the date of application; and

(i) Provide verification of pregnancy, if applicable.

(2) (a) The state department shall promulgate rules to identify with specificity who may be a participant in the works program and the income requirements for participation in the works program. An asset test shall not be applied as a condition of eligibility for participation in the works program.

(b) The rules shall provide that an unmarried parent under eighteen years of age shall not receive assistance unless such unmarried parent resides with his or her parent or other specified caretaker in an adult-supervised home or in any other arrangement approved by the county department.

(3) A person convicted of a drug-related felony offense under the laws of this state, any other state, or the federal government on or after June 3, 1997, shall not be eligible for assistance under the works program, unless such person is determined by the county department to have taken action toward rehabilitation such as, but not limited to, participation in a drug treatment program.

(4) The state board shall promulgate rules to simplify the requirements relating to determination and verification of eligibility criteria. Nothing in this subsection (4) shall authorize the state board to amend or delete eligibility criteria for participation in the works program that the board is not otherwise authorized to amend or delete.

(5) and (6) (Deleted by amendment, L. 2010, (SB 10-068), ch. 160, p. 549, § 3, effective January 1, 2011.)

Source: L. 97: Entire part added, p. 1198, § 1, effective June 3. L. 2001: (1) amended, p. 102, § 1, effective March 21; (1) amended, p. 723, § 7, effective May 31; (5)(b) repealed, p. 1170, § 3, effective August 8. L. 2002: (1)(a) amended, p. 904, § 2, effective May 31. L. 2003: (1)(a), IP(2), (2)(b), and (4) amended and (1)(a.5) and (1.5) added, pp. 800, 802, §§ 2, 3, effective August 6. L. 2004: (1.5)(b) amended, p. 1087, § 2, effective May 27. L. 2006: IP(2), (2)(a), and (2)(b) amended and (6) added, p. 592, § 1, effective April 24. L. 2008: IP(1)(a.5) and (1)(a.5)(IV) amended, p. 1953, § 4, effective January 1, 2009. L. 2010: IP(1)(a), (1)(a)(III), IP(1)(a.5), (1)(a.5)(IV), (1)(d), (1.5)(h), (1.5)(i), (2), (5), and (6) amended, (SB 10-068), ch. 160, p. 549, § 3, effective January 1, 2011.

Editor's note: Amendments to subsection (1) by House Bill 01-1048 and House Bill 01-1264 were harmonized.

26-2-706.5. Restrictions on length of participation. (1) Unless cash assistance is provided through segregated funds pursuant to federal law and section 26-2-714, as of June 3, 1997, each month of cash assistance received by an assistance unit that includes a specified caretaker who has received assistance under Title IV-A of the social security act, as amended, shall count toward that specified caretaker's sixty-month lifetime maximum of TANF benefits as established in federal law.

(2) Any month in which a specified caretaker is determined to be a disqualified or excluded person from a basic cash assistance grant shall count as a month of participation in the calculation of the specified caretaker's overall sixty-month lifetime maximum.

(3) (a) The county department shall, where available and applicable, provide for or refer a disqualified or excluded person to other appropriate services, including services that may assist the person toward self-sufficiency.

(b) Nothing in this subsection (3) shall be construed to create any entitlement for services or to require any county to expend resources in addition to existing appropriations.

Source: L. 99: Entire section added, p. 49, § 2, effective July 1. L. 2002: (1) amended, p. 142, § 2, effective March 27. L. 2008: (1) and (2) amended, p. 1953, § 5, effective January 1, 2009. L. 2010: (1) and (2) amended, (SB 10-068), ch. 160, p. 551, § 4, effective January 1, 2011.

26-2-706.6. Payments and services under Colorado works - rules. (1) Subject to the provisions of federal law, rules promulgated by the state board pursuant to this section,

and available appropriations, the payment types and services specified in this section are available to participants in the Colorado works program.

(2) **Ongoing assistance payment.** An assistance unit that applies and is eligible for ongoing assistance shall, unless voluntarily and knowingly refused, receive cash assistance, which is a recurrent cash payment. In addition to a cash payment, an eligible assistance unit may also receive cash assistance in the form of a cash-equivalent payment, voucher, or other form of cash benefit that is designed to meet the basic ongoing needs of the persons in the assistance unit. Basic ongoing needs shall consist of food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. In addition to cash assistance, persons in an assistance unit that is eligible for ongoing assistance may receive supportive services as described in this section.

(3) **Short-term assistance payment.** A participant may choose to receive a short-term assistance payment, formerly referred to as a diversion payment, which is a nonrecurrent, needs-based, cash or cash-equivalent payment designed to meet the short-term needs of the participant. A short-term assistance payment is designed to address a specific crisis situation or episode of need and is not designed to meet the basic ongoing needs of the participant. A short-term assistance payment may not extend beyond four months. In addition to a short-term assistance payment, a participant who is eligible for short-term assistance may receive supportive services as described in subsection (4) of this section. Short-term assistance payments include the following types:

(a) A standard short-term assistance payment, formerly referred to as a state diversion payment, is a nonrecurrent, needs-based, cash or cash-equivalent payment made to a participant who is eligible for short-term assistance.

(b) An expanded short-term assistance payment, formerly referred to as a county diversion payment, is a nonrecurrent, needs-based, cash or cash-equivalent payment made to a participant who is eligible for assistance pursuant to the maximum eligibility criteria for nonrecurrent, short-term benefits established in the state plan pursuant to section 26-2-712 (1), in the county-defined expanded eligibility based on federal poverty and other standardized guidelines, and in county policies.

(4) **Supportive services.** (a) An eligible participant may receive supportive services, including but not limited to:

(I) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(II) Supportive services such as child care and transportation provided to families who are employed;

(III) Refundable earned income tax credits;

(IV) Contributions to, and distributions from, individual development accounts;

(V) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(VI) Transportation benefits provided under a job access or reverse commute project to an individual who is not otherwise receiving assistance.

(b) A county may provide supportive services directly to an eligible participant or through a contract or memorandum of understanding between the county department and another agency, including but not limited to another county department or a community provider.

(c) The state board shall promulgate rules pursuant to which a county shall provide referrals for available supportive services to persons who apply for assistance and to participants who are homeless or in need of mental health services or substance abuse counseling or services. The rules shall not obligate the county to pay for any supportive services to which a person who applies for ongoing assistance or short-term assistance or a participant is referred.

(5) **Individual development accounts.** A county department may make available opportunities for participants to have individual development accounts for home purchase, business capitalization, or higher education in accordance with federal law.

(6) **Child care assistance.** Subject to available appropriations and pursuant to rules promulgated by the state board, a county may provide child care assistance to a participant

pursuant to the provisions of part 8 of this article and rules promulgated by the state board for implementation of said part 8.

(7) **Substance abuse control program.** A county may elect to implement a Colorado works controlled substance abuse control program. Under such a program, if the use of a controlled substance prevents the participant from successfully participating in his or her work activity, the county department may require the participant to participate in a controlled substance abuse control program based in whole or in part upon a representation by the participant that he or she is using controlled substances or upon a finding by the county department pursuant to an assessment by a certified drug treatment provider that the participant is or is likely to be using controlled substances. If a county chooses to require the participant to participate in a controlled substance abuse control program, the county department shall:

(a) Require the participant to be assessed by a certified drug treatment provider and to follow a rehabilitation plan as a condition of continued receipt of assistance under the works program. The rehabilitation plan shall be based upon the assessment and developed by a certified drug treatment provider, and may include, but need not be limited to, participation in a controlled substance abuse treatment program. This paragraph (a) shall not create an entitlement to rehabilitation services or to payment for rehabilitation services.

(b) If required by the rehabilitation plan, conduct random testing of the participant to determine whether he or she is remaining free of controlled substances; and

(c) Impose on the participant any applicable adverse action for nonparticipation in a work activity if the participant fails to follow the rehabilitation plan, which nonparticipation may be evidenced by having a positive result on a random test or refusing to participate in a random test pursuant to this subsection (7). A county may not take adverse action against a participant for failing to meet the requirements of the rehabilitation plan if the services required under the plan are not available, if transportation or child care is not available, or if the costs of the services are prohibitive.

(8) **Job skills education voucher.** A county department may provide a voucher created pursuant to the provisions of section 26-2-712 (11) to a participant for use at one of the community or technical colleges administered pursuant to the provisions of article 60 of title 23, C.R.S., for the purpose of securing short-term educational and academic skills training and job placement services.

Source: L. 2008: Entire section added, p. 1954, § 6, effective January 1, 2009.

26-2-707. Diversion grant. (Repealed)

Source: L. 97: Entire part added, p. 1199, § 1, effective June 3. **L. 2008:** Entire section repealed, p. 1957, § 7, effective January 1, 2009.

26-2-707.5. Community resources investment assistance. (1) A county department may use county block grant moneys to invest in the development of community resources that support the purposes of the federal "Personal Responsibility and Work Opportunity Reconciliation Act", Public Law 104-193, and that are designed to assist eligible applicants or participants under section 26-2-706 or 26-2-706.6. An eligible applicant or participant may receive benefits or services from such a community resource without completing an application pursuant to section 26-2-106 or an individual responsibility contract pursuant to section 26-2-708 (2). However, nothing in this subsection (1) precludes a county department from requiring such applications and individual responsibility contracts in a county's individual contracting procedures established pursuant to subsection (2) of this section.

(2) The state board shall establish standards and procedures through rules for the use of county block grant moneys pursuant to this section including but not limited to the contracting procedures counties must follow to ensure that funds are being spent to support TANF-eligible applicants or participants. Such contracting procedures shall include a requirement that a county's contract with a provider shall specify the approximate number of applicants or participants to be served by the provider. Counties shall also be required to

adopt official written policies as referenced in section 26-2-716 (2.5) regarding the types of community resources in which counties are investing, the purposes of such community resource investments, the income eligibility standards, and the county's dispute resolution processes.

(3) A county that uses county block grant moneys pursuant to this section shall use all moneys in accordance with all applicable federal and state statutes and regulations.

(4) A county shall not be authorized to use funds pursuant to this section for the purpose of supplanting funds.

(5) Nothing in this section shall preclude a household from applying for and receiving basic cash assistance.

Source: L. 2001: Entire section added, p. 660, § 1, effective May 30. **L. 2008:** (1) amended, p. 1957, § 8, effective January 1, 2009.

26-2-707.7. Information concerning immunization of children. At the time of application for the works program, the county department shall provide information concerning immunizations to all applicants, including the exemptions listed in section 25-4-903, C.R.S. The information shall include parent education on vaccines and information concerning where to access vaccines in the local community. The department of public health and environment or the county or district public health agency shall provide the immunization information to the county department.

Source: L. 2010: Entire section added, (SB 10-068), ch. 160, p. 548, § 1, effective January 1, 2011.

26-2-708. Assistance - assessment - individual responsibility contract - waivers for domestic violence. (1) Subject to the provisions of the federal law, the provisions of this section, and available appropriations, a county department shall perform an assessment for a new participant who is eighteen years of age or older, or who is sixteen years of age or older but has not yet attained the age of eighteen years of age and has not completed high school or obtained a certificate of high school equivalency and is not attending high school or participating in a high school equivalency program. The initial assessment shall be completed no more than thirty days after the submission of the application for assistance under the works program. Updated assessments may be conducted at the discretion of the county department.

(2) A county department shall develop an individual responsibility contract for a new participant who has been assessed pursuant to subsection (1) of this section, within thirty days after completing the initial assessment of the participant as required in subsection (1) of this section, subject to the provisions of the federal law and this section. The IRC shall be limited in scope to matters relating to securing and maintaining training, education, or work. The county department shall seek the input and involvement of the participant when developing the IRC.

(3) The IRC shall contain provisions in bold print at the beginning of the document that notify the participant of the following:

(a) That no individual is legally entitled to any form of assistance under the Colorado works program;

(b) That the IRC is a contract that contains terms and conditions governing the participant's receipt of assistance under the Colorado works program and that nothing in such contract may be deemed to create a legal entitlement to assistance under the Colorado works program;

(c) That the participant's failure to comply with the terms and conditions of the IRC may result in sanctions, including but not limited to the termination of any cash assistance;

(d) For a county that has elected to implement a Colorado works controlled substance abuse control program described in section 26-2-706.6 (7), that the IRC may require the participant to participate in the Colorado works controlled substance abuse control program, based upon the participant's use of a controlled substance, by requiring the participant to

take action toward rehabilitation consistent with the recommendations of the assessment pursuant to section 26-2-706.6 (7). The program may be included as a county-defined work activity. The rehabilitation plan may include random drug testing, drug treatment, or other rehabilitation activities. The participant may be subject to any sanctions for nonparticipation in a work activity if the participant fails to meet the requirements of the rehabilitation plan; except that a participant may not be sanctioned for failing to meet the requirements of the rehabilitation plan if services required under the plan are not available, if transportation or child care is not available, or if the costs of the services are prohibitive.

(e) That the applicant or participant shall indicate by signature on the IRC either agreement with the terms and conditions of the IRC or that the applicant or participant requests a county level review of the proposed IRC in accordance with section 26-2-710 (4) on the grounds that the proposed IRC is unreasonable within the context of the county's written policies.

(4) (Deleted by amendment, L. 99, p. 272, § 1, effective April 13, 1999.)

(5) The state board shall establish through rules, after consultation with domestic violence service providers, statewide standards and procedures that:

(a) Require counties to provide notice to all past or present victims of domestic violence as described in the federal law or those at risk of further domestic violence of the referrals required pursuant to paragraph (b) of this subsection (5), the possible waivers pursuant to paragraph (c) of this subsection (5), and the applicable procedures described in paragraph (e) of this subsection (5);

(b) Require counties to provide for referrals to any available counseling and supportive services to past or present victims of domestic violence as described in the federal law or those at risk of further violence, but the rules shall not obligate a county to pay for any counseling or supportive services to which a participant is referred;

(c) Allow counties upon a showing of good cause, as determined by rules of the state board, to provide waivers from any program requirements, except as provided in paragraph (d) of this subsection (5), that will make it more difficult for an applicant or a participant to escape domestic violence or that would unfairly penalize such individuals who are or have been victimized by such violence or who are at risk of further violence;

(d) Require counties to submit requests for waivers of work requirements to the state department to determine whether good cause exists to grant such waivers;

(e) Require counties to assure the voluntariness and confidentiality of the procedures for identifying eligibility for referrals to supportive services and waivers, the procedures for applying for waivers, and the procedures by which an applicant or a participant who is denied a waiver may appeal such decision.

(5.5) and (6) (Deleted by amendment, L. 2008, p. 1957, § 9, effective January 1, 2009.)

Source: L. 97: Entire part added, p. 1200, § 1, effective June 3. L. 99: (1), (2), and (4) amended, p. 272, § 1, effective April 13; (3) amended, p. 658, § 1, effective May 18; (3) amended, p. 1359, § 1, effective June 3. L. 2001: (5)(d) amended, p. 1173, § 12, effective August 8; (5.5) added, p. 980, § 5, effective August 8. L. 2008: (1), (2), (3)(d), (5.5) and (6) amended, p. 1957, § 9, effective January 1, 2009.

Editor's note: Amendments made to subsection (3) by House Bill 99-1203 and House Bill 99-1017 were harmonized. As a result of the harmonization, subsection (3)(d) contained in House Bill 99-1017 was renumbered on revision as (3)(e).

26-2-708.5. Colorado works controlled substance abuse control program. (Repealed)

Source: L. 99: Entire section added, p. 1360, § 2, effective June 3. L. 2008: Entire section repealed, p. 1959, § 10, effective January 1, 2009.

26-2-709. Benefits - cash assistance - programs - rules. (1) Standard of need - basic cash assistance grant. (a) The state department shall promulgate rules determining

the standard of need for eligibility for a basic cash assistance grant, whether an applicant or participant meets the standard of need, and the amount of the basic cash assistance grant. In addition to any other rules necessary for the implementation of this part 7, the state department's rules shall:

(I) Adopt a statewide standard of need for eligibility for a basic cash assistance grant that is not less than the basis for standard of need pursuant to this subsection (1) as it existed on July 1, 2009;

(II) Establish criteria for determining whether an applicant or participant meets the standard of need, including but not limited to what constitutes countable and excludable income for the purposes of eligibility for a basic cash assistance grant; and

(III) Establish the calculation for determining the amount of an eligible applicant's or participant's basic cash assistance grant, which calculation shall include an earned income disregard which shall be applied to the gross countable earned income of an applicant or participant who is employed. The earned income disregard shall promote work and self-sufficiency and shall benefit the applicant or participant by reducing the unintended economic consequences of becoming employed. The rules promulgated by the state department pursuant to this subparagraph (III) shall not establish an earned income disregard that results in an applicant or participant having fewer financial resources available to him or her than a similarly situated applicant or participant would have had under the earned income disregard pursuant to section 26-2-709 as it existed on July 1, 2009.

(b) In establishing the calculation for determining the amount of an eligible applicant's or participant's basic cash assistance grant, the state department shall ensure that the amount of the basic cash assistance grant that a participant or applicant receives is equal to or exceeds one hundred two percent of the need standard for a participant in a similarly sized household on January 1, 2008. The state department is encouraged to establish a calculation for determining the amount of a basic cash assistance grant that results in a basic cash assistance grant that is equal to or exceeds one hundred twelve percent of the need standard for a participant in a similarly sized household on January 1, 2008.

(c) Except as otherwise provided in this part 7 and subject to available appropriations, an applicant or participant who meets the eligibility criteria established by the state department pursuant to paragraph (a) of this subsection (1) shall receive a basic cash assistance grant in an amount determined by the state department pursuant to paragraphs (a) and (b) of this subsection (1). An increase in the amount of the basic cash assistance grant approved by the state department shall not take effect unless the funding for the increase is included in the annual general appropriation act or a supplemental appropriation act.

(1.3) **Redetermination of eligibility for persons receiving cash assistance.** The county department shall perform an annual face-to-face redetermination of eligibility for all assistance units receiving cash assistance.

(1.5) **Rules concerning cash assistance.** The state department shall promulgate rules as may be necessary to comply with changes in federal regulations relating to the definition of the term "cash assistance".

(2) **Other assistance.** (a) Subject to available appropriations, a county department may provide assistance, including but not limited to cash assistance, in addition to the basic cash assistance grant described in subsection (1) of this section that is authorized pursuant to the provisions of the federal law or this section. Such other assistance shall be based upon a participant's assessed needs.

(b) and (c) (Deleted by amendment, L. 2008, p. 1960, § 11, effective January 1, 2009.)

(3) (Deleted by amendment, L. 2008, p. 1960, § 11, effective January 1, 2009.)

Source: L. 97: Entire part added, p. 1202, § 1, effective June 3. L. 98: (2) amended, p. 335, § 1, effective April 17. L. 99: (1.5) added, p. 31, § 2, effective July 1. L. 2000: (1.5) amended, p. 25, § 2, effective March 10. L. 2001: (1)(a) amended, p. 212, § 1, effective March 28. L. 2002: (1)(a.5) added, p. 904, § 1, effective May 31. L. 2003: (1)(a) and (1)(a.5) amended and (1.3) added, p. 802, § 4, effective August 6. L. 2006: (1)(b) repealed, p. 593, § 2, effective April 24. L. 2008: (1)(a), IP(1)(a.5), (1)(c), (2), and (3) amended, p.

1960, § 11, effective January 1, 2009. **L. 2010:** (2)(a) amended, (HB 10-1043), ch. 92, p. 316, § 13, effective April 15; entire section amended, (SB 10-068), ch. 160, p. 551, § 5, effective January 1, 2011.

Editor's note: Amendments to subsection (2) in House Bill 10-1043 and Senate Bill 10-068 were harmonized, effective January 1, 2011.

ANNOTATION

Although the “no entitlement” language under § 26-2-704 modifies the unconditional entitlement to welfare benefits previously available under the AFDC program, the lan-

guage in subsection (1)(a)(I) does not vitiate all forms of property rights in welfare benefits. *Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001).

26-2-709.5. Exit interviews and follow-up interviews of participants. (1) In order to follow the legislative intent declared in section 26-2-702 (1) (a), a county department is strongly encouraged to conduct exit and follow-up interviews upon case closure, either in person or by telephone, with all participants of the Colorado works program, including participants who are or have been receiving short-term assistance payments pursuant to section 26-2-706.6. The interviews shall be for the purpose of providing information to the participant and offering assistance with applications for or continuance of assistance under medicaid, food stamps, the Colorado child care assistance program, the earned income tax credit, or other programs such as welfare-to-work or other county benefits or services.

(2) Repealed.

Source: **L. 2001:** Entire section added, p. 654, § 1, effective August 8. **L. 2004:** (2) repealed, p. 471, § 2, effective August 4. **L. 2008:** (1) amended, p. 1963, § 12, effective January 1, 2009.

26-2-710. Administrative review. (1) The state department shall promulgate rules for an administrative review process.

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

(3) If a participant does not agree with or fails to participate in a program or service identified in the IRC, the participant shall continue to receive the basic cash assistance grant that the participant received at the time the appeal is requested during the pendency of any appeal process.

(4) An applicant or participant who believes the IRC proposed by the county is unreasonable has a right to request a review of the proposed IRC by the county department pursuant to a process designated by the county in its written county policy. If the applicant or participant requests such review, the county shall provide the applicant or participant the opportunity for a county level review by a person not directly involved in the initial determination. The review shall be limited to determining whether the terms of the disputed IRC are reasonable within the context of the county's written policy. The reviewer shall issue a written decision for the county regarding the resolution of the outstanding issues involving the proposed IRC. The time frame for such review shall be specified by the county in its written county policy.

Source: **L. 97:** Entire part added, p. 1203, § 1, effective June 3. **L. 99:** Entire section amended, p. 659, § 2, effective May 18.

26-2-711. Works program - sanctions against participants - rules. (1) (a) The state board shall promulgate rules for the imposition of sanctions affecting the basic cash assistance grant as described in section 26-2-709 (1). The rules shall require:

(I) Imposition of sanctions upon a participant who fails, without good cause as determined by the county, to comply with the terms and conditions of his or her IRC;

(II) A percentage reduction in the basic assistance grant upon the first imposition of a sanction affecting such basic assistance grant, with the percentage to be specified in the rules but not less than twenty-five percent;

(III) Specific reductions in the basic assistance grant for second and subsequent sanctions affecting the basic assistance grant;

(IV) Imposition of sanctions either in the month following the decision to sanction and in subsequent months thereafter until the full amount of any sanctions have been withheld or, in the event that a participant has appealed the imposition of a sanction, in the month following the final decision of the appeal process and in subsequent months thereafter until the full amount of any sanctions have been withheld.

(b) Nothing in the state board rules promulgated pursuant to paragraph (a) of this subsection (1) shall prevent a county from denying the basic cash assistance grant in its entirety to a participant who refuses, as evidenced by an affirmative statement by the participant or demonstrable evidence, to participate in training, education, or work.

(c) The state board rules promulgated pursuant to paragraph (a) of this subsection (1) shall establish the period of time that sanctions affecting the basic cash assistance grant shall be in effect and the period of time within which a participant who has been denied the basic cash assistance grant by a county pursuant to paragraph (b) of this subsection (1) may take action for reinstatement into the works program.

(2) A county shall have the authority to determine and impose sanctions affecting other assistance as described in section 26-2-706.6. The sanctions shall be based upon fair and objective criteria that have been developed and adopted by the county and are consistent with state and federal law.

(3) If a county department elects to suspend payment of child care assistance, it may suspend such assistance in its entirety.

(4) In no event shall a county department impose any sanction on a participant that adversely affects the participant's receipt of food stamps beyond those allowable sanctions provided for in federal regulations and state rules or medical assistance pursuant to the provisions of articles 4, 5, and 6 of title 25.5, C.R.S.

(5) (a) A person shall not be required to participate in work activities if good cause exists as determined by the county.

(b) Good cause does not constitute an exemption from work or time limits. Good cause is, however, a proper basis for not imposing a sanction for nonparticipation in a work activity, and may include, but need not be limited to, participation in a Colorado works controlled substance abuse control program pursuant to section 26-2-706.6 (7).

(6) (Deleted by amendment, L. 2008, p. 1963, § 13, effective January 1, 2009.)

(7) If a participant or an applicant has misrepresented residence to obtain benefits in two or more states at the same time, such person shall be ineligible for benefits under the works program for a period of ten years.

Source: L. 97: Entire part added, p. 1203, § 1, effective June 3. L. 99: (5) amended, p. 1361, § 3, effective June 3. L. 2006: (4) amended, p. 2018, § 101, effective July 1. L. 2008: IP(1)(a), (1)(b), (1)(c), (2), (5)(b), and (6) amended, p. 1963, § 13, effective January 1, 2009.

26-2-712. State department duties - authority. (1) **Plan submission.** The state department shall submit and amend as necessary a plan to the secretary of the federal department of health and human services that is consistent with the provisions of this part 7 and federal law.

(2) **County block grant allocation.** (a) The state department shall allocate the amount of moneys that shall be provided to a county as a county block grant for the purposes of a county's administration and implementation of the works program pursuant to section 26-2-714.

(b) Except as provided in section 26-2-720.5, the county block grant shall represent the total amount that a county shall receive from the state for the administration and implementation of the Colorado works program.

(3) **Maintenance of effort.** The state department shall monitor the state's progress toward meeting the levels of spending required under the federal law and section 26-2-713.

(4) **Performance measurements.** (a) The state department shall develop performance goals and a formula for measuring a county's progress toward meeting such performance goals in administering and implementing the works program with county block grants. The state department shall provide data gathered on behalf of each county to the general assembly on a quarterly basis regarding employment- and training-related performance measures for the works program. Such data shall include wages earned by works program participants upon leaving the program, job retention rates, and other related information. Such data shall be provided through the state department's computerized systems, if available. Counties shall not be required to provide additional manual or computerized systems to gather such data. The state department shall work with the state work force development council to gather data on works program participants who participate in training and job placement programs offered by work force development boards and the result of such participation. Such data shall be provided to the state auditor's office on at least an annual basis as a part of the works program audit pursuant to section 26-2-723.

(b) The formula may be based upon the formula developed by the secretary of the federal department of health and human services after consultation with the national governors' association and the American public welfare association for measuring states' performance under the TANF block grants.

(5) **Oversight.** In connection with overseeing the works program, the state department shall have the specific duties to:

(a) Oversee the implementation of the works program statewide and, in connection with such oversight, develop standardized forms for the counties' use in streamlining the application process, delivery of services, and tracking of participants;

(b) Monitor the state's progress in meeting the work participation requirements set forth in federal law;

(c) Establish a process to implement the provisions for regionalization set forth in section 26-2-718 pursuant to which any combination of county departments may be approved by the state department to administer and implement the works program pursuant to the provisions of this part 7;

(d) Establish statewide goals and monitor the state's progress toward meeting such goals for the reduction in the incidence of out-of-wedlock pregnancies;

(e) Monitor the counties' provision of basic cash assistance grants pursuant to section 26-2-706.6 and, if necessary due to increased caseloads or economic downturns, do the following to ensure that the basic cash assistance grant is provided in a consistent manner statewide:

(I) Grant moneys to one or more counties from the county block grant support fund administered pursuant to section 26-2-720.5; or

(II) If no funds administered pursuant to section 26-2-720.5 are available:

(A) Request supplemental appropriations from the general assembly, including but not limited to an appropriation from the Colorado long-term works reserve created pursuant to section 26-2-721; or

(B) Reduce the county block grant of any county that maintains moneys in a county reserve account pursuant to section 26-2-714 (5) in order that moneys may be made available to one or more counties to avoid the need to reduce or eliminate the basic cash assistance grant statewide. If the state department makes a reduction in a county's reserve account pursuant to this sub-subparagraph (B), the state department shall increase the county's block grant for the following fiscal year by the amount of the reduction authorized pursuant to this sub-subparagraph (B); or

(III) After taking the actions described in subparagraphs (I) and (II) of this paragraph (e), take any actions necessary to reduce the costs of, or reduce or eliminate, the basic cash assistance grant statewide.

(6) (Deleted by amendment, L. 2008, p. 1964, § 14, effective January 1, 2009.)

(7) **Colorado works program capacity building.** The state department shall develop training for case workers and other service providers so that they are knowledgeable and may assist persons who receive assistance through the Colorado works program in:

(a) Identifying goals, including work activities, time frames for achieving self-sufficiency, and the means required to meet these benchmarks;

(b) Obtaining supportive services such as mental health counseling, substance abuse counseling, domestic violence services, life skills training, and money management and parenting classes;

(c) Utilizing the family's existing strengths;

(d) Providing ongoing support and assistance to the family in overcoming barriers to training and employment;

(e) Monitoring the progress of the family toward attaining self-sufficiency;

(f) Understanding and properly utilizing data reporting systems to report participation data and outcomes required by the state department; and

(g) Providing opportunities for persons working with Colorado works participants to access professional-level curriculum to become proficient in assessing participant needs and developing individual plans to address those needs.

(8) **Domestic violence services training - rules.** (a) To facilitate the proper identification, screening, and assessment of past and present victims of domestic violence who apply for or participate in the Colorado works program and to assist counties in complying with the provisions of this subsection (8) and section 26-2-708 (5), the state board shall promulgate rules that require the state department to provide ongoing domestic violence training and appropriate domestic violence training materials to county staff and to:

(I) Assist counties in developing local resources and using available community resources to provide counseling and supportive services to past and present victims of domestic violence; and

(II) Require counties to make applicants to and participants in the Colorado works program aware of the services and assistance provided by the state department pursuant to this subsection (8) and by the county.

(b) The state department may contract with an individual or entity that has demonstrated expertise in the area of domestic violence assistance for the provision of the services specified in this subsection (8).

(9) **Waiver process.** (a) Except as provided in paragraph (c) of this subsection (9), the governor and the state department, acting jointly, may grant a county's application for a waiver of any requirement of this part 7 or the rules promulgated pursuant to this part 7. Any waiver granted pursuant to this subsection (9) shall be designed to improve methods of achieving participants' self-sufficiency, meeting work participation rates and performance goals, or reducing dependency.

(b) Any application for a waiver shall include a statement of the purpose of the waiver. The application shall be submitted to the governor and the state department no later than October 1 of the year immediately preceding the year in which the county intends to implement the waiver. The county shall provide notice of its application to all adjacent counties. The governor and the state department shall grant or deny the county's application no later than December 1 of the year in which the county applied. A waiver granted pursuant to this subsection (9) shall take effect on January 1 of the year immediately following approval of such waiver. The governor and the state department shall specify the duration of such waivers.

(c) The state department and the governor shall not approve an application under this subsection (9) that proposes to waive any statute or rule governing statewide eligibility, the amount of the basic cash assistance grant, the county maintenance of effort, or any requirement of the federal law. The governor and the state department shall not approve an application under this subsection (9) that proposes to waive a participant's right to appeal a county determination under the works program, but they may approve the waiver of statutes or rules governing the method or procedure for such appeal.

(d) The governor and the state department may approve any number of applications for waivers of one or more provisions of this part 7 or of the rules promulgated pursuant to this

part 7, so long as such waivers meet the requirements of paragraphs (a), (b), and (c) of this subsection (9).

(e) In the event that the governor has reason to believe that a county's implementation of the works program pursuant to a waiver granted under this subsection (9) fails to satisfy the requirements of the federal law or is inconsistent with the purposes of the works program as set forth in section 26-2-705, the governor may revoke the waiver granted to the county and require the county to resume implementation of the works program pursuant to the provisions of this part 7 and the rules promulgated pursuant to this part 7.

(f) In the event that the governor and the state department grant waivers to a county pursuant to this subsection (9), the performance contract entered into between the county and the state department pursuant to section 26-2-715 shall be amended to reflect the county's authority to implement the works program in accordance with the waivers granted and the governor's authority to revoke the waivers in accordance with paragraph (e) of this subsection (9).

(10) **Job market analysis.** The state department, the department of labor and employment, and the state board for community colleges and occupational education created in section 23-60-104 (1) (b), C.R.S., shall annually analyze job market information in order to establish a compilation of the types of jobs most appropriate and likely to lead to long-term self-sufficiency for participants. As used in this subsection (10), "job market information" means any state or regional job market or labor data or statistics or any information related to state or regional labor trends that the department of labor and employment may have or to which it may have access.

(11) **Tuition voucher system.** (a) The state department shall collaborate with the state board for community colleges and occupational education, created in section 23-60-104 (1) (b), C.R.S., to develop a tuition voucher system pursuant to which a participant may attend courses at an institution in the state's system of community and technical colleges by using a tuition voucher.

(b) The state department and the state board for community colleges and occupational education, created in section 23-60-104 (1) (b), C.R.S., shall enter into a cooperative arrangement to make available appropriate educational and academic training programs for participants who receive tuition vouchers.

Source: L. 97: Entire part added, p. 1204, § 1, effective June 3. **L. 2001:** (4)(a) amended, p. 414, § 2, effective August 8; (9)(b) amended, p. 1174, § 13, effective August 8. **L. 2008:** (7) amended, p. 1964, § 14, effective June 2; (4)(a) amended, p. 1291, § 6, effective July 1; (1), (2), (5)(a), (5)(b), (5)(e), (6), (8), and (9)(c) amended and (10) and (11) added, p. 1964, § 14, effective January 1, 2009.

26-2-713. State maintenance of effort. The general assembly shall make annual appropriations from state funds for the works program which, together with the expenditures made by counties under the works program, shall be applied toward the state's maintenance of historic effort as specified in section 409 (a) (7) of the social security act.

Source: L. 97: Entire part added, p. 1208, § 1, effective June 3. **L. 2000:** Entire section amended, p. 280, § 2, effective March 31.

26-2-714. County block grants formula - use of moneys - rules.

(1) (Deleted by amendment, L. 2008, p. 1967, § 15, effective January 1, 2009.)

(1.5) Moneys appropriated by the general assembly to the county block grant line shall remain appropriated and available to counties pursuant to the procedures specified in this section.

(2) Subject to available appropriations, in state fiscal year 2009-10 and in each fiscal year thereafter, the state department, with input from the works allocation committee, shall set the amount of the county block grants based on demographic and economic factors within the counties.

(2.5) In the event that the state department and the works allocation committee do not reach an agreement in setting the amounts of the county block grants pursuant to the provisions of subsection (2) of this section on or before June 15 of each state fiscal year, the works allocation committee shall submit alternatives to the joint budget committee of the general assembly from which the joint budget committee shall identify each individual county's block grant for the state fiscal year commencing on the immediately succeeding July 1.

(3) Nothing in subsections (2) and (2.5) of this section shall prevent a county from transferring at any time during the fiscal year, pursuant to procedures established by the state department and the works allocation committee, a portion of the county's current federal TANF allocation to another county in exchange for an amount of county moneys equal to the maintenance of effort associated with the allocation.

(4) The state department shall identify the portion of moneys in the county block grant that may be spent on administrative costs.

(5) (a) (I) (A) A county shall be authorized to maintain a reserve account of county block grant moneys pursuant to rules promulgated by the state department.

(B) Pursuant to the provisions of subparagraph (V) of paragraph (c) of subsection (6) of this section, upon the conclusion of state fiscal year 2010-11, and upon the conclusion of each state fiscal year thereafter, the works allocation committee may transfer to another county on or before November 1 of the succeeding fiscal year, any unspent county TANF reserves in excess of forty percent of the county's county block grant for the concluding state fiscal year. TANF reserves transferred to a county pursuant to this sub-subparagraph (B) shall be available to the county in the succeeding state fiscal year.

(C) (Deleted by amendment, L. 2011, (SB 11-124), ch. 183, p. 695, § 1, effective May 19, 2011.)

(D) If the works allocation committee transfers excess unspent TANF reserves pursuant to sub-subparagraph (B) of this subparagraph (I), the county from which the reserves are transferred shall receive appropriate maintenance of effort credit for those reserves. The county receiving the TANF reserves shall be responsible for providing an amount of county moneys equal to the maintenance of effort associated with the TANF reserves.

(E) (Deleted by amendment, L. 2011, (SB 11-124), ch. 183, p. 695, § 1, effective May 19, 2011.)

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (a) to the contrary, in state fiscal year 2008-09, and in each state fiscal year thereafter, a county with an annual county block grant amount of two hundred thousand dollars or less shall make available to the works allocation committee for transfer to another county pursuant to the provisions of subparagraph (V) of paragraph (c) of subsection (6) of this section any unspent TANF reserves in excess of one hundred thousand dollars.

(III) As used in this subsection (5), "unspent TANF reserves" means the amount deposited in a county reserve account plus any unspent TANF transfers authorized pursuant to this subsection (5) and subsections (7) and (9) of this section.

(IV) (Deleted by amendment, L. 2011, (SB 11-124), ch. 183, p. 695, § 1, effective May 19, 2011.)

(b) A county shall be required to maintain in such county's social services fund created pursuant to section 26-1-123 any county funds that were appropriated pursuant to section 26-2-716 (1) (a) and section 26-1-122 (6) in order to meet the targeted spending level required pursuant to subsection (6) of this section but not actually expended on the works program during the state fiscal year for which the county appropriated such funds.

(5.5) (a) The state department is authorized to segregate county block grant funds allocated under this section.

(b) If the state department segregates county block grant funds as authorized under this subsection (5.5):

(I) County departments shall report to the state expenditures they have made in a segregated manner, according to rules promulgated by the state board in accordance with applicable federal law;

(II) The counties shall develop policies regarding the use of segregated funds under this subsection (5.5);

(III) Funds shall be segregated in order to ensure maximum flexibility and to allow counties to provide additional assistance or services, in accordance with federal law.

(c) Repealed.

(d) The state board shall promulgate rules as necessary to implement this subsection (5.5).

(6) (a) **Targeted spending levels.** For state fiscal year 1997-98 and each state fiscal year thereafter, a county's targeted spending level shall be an amount that meets or exceeds one hundred percent of the county's spending on AFDC, JOBS, and the administrative costs related to those programs in state fiscal year 1995-96.

(b) Repealed.

(c) **Actual spending levels - 1998-99 and thereafter.** (I) For state fiscal year 1998-99 and for each state fiscal year thereafter, all counties collectively shall be required to meet levels of spending on the works program that are set forth in the annual long appropriation act, subject to the provisions of subsection (8) of this section.

(II) For state fiscal year 1998-99 and for each state fiscal year thereafter, each county's actual level of spending shall be identified by the works allocation committee created in subparagraph (IV) of this paragraph (c) no later than June 15 of each state fiscal year for the immediately succeeding state fiscal year. Prior to determining each county's actual spending level, the works allocation committee shall ensure that all counties have been notified of the recommended actual spending level and given an opportunity to provide comment on the recommendation. In the event that the works allocation committee does not reach an agreement on each individual county's actual level of spending for a state fiscal year on or before June 15 of such prior state fiscal year, the committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee shall identify each individual county's level of spending for a state fiscal year. The amount identified for a county's level of spending shall be identified in the county's performance contract with the state department entered into pursuant to section 26-2-715.

(III) The works allocation committee shall also identify the amount of mitigation that shall be allocated for a small county in accordance with the provisions of subsection (8) of this section. The works allocation committee may create a subcommittee that represents the interests of small counties as defined in subsection (8) of this section, which subcommittee may make recommendations concerning the mitigation amounts to be allocated for a small county pursuant to the provisions of subsection (8) of this section.

(IV) There is hereby created the works allocation committee that shall consist of seven members, five of whom shall be appointed by a statewide association of counties and two of whom shall be appointed by the state department. The appointing authorities shall consult with each other to ensure that the works allocation committee is representative of the counties in the state. If a statewide association of counties does not appoint a representative from the county that has the greatest percentage of the state's works caseload, the state department shall appoint such a representative from such county. The works allocation committee shall develop its own operational procedures.

(V) The works allocation committee shall determine the priority criteria for transfers of excess unspent TANF reserves to a county pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (5) of this section and the amount of the transfers. With the goal of increasing the counties' minimum percentage reserve balances, the works allocation committee's priority criteria shall give first priority to transfers to counties that have no more than a ten percent balance in the county's TANF reserve account. If moneys remain after satisfying the first priority criterion, second priority shall be given to transfers to those counties whose TANF reserves are more than ten percent, but no more than twenty percent.

(7) The county may transfer any amount of the county block grant that is designated as federal funds and that is specified by the state department as being available for transfer within the limitation imposed by the federal law on transfers of federal funds from the temporary assistance for needy families block grant to the child care development fund if child care funds are not available.

(8) (a) As used in this subsection (8), unless the context otherwise requires:

(I) “Annual maximum mitigation amount” means that portion of the total amount of county funds identified in the annual long appropriation act that may be used for mitigation for small counties in that state fiscal year.

(II) “Mitigation” means a specific reduction in a county’s targeted spending level established pursuant to paragraph (a) of subsection (6) of this section or a specific reduction in a county’s actual spending level established pursuant to paragraph (c) of subsection (6) of this section that is authorized pursuant to the provisions of this subsection (8). Mitigation can occur for targeted spending levels or actual spending levels or for both types of spending levels.

(III) “Small county” means a county with less than thirty-eight one hundredths of one percent of the total caseload of the works program statewide. The state department, with input from the works allocation committee, shall determine what shall constitute the total caseload of the works program and the time at which such caseload shall be established.

(b) Subject to the identification of an annual maximum mitigation amount in the annual long appropriation act and the criteria identified in paragraph (c) of this subsection (8), the works allocation committee created pursuant to subparagraph (IV) of paragraph (c) of subsection (6) of this section is authorized to identify the amount or amounts of any mitigation that shall be allocated to a small county in a specific state fiscal year. The works allocation committee shall notify the state department of any agreement concerning the allocation of any annual maximum mitigation amount in accordance with the provisions of this subsection (8).

(c) The criteria that the works allocation committee shall use include but are not limited to the following:

(I) The assessment of the equity of a small county’s total program expenditures as they relate to the targeted or actual spending level for the small county;

(II) The extent to which the small county will have insufficient revenues to meet its targeted or actual spending level; and

(III) The extent to which the provision of any mitigation may enhance the efforts of a small county or group of small counties to regionalize pursuant to the provisions of section 26-2-718.

(9) (a) For state fiscal year 1997-98, and for each state fiscal year thereafter, a county may transfer any amount of the county block grant that is designated as federal funds and that is specified by the state department as being available for transfer within the limitation imposed by the federal law on transfers of federal funds from the temporary assistance for needy families block grant to programs funded by Title XX of the federal social security act.

(b) A county may make the transfer authorized by paragraph (a) of this subsection (9) only for expenditures that are allowable under programs funded by Title XX of the federal social security act, subject to the following provisions:

(I) If the funds transferred are used for the provision of child welfare services as defined in section 26-5-101 (3), the county may only make the transfer:

(A) After the county has made allowable expenditures of all funds in the county’s capped or targeted allocation or allocations for child welfare services, other than for core services as referred to in section 26-5-101 (3) (f); and

(B) For the expenditures for child welfare services other than out-of-home placement services as described in section 26-5-101 (3) (i).

(II) A county shall not be required to appropriate funds to provide a county match pursuant to the provisions of section 26-1-122 for any funds transferred pursuant to the provisions of this subsection (9).

(III) A county shall not be authorized to use funds transferred pursuant to the provisions of this subsection (9) for the purpose of supplanting funds that:

(A) The county would otherwise be required to appropriate pursuant to section 26-1-122 in order to provide a county match for public assistance programs; or

(B) The county would otherwise appropriate in order to continue the provision of services under a program of public assistance administered with county only funds in the prior fiscal year.

(c) The state board shall promulgate rules governing procedures for transfers authorized pursuant to the provisions of this subsection (9).

(d) A county may make a transfer authorized by paragraph (a) of this subsection (9), within the limitations imposed by state and federal law on such transfers, in order to fund various programs for the improvement of child care. Such transfers may be used for minor remodeling of licensed child care facilities or facilities legally exempt from licensing requirements pursuant to section 26-6-103 (1), including but not limited to physical modifications for the purpose of licensure or accreditation, construction or improvement of fencing or other safety and security fixtures or other uses not prohibited under 42 U.S.C. sec. 1397d.

(10) (a) If the state meets federal work participation rates and qualifies for a percent reduction in the state's maintenance of effort as specified in federal law for any year, the actual spending level for the works program of all counties collectively shall be reduced by the same amount as the amount of the reduction in the federal maintenance of effort requirement.

(b) For the purposes of this subsection (10), "percent reduction" means the percent of reduction of historical expenditures as that term is defined in section 409 (7) (b) of the federal social security act, as amended.

(c) For any year in which a percent reduction in the state's maintenance of effort requirement occurs, the works allocation committee created pursuant to subparagraph (IV) of paragraph (c) of subsection (6) of this section shall determine each county's share of the reduction in actual spending levels. Prior to making such determination, the works allocation committee shall ensure that all counties have been notified of the recommended reduction for each county and given an opportunity to provide comment on the recommendation. In the event that the works allocation committee does not reach an agreement on each individual county's reduction in actual spending levels, the committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee shall identify each individual county's reduction in actual spending levels. The state department is authorized to adjust each county's share of the reduction in actual spending levels. The state department is authorized to adjust each county's actual spending level for any percentage reduction earned in accordance with the determination of the works allocation committee concerning each county's share of the reduction.

Source: **L. 97:** Entire part added, p. 1208, § 1, effective June 3. **L. 98:** (9) added, p. 779, § 1, effective May 22; (2), (5), and (6) amended and (2.5) and (8) added, p. 1192, § 2, effective June 1. **L. 2000:** (2), (5)(a), (6)(c)(II), (7), (8)(a)(II), (8)(c), and (9)(a) amended and (10) added, p. 280, § 3, effective March 31; (9)(c) added, p. 36, § 1, effective May 14. **L. 2002:** (5.5) added, p. 141, § 1, effective March 27; (5)(a) amended, p. 281, § 1, effective July 1. **L. 2004:** (5)(a) amended, p. 369, § 1, effective July 1; (6)(b) repealed, p. 204, § 24, effective August 4. **L. 2007:** (5.5)(c) repealed, p. 123, § 1, effective August 3. **L. 2008:** (1), (2), (2.5), and (5)(a) amended, p. 1967, § 15, effective January 1, 2009. **L. 2011:** (1.5) and (6)(c)(V) added and (3) and (5)(a) amended, (SB 11-124), ch. 183, pp. 695, 697, §§ 1, 2, effective May 19.

26-2-714.5. Adjusted work participation rate - notification - county authorization - vocational education. (1) As used in this section, unless the context otherwise requires, "federal credit" means the caseload reduction credit as calculated pursuant to 45 CFR 261.40 or any employment credit, caseload reduction credit, or other credit against such rate for a fiscal year that may be subsequently adopted by the federal government.

(2) The state department shall notify each county, within thirty days after the beginning of the state fiscal year, of the state department's projection regarding the adjusted rate that the state must attain for the fiscal year in order to be in compliance with federal requirements, based on the state's estimate of the federal credit the state anticipates qualifying to receive. This adjusted rate shall be the county's adjusted work participation rate for that state fiscal year.

(3) Each county is authorized to place participants in vocational education, as that term is defined by rule of the state board, for longer than twelve months in order to meet critical skills shortages in the labor market; except that the percentage of participants allowed to

satisfy program requirements through vocational education of longer than twelve months in a county shall not exceed seventy-five percent of the state's estimate of the federal credit.

(4) The provisions of this section shall be implemented by the state department consistent with the requirement of section 26-2-715 (1) (a) (III).

(5) The state department may suspend a county's ability to place participants in vocational education for longer than twelve months if the state department certifies that allowing vocational education to count toward a works participant's required work activities would affect the state's ability to meet federal work participation rates.

Source: L. 2004: Entire section added, p. 89, § 1, effective March 9.

26-2-714.7. Work participation rates - increases - county strategies - report - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 1522, § 1, effective May 31. L. 2008: (1)(b) and (1)(f) amended, p. 1969, § 16, effective January 1, 2009.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 1522.)

26-2-715. Performance contracts. (1) (a) Each county, either acting singly or with a group of counties, shall enter into an annual performance contract with the state department that shall identify the county's or group of counties' duties and responsibilities in implementing the works program and the Colorado child care assistance program, described in part 8 of this article. The performance contract shall include but not be limited to:

(I) Requirements and provisions that address the county's or group of counties' duty to administer and implement the works program and the Colorado child care assistance program using fair and objective criteria;

(II) Provisions that prohibit the county or group of counties from reducing the basic cash assistance grant administered pursuant to section 26-2-709 and monitored by the state department pursuant to section 26-2-711 and provisions that prohibit the county or group of counties from restricting eligibility or the provision of services or imposing sanctions in a manner inconsistent with the provisions of this part 7 or the provisions in the state plan submitted to the secretary of the federal department of health and human services pursuant to section 26-2-712;

(III) Work participation rates for the county or group of counties that shall ensure that the state will be able to meet or exceed its work participation rates under the federal law.

(b) A county or group of counties may be sanctioned for not meeting any obligation under such performance contract. Such sanctions must be identified in the performance contract and may include a reduction in a future county block grant allocation.

(2) The performance contract shall set forth the circumstances under which the state department may elect that it or its agent assume the county's or group of counties' administration and implementation of the works program and the Colorado child care assistance program.

(3) If the state department and the county or group of counties are unable to reach agreement on the contract, either party may request the state board to consider the matter, and the state board shall schedule the matter for hearing within thirty days after receipt of the request. The state board shall issue a decision on the matter which shall be considered binding on all parties. If necessary to assure services are available within the county or group of counties, the state department may enter into a temporary agreement with the county or group of counties or with another public or private agent until the matter is resolved by the state board.

Source: L. 97: Entire part added, p. 1209, § 1, effective June 3. L. 2008: IP(1)(a) and (1)(a)(II) amended, p. 1969, § 17, effective January 1, 2009.

26-2-716. County duties - appropriations - penalties - hardship extensions - domestic violence extensions - incentives - rules. (1) (a) (I) The board of county commissioners in each county of this state shall annually appropriate as provided by law such moneys as required pursuant to section 26-1-122 (6).

(II) In the case of two or more counties jointly administering a county block grant under the provisions of this part 7, each county involved shall appropriate the funds necessary to defray its proportionate costs of implementing the works program.

(b) A county department shall keep such records and accounts in relation to the costs of administering and implementing the works program.

(c) Whenever a county anticipates that it may be financially unable to meet requests for assistance from participants, the county may seek additional moneys from the county block grant support fund administered by the state department pursuant to section 26-2-720.5.

(2) In connection with administering a county block grant, a county department shall:

(a) Meet the work participation rate as set forth in the performance contract with the state department pursuant to section 26-2-715;

(b) Report to the state department the information required to enable the state department to track participants' length of time for receipt of assistance and to enable the state department to provide written notice to applicants and participants of their rights;

(c) Provide written notification to applicants and recipients of their responsibilities and options available under the works program, including but not limited to time limits, domestic violence waivers, extensions or exemptions, and services available. Verbal notice shall be provided when requested.

(d) Submit the reports required pursuant to section 26-2-717;

(e) Use an income eligibility verification system (IEVS) to verify eligibility information against federal social security administration and internal revenue service files;

(f) Provide Title IV-D services to participants and require assignment of rights to child support by participants and participant cooperation with establishment and collection of child support, except as to participants receiving short-term assistance pursuant to section 26-2-706.6;

(g) Make available opportunities for participants to have individual development accounts for home purchase, business capitalization, or higher education in accordance with federal law;

(h) Meet the required maintenance of effort as identified in section 26-2-714.

(2.5) The board of county commissioners in each county shall adopt official written policies for implementing aspects of the Colorado works program that counties have the statutory authority and flexibility to determine under this part 7. Such policies shall include, without limitation, a description of the kinds of assistance available under the Colorado works program within the county, any eligibility criteria for assistance that may be unique to the county, and the process by which such eligibility and assistance is determined on an individual basis. Such policies shall not be construed to create an entitlement to any service or benefit under the Colorado works program in any county for any applicant or participant, and shall not limit the flexibility of a county to respond to the individual circumstances of a participant. The board of county commissioners in each county shall make such policies available to applicants and participants.

(3) (a) No person in a work activity described in section 26-2-703 (21) shall be employed by, or assigned to, an employer if:

(I) Any other person is on layoff from the same or any substantially equivalent job with such employer; or

(II) Such employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of the workforce in order to fill the vacancy with a participant; or

(III) Placement of the person with the employer will result in a reduction of hours, regular or overtime, wages, or benefits of persons currently employed by the employer; or

(IV) The position is available due to a labor dispute, strike, lockout, or violation of a collective bargaining agreement.

(b) A uniform statewide grievance procedure for resolving complaints of alleged violations of displacements shall be established by the department of labor and employment.

(c) All state and federal laws affecting workers and employers shall apply to all participants, including but not limited to state and federal minimum and prevailing wage laws, workers' compensation, unemployment insurance, occupational safety and health administration coverage where applicable, the federal "Fair Labor Standards Act of 1938", as amended, all federal, state, and local antidiscrimination laws, and all labor laws affecting the rights of employees to organize.

(d) All participants shall be entitled to the same wages and benefits, including but not limited to sick leave and holiday and vacation pay, as are offered to employees who are not participants and who have similar training or experience performing the same or similar work at a specific work place.

(4) (a) A county may not use county block grant moneys except as specifically authorized pursuant to the provisions of this part 7 and rules promulgated by the state board or state department to implement the provisions of this part 7. If the state department has reason to believe that a county has misused county block grant moneys and has given the county an opportunity to cure the misuse and the county has failed to cure, the state department may reduce the county's block grant for the succeeding state fiscal year by an amount equal to the amount of moneys misused by the county.

(b) A county found out of compliance with its performance contract or any provision of the works program may be assessed a financial sanction. The financial sanction must be replaced by county moneys. The state board shall promulgate rules for county sanctions that include financial sanctions and may include other sanctions. Any moneys resulting from the imposition of a financial sanction shall be transmitted to the Colorado long-term works reserve created in section 26-2-721, but only if the state has not incurred a federal sanction for the same act that gave rise to the county sanction.

(5) (a) County departments are authorized to administer hardship and domestic violence extensions for needy families that have exceeded the sixty-month lifetime limit for receipt of assistance set forth in the federal law. The county departments shall approve or deny hardship extensions or domestic violence extensions pursuant to fair and objective criteria established by the state board. The state board, by rule, shall establish hardship criteria, and each county shall apply the hardship criteria to all participants seeking extensions. A county, in its written county policies, may define additional reasons for granting hardship extensions. A county may not grant hardship or domestic violence extensions for a duration longer than six months.

(b) All participants shall have the opportunity to request extensions in their counties of residence. A participant who has been granted an initial extension may request additional extensions prior to the end of the current extension period. If a participant fails to request an extension on a timely basis, an extension may be granted if the participant demonstrates good cause. Whether good cause has been established shall be determined at the sole discretion of the county department and shall not be appealable.

(c) The state department shall send notice to participants approaching the sixty-month limit on lifetime receipt of assistance pursuant to subsection (2) of this section. The county departments shall make all reasonable efforts to contact a participant by phone or in person to explain the extension process and to accept a request for an extension. Participants may also make such requests in writing.

(d) A person who is granted a hardship extension or a domestic violence extension shall be required to complete an individual responsibility contract and shall be required to follow all the terms and conditions of the IRC, including the participation activities required of the participant as a condition of the extension, as outlined in the IRC.

(e) Sanctions and terminations pursuant to section 26-2-711 shall apply during the period of an extension granted pursuant to this section. Participants may appeal adverse actions consistent with sections 26-2-127 and 26-2-710.

(f) The county department shall have thirty days after the receipt of a request for an extension to make a decision whether to grant or deny the extension. When granting the extension the county department shall send notice of such extension to participants. The

county department shall send a denial notice to a participant who applies for but is denied a hardship extension due to lack of available extensions or for any other reason, which reason shall be included. The county department shall send a denial notice to a participant who applies for but is denied a domestic violence extension, which shall include the reason for the denial. If the state exceeds the twenty-percent numerical limit on the number of extensions that may be granted under the federal law due to the inclusion of domestic violence extensions, then the state department shall determine how many of those domestic violence extensions qualify as domestic violence waivers granted pursuant to section 26-2-708 (5) and if this determination indicates that the state exceeds the twenty-percent numerical limit due to domestic violence extensions that qualify as domestic violence waivers, the state department shall demonstrate to the federal government that its failure to comply with the sixty-month limit was attributable to federally recognized good cause domestic violence waivers in accordance with the provisions of 45 CFR 260, subpart B.

(g) The state board shall promulgate rules establishing the criteria for hardship extensions and for establishing a system for allocating the number of extensions available for each county.

(h) Nothing in this section shall be construed to prohibit a former participant from requesting a hardship or domestic violence extension, after the lapse of the sixty-month lifetime limit, when new hardship or domestic violence factors occur, to the extent permissible under state and federal law.

(i) This subsection (5) shall only apply to participation in the Colorado works program, as contained in this part 7.

(6) In the event that a county is unable to meet the need for assistance pursuant to section 26-2-709 (2), it may impose cost-reducing measures, including but not limited to proportionate reductions in such assistance, establishment of waiting lists for such assistance, or elimination of such assistance.

(7) A county that encompasses an Indian reservation shall consult with the respective Indian tribe concerning the administration and implementation of the works program by that county. Such consultation shall include but not be limited to:

(a) Possible exemption of the Indian tribe from the sixty-month time limit of the federal law if that tribe has more than one thousand members and an unemployment rate that exceeds fifty percent;

(b) Collection of statistical data on participants, funding for tribal data collection and tribal administration of federally and tribally funded programs;

(c) Cooperation and agreement concerning when a tribal member shall be referred to his or her respective tribe for assistance in finding work and how the costs for such assistance may be reimbursed by or otherwise shared with the county.

(8) (Deleted by amendment, L. 2008, p. 1969, § 18, effective January 1, 2009.)

(9) County departments shall assist families in completing the reporting requirements for transitional medicaid. This shall include informing 1931 medicaid recipients, as defined in section 25.5-4-103 (1), C.R.S., of the transitional medicaid eligibility requirements and the required reporting calendar.

(10) A county department shall assist participants in applying for and receiving the earned income tax credit under applicable rules of the federal internal revenue service.

Source: L. 97: Entire part added, p. 1210, § 1, effective June 3. L. 98: (2)(f) amended, p. 766, § 17, effective July 1. L. 99: (2.5) added, p. 303, § 1, effective April 15; (8) added, p. 1361, § 4, effective June 3. L. 2000: (4)(b) amended, p. 282, § 4, effective March 31. L. 2001: (9) added, p. 737, § 1, effective July 1. L. 2002: (5) amended, p. 375, § 1, effective April 25. L. 2003: (5)(f) amended, p. 761, § 1, effective March 25. L. 2006: (9) amended, p. 2018, § 102, effective July 1. L. 2008: (1)(c), (2)(f), (4)(b), (5)(a), and (8) amended and (10) added, p. 1969, § 18, effective January 1, 2009.

26-2-717. Reporting requirements. (1) The state department shall submit, in a timely and accurate manner, case record information on participants to the federal government as required by federal law.

(2) to (4) (Deleted by amendment, L. 2008, p. 1970, § 19, effective January 1, 2009.)

Source: **L. 97:** Entire part added, p. 1213, § 1, effective June 3. **L. 2006:** (1)(h) amended, p. 2018, § 103, effective July 1. **L. 2008:** Entire section amended, p. 1970, § 19, effective January 1, 2009.

26-2-718. Regionalization. (1) In the event that two or more counties agree to administer and implement the Colorado works program jointly, such counties shall submit resolutions from their boards of county commissioners to the state department that reflect their intention to administer and implement the Colorado works program jointly.

(2) The state department shall make a determination to approve or deny the resolutions and notify the counties within thirty days after the receipt of the resolutions.

(3) The state department, in conjunction with the boards of county commissioners of the affected counties, shall determine administrative, programmatic, and reporting requirements in connection with the joint operation of the works program by the counties.

Source: **L. 97:** Entire part added, p. 1214, § 1, effective June 3.

26-2-719. Private contracting. The state department and any county department are authorized to award contracts for the administration, implementation, or operation of any aspect of the works program to any appropriate public, private, or nonprofit entity in accordance with applicable county regulations, federal law, and the provisions of the state procurement code, articles 101 to 112 of title 24, C.R.S.

Source: **L. 97:** Entire part added, p. 1215, § 1, effective June 3. **L. 2008:** Entire section amended, p. 1972, § 20, effective January 1, 2009.

26-2-720. Short-term works emergency fund - repeal. (Repealed)

Source: **L. 97:** Entire part added, p. 1215, § 1, effective June 3. **L. 2000:** Entire section amended, p. 278, § 1, effective March 31; (2.5) added, p. 429, § 1, effective April 14. **L. 2004:** (2.5) repealed, p. 205, § 25, effective August 4. **L. 2008:** (1) amended, p. 1972, § 21, effective June 2.

Editor's note: Subsection (1)(c) provided for the repeal of this section, effective July 1, 2008. (See L. 2008, p. 1972.)

26-2-720.5. County block grant support fund - created. (1) The state department shall create a county block grant support fund that shall consist of moneys annually appropriated thereto by the general assembly. Any unexpended moneys remaining in the county block grant support fund at the end of a fiscal year shall be remitted to the Colorado long-term works reserve.

(2) The state department, with input from the works allocation committee, shall allocate moneys in the county block grant support fund to counties according to criteria and procedures established by the state department and the works allocation committee.

(3) A county that meets the criteria established by the state department and the works allocation committee pursuant to subsection (2) of this section may request moneys from the county block grant support fund. Priority shall be given to any county that exhausts all moneys available in the county's block grant for the Colorado works program for that fiscal year.

(4) The state department, with input from the works allocation committee, may allocate moneys to counties out of the county block grant support fund during the state fiscal year or at the end of a state fiscal year.

(5) The state department shall annually report to the joint budget committee on any allocations made from the county block grant support fund, including the amount requested by each county and the county's reason for requesting the moneys, and the amount allocated to each county and the reasons for the state department's decision regarding each request.

Source: L. 2008: Entire section added, p. 1972, § 22, effective June 2.

26-2-721. Colorado long-term works reserve - creation - use - repeal. (1) There is hereby created the Colorado long-term works reserve, referred to in this section as the “reserve”, that shall consist of unappropriated TANF block grant moneys, state general fund moneys appropriated thereto by the general assembly, and moneys transferred thereto pursuant to sections 26-2-714 (5) (a), 26-2-716 (4) (b), 26-2-720.5 (1), 26-2-721.3 (1), and 26-2-721.7 (1). A county’s excess unspent TANF reserves that are transferred to another county pursuant to section 26-2-714 (5) (a) (I) (B) or (5) (a) (I) (C) shall not be considered unappropriated TANF block grant moneys for purposes of this section. Any excess unspent TANF reserves for state fiscal year 2009-10 shall be excluded from the Colorado long-term works reserve and shall be available for transfer to a county pursuant to section 26-2-714 (5) (a) (I) (B).

Editor’s note: This version of subsection (1) is effective until April 1, 2013.

(1) There is hereby created the Colorado long-term works reserve, referred to in this section as the “reserve”, that shall consist of unappropriated TANF block grant moneys, state general fund moneys appropriated thereto by the general assembly, and moneys transferred thereto pursuant to sections 26-2-714 (5) (a), 26-2-716 (4) (b), 26-2-720.5 (1), and 26-2-721.3 (1). A county’s excess unspent TANF reserves that are transferred to another county pursuant to section 26-2-714 (5) (a) (I) (B) or (5) (a) (I) (C) shall not be considered unappropriated TANF block grant moneys for purposes of this section. Any excess unspent TANF reserves for state fiscal year 2009-10 shall be excluded from the Colorado long-term works reserve and shall be available for transfer to a county pursuant to section 26-2-714 (5) (a) (I) (B).

Editor’s note: This version of subsection (1) is effective April 1, 2013.

(2) The general assembly, upon request of the state department, may appropriate the moneys in the reserve for the purposes of:

(a) Implementing the works program, including but not limited to:

(I) Funding the Colorado works program maintenance fund created in section 26-2-721.3; and

(II) (A) Funding the Colorado works statewide strategic use fund created in section 26-2-721.7.

(B) This subparagraph (II) is repealed, effective April 1, 2013.

(b) Transfers that are allowed under the federal law for transfers to programs funded by Title XX of the social security act or for transfers to the child care development fund.

(3) Prior to requesting any appropriations from the reserve for the purpose of making transfers, the state department shall consult with counties and provide information to the joint budget committee for the purposes of ensuring that all transfers of TANF funds do not exceed the federal limits for transfers and ensuring that the needs of counties to make transfers authorized pursuant to section 26-2-714 (7) and (9) are considered.

Source: L. 97: Entire part added, p. 1216, § 1, effective June 3. **L. 2000:** Entire section amended, p. 283, § 5, effective March 31; entire section amended, p. 429, § 2, effective April 14. **L. 2001:** Entire section amended, p. 981, § 6, effective August 8. **L. 2002:** Entire section amended, p. 281, § 2, effective July 1. **L. 2004:** Entire section amended, p. 369, § 2, effective July 1. **L. 2008:** Entire section amended, p. 1973, § 23, effective June 2. **L. 2011:** (1) amended, (SB 11-124), ch. 183, p. 697, § 3, effective May 19. **L. 2012:** (1) amended, (HB 12-1341), ch. 155, p. 555, § 4, effective April 1, 2013; (2)(a)(II)(B) added by revision, (HB 12-1341), ch. 155, p. 555, § 4, 6.

Editor’s note: Amendments to this section by Senate Bill 00-065 and Senate Bill 00-067 were harmonized.

26-2-721.3. Colorado works program maintenance fund - creation - use - report.

(1) There is hereby created the Colorado works program maintenance fund, referred to in this section as the "maintenance fund". The maintenance fund shall consist of moneys appropriated thereto by the general assembly from the Colorado long-term works reserve. The moneys in the maintenance fund shall be subject to annual appropriation by the general assembly to the executive director for use in responding to emergency or otherwise unforeseen purposes that are authorized by this part 7 or by federal law and that are necessary for the efficient and effective implementation of the Colorado works program at the state and county levels. Any unexpended moneys remaining in the maintenance fund at the end of a fiscal year shall revert to the Colorado long-term works reserve.

(2) On or before February 15, 2009, and on or before February 15 each year thereafter, the executive director shall report to the joint budget committee and the health and human services committees of the senate and the house of representatives, or any successor committees, concerning the use of moneys appropriated to the maintenance fund in the preceding fiscal year.

Source: L. 2008: Entire section added, p. 1974, § 24, effective June 2.

26-2-721.5. Strategic allocation committee - created - duties - repeal. (1) There is hereby created in the state department the strategic allocation committee, referred to in this section as the "committee", that shall consist of thirteen members, as follows:

(a) The executive director of the department of labor and employment, or his or her designee;

(b) The executive director of the department of public health and environment, or his or her designee; and

(c) Eleven members appointed, pursuant to subsection (2) of this section, by the state board as follows:

(I) Four members who represent counties, at least two of whom are members of the works allocation committee;

(II) Four members who represent Colorado works program participant advocates, participants or former participants, and nonprofit service providers; and

(III) Three members who represent interests in early childhood development, child welfare, community colleges and occupational education, workforce development, or mental health.

(2) In making appointments to the committee, the state board shall solicit applications from county departments, advocacy agencies, and other interested persons throughout the state. The state department shall assist the state board in reviewing the applications received and in selecting appointees. The state board may also seek appointment recommendations from a statewide association that represents counties in Colorado and from Colorado works program participant advocates. The state board shall, to the extent practicable, ensure that the persons appointed to the committee are selected from areas throughout the state and are representative of the racial, ethnic, and gender diversity within the state. The state board may promulgate rules as necessary for the implementation of this section.

(3) (a) The appointed members of the committee shall serve four-year terms; except that, of the members initially appointed, five shall serve two-year terms. The state board may appoint the same person to serve multiple consecutive terms.

(b) The executive director of the state department, or his or her designee, shall serve as an ex officio and nonvoting member of the committee and as the chair of the committee. The committee shall meet as often as necessary to complete its duties and shall adopt such operational procedures as may be necessary.

(c) The members of the committee shall serve without compensation and without reimbursement for expenses; except that the committee members who are not public employees may receive reimbursement for reasonable and necessary expenses incurred in serving as members of the committee.

(d) The appointed members of the committee may be removed for cause. If a vacancy arises among the appointed members of the committee, the state board shall fill the vacancy by appointment for the remainder of the term.

(4) The committee shall advise the executive director regarding criteria and procedures for making allocations from the Colorado works statewide strategic use fund created in section 26-2-721.7 (1). In addition, the committee shall make recommendations as provided in section 26-2-721.7 (2) and (3) regarding allocations from the Colorado works statewide strategic use fund.

(5) (a) This section is repealed, effective April 1, 2013.

(b) Repealed.

Source: **L. 2008:** Entire section added, p. 1974, § 24, effective June 2. **L. 2012:** (5)(a) amended and (5)(b) repealed, (HB 12-1341), ch. 155, p. 554, § 2, effective May 3.

26-2-721.7. Colorado works statewide strategic use fund - created - allocations - rules - evaluation - report - repeal. (1) (a) There is hereby created the Colorado works statewide strategic use fund, referred to in this section as the “statewide strategic use fund”, which shall consist of the moneys annually appropriated thereto by the general assembly from the Colorado long-term works reserve. The moneys in the statewide strategic use fund shall be continuously appropriated to the state department for the purposes specified in this section. Any unexpended moneys remaining in the statewide strategic use fund at the end of a fiscal year shall remain in the statewide strategic use fund and shall not revert to the Colorado long-term works reserve or any other fund.

(a.5) Notwithstanding the provisions of paragraph (a) of this subsection (1) to the contrary, any unencumbered and unexpended moneys remaining in the statewide strategic use fund on December 30, 2012, shall revert to the Colorado long-term works reserve created in section 26-2-721.

(b) The state department may annually use up to ten thousand dollars of the moneys annually appropriated from the statewide strategic use fund to offset the costs incurred by the strategic allocation committee.

(c) The executive director may annually use up to two percent of the moneys annually appropriated from the statewide strategic use fund to contract, pursuant to subsection (6.5) of this section, with a qualified, independent entity for an evaluation of the statewide strategic use fund.

(2) (a) Based on the approved recommendations of the strategic allocation committee, the state department shall allocate the moneys appropriated to the statewide strategic use fund to support initiatives and programs that:

(I) Meet at least one of the purposes of the Colorado works program, as specified in section 26-2-705; and

(II) Either have demonstrated effectiveness in achieving, or represent an evidence-based, innovative approach that is likely to achieve, one or more of the following goals:

(A) Enhancing the long-term self-sufficiency of eligible, low-income Colorado families;

(B) Reducing the number of children and families living in poverty;

(C) Strengthening families who are living in poverty; or

(D) Increasing the participation of Colorado works participants in meaningful work activities.

(b) Initiatives and programs that receive allocations from the statewide strategic use fund may include, but need not be limited to, those that support regional public-private partnerships to accomplish the purposes specified in paragraph (a) of this subsection (2).

(3) (a) The strategic allocation committee may consider applications from, and recommend allocations from the statewide strategic use fund to, any one or more of the following entities, referred to in this section as “an eligible entity”:

(I) A county department;

(II) A nonprofit or not-for-profit entity;

(III) A state agency;

(IV) Any other appropriate entity specified by rule of the state board.

(b) An eligible entity, singly or jointly with one or more other eligible entities, that seeks an allocation from the statewide strategic use fund shall submit an application to the strategic allocation committee, as provided by rule of the state board. In reviewing applications, the strategic allocation committee shall take into account the degree of collaboration and cooperation between the applying eligible entity and the county department for the county in which the initiative or program would be implemented, as demonstrated in materials submitted with the application.

(c) The strategic allocation committee shall review all applications received and shall make recommendations to the executive director for allocations from the statewide strategic use fund. Each recommendation by the strategic allocation committee shall require the approval of at least nine of the committee members.

(d) The executive director shall approve the recommendations of the strategic allocation committee for allocation by the state department of the moneys in the statewide strategic use fund. If the executive director does not approve a recommendation of the strategic allocation committee, the committee may submit the recommendation to the state board for approval. If the state board approves the recommendation, the state department shall allocate the moneys as recommended by the strategic allocation committee.

(4) If an allocation to a nonprofit or not-for-profit entity is approved pursuant to this section, the state department in allocating the moneys shall comply with any applicable requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S.

(5) Each eligible entity or group of eligible entities that receives an allocation from the statewide strategic use fund pursuant to this section shall comply with all reporting and monitoring requirements established by rule of the state board for purposes of overseeing the effectiveness of the programs and initiatives implemented with allocations from the fund. The state department, in accordance with state board rules, shall review the implementation of the programs and initiatives that receive allocations from the statewide strategic use fund.

(6) The state board shall promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as specified in this section and as may otherwise be necessary for the implementation of this section.

(6.5) The executive director may contract with a qualified, independent entity for an evaluation of the effectiveness of the statewide strategic use fund in meeting the objectives of the Colorado works program and the effectiveness of individual initiatives and programs supported by the statewide strategic use fund in attaining the goals set forth in subsection (2) of this section as well as any outcomes defined by the strategic allocation committee. The executive director shall consult with the strategic allocation committee before awarding the evaluation contract. The executive director shall select an entity that is qualified to perform an evidence-based evaluation of a social program, and the entity awarded the evaluation contract shall not have a conflict of interest with respect to the entities or organizations that have benefitted from, or may benefit from, allocations from the statewide strategic use fund.

(7) On or before February 15, 2009, and on or before February 15 each year thereafter, the executive director shall submit to the joint budget committee and to the health and human services committees of the senate and the house of representatives, or any successor committees, a report concerning the programs and initiatives that received allocations from the statewide strategic use fund in the preceding fiscal year and a copy of the most recent evaluation completed pursuant to subsection (6.5) of this section.

(8) This section is repealed, effective April 1, 2013.

Source: L. 2008: Entire section added, p. 1974, § 24, effective June 2. **L. 2009:** (1)(a) amended, (HB 09-1222), ch. 231, p. 1064, § 9, effective May 4. **L. 2010:** (1)(c) and (6.5) added and (7) amended, (SB 10-010), ch. 58, p. 210, §§ 1, 2, effective March 31. **L. 2012:** (1)(a.5) and (8) added, (HB 12-1341), ch. 155, p. 554, § 1, effective May 3.

26-2-722. Legislative oversight committee - created - repeal. (Repealed)

Source: L. 97: Entire part added, p. 1216, § 1, effective June 3. L. 2001: (4) amended, p. 654, § 2, effective August 8.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2004. (See L. 2001, p. 654.)

26-2-723. Evaluation - state department - repeal. (Repealed)

Source: L. 98: Entire section added, p. 1196, § 3, effective June 1. L. 2001: (2) and (3) amended, p. 1174, § 14, effective August 8. L. 2002: (4)(a) amended, p. 503, § 2, effective May 24. L. 2004: Entire section R&RE, p. 802, § 1, effective July 1. L. 2007: (1) and (4)(c) amended, p. 2044, § 77, effective June 1.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2009. (See L. 2004, p. 802.)

26-2-724. Colorado works - screening for substance abuse and mental health problems - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 502, § 1, effective May 24.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2005. (See L. 2002, p. 502.)

PART 8**COLORADO CHILD CARE
ASSISTANCE PROGRAM**

26-2-801. Short title. This part 8 shall be known and may be cited as the "Colorado Child Care Assistance Program Act".

Source: L. 97: Entire part added, p. 1217, § 1, effective June 3.

26-2-802. Legislative declaration. (1) The general assembly hereby finds and declares that the state's policies in connection with the provision of child care assistance and the effective delivery of such assistance are critical to the ultimate success of any welfare reform program. The general assembly further finds that children in low-income families who receive services through a child care assistance program need and deserve the same access to a broad range of child care providers as do children in families who do not need assistance.

(2) Therefore, the general assembly hereby finds and declares that it is in the best interests of the state to adopt the Colorado child care assistance program set forth in this part 8. The general assembly further finds and declares that it is in the best interests of the state to adopt consistent, statewide child care provider reimbursement rates set at a floor of the seventy-fifth percentile of each county's market rate or the provider's rate, whichever is lower, to facilitate and increase access to high-quality child care for low-income families.

Source: L. 97: Entire part added, p. 1217, § 1, effective June 3. L. 2008: Entire section amended, p. 2176, § 1, effective June 4.

26-2-803. State department authority - provider rates.

(1) Repealed.

(2) The state department shall establish provider rates for the counties. After notice to the state department, a county may opt out of adhering to the state department provider rates and negotiate its own rates with such providers.

Source: L. 97: Entire part added, p. 1217, § 1, effective June 3. **L. 2008:** (1) repealed, p. 1910, § 114, effective August 5.

26-2-804. Funding - allocation - maintenance of effort. (1) Subject to available appropriations, a county's block grant for the Colorado child care assistance program for state fiscal year 1997-98 shall be determined by the state department and shall be based upon not less than one hundred percent of the state and federal moneys that the county received in state fiscal year 1996-97 to administer and implement JOBS-related child care and the Colorado child care assistance program, including the administrative costs related to such programs. The state department shall consider factors that include but are not limited to the following:

- (a) Historical expenditures on the Colorado child care assistance program;
- (b) The number of children in the county under thirteen years of age;
- (c) The number of low-income families in the county; and
- (d) Provider rates in the county, as established pursuant to section 26-2-803 (2).

(2) In state fiscal years 1998-99 and thereafter, the state department may adjust the county block grant identified in subsection (1) of this section by increasing or reducing the amount of such grants based upon factors that shall include but not be limited to:

- (a) The county's population and the Colorado works program caseload;
- (b) The unemployment rate in the county based upon the state department of labor and employment assessment of county unemployment rates for the prior year;
- (c) The county's performance in meeting the obligations under the performance contract with the state department pursuant to the provisions of section 26-2-715;
- (d) The fact that the county received funds from the county block grant support fund, created in section 26-2-720.5, in the previous fiscal year for allowable child care expenditures, which may indicate that the previous fiscal year's allocation was insufficient to meet the county's needs.

(3) The moneys in a county block grant allocated to a county pursuant to subsection (1) of this section may only be used for the provision of child care services under rules promulgated by the state department.

(4) and (5) Repealed.

(6) For state fiscal year 2005-06 and for each state fiscal year thereafter, each county shall be required to meet a level of county spending for the Colorado child care assistance program that is equal to the county's proportionate share of the total county funds set forth in the annual general appropriation act for the Colorado child care assistance program for that state fiscal year. The level of county spending shall be known as the county's maintenance of effort for the program for that state fiscal year. For any state fiscal year, the state department is authorized to adjust a county's maintenance of effort, reflected as a percentage of the total county funds set forth in the annual general appropriation act for the Colorado child care assistance program for that state fiscal year, so that the percentage equals the county's proportionate share of the total state and federal funds appropriated for the Colorado child care assistance program for that state fiscal year, reflected as a percentage. For any state fiscal year, the sum of all counties' maintenance of effort shall be equal to or greater than the total county funds set forth in the general appropriation act for the state fiscal year 1996-97 for employment-related child care.

Source: L. 97: Entire part added, p. 1218, § 1, effective June 3. **L. 2000:** (2)(d) added, p. 283, § 6, effective March 31. **L. 2003:** (4) amended and (5) and (6) added, p. 2600, § 1, effective June 5. **L. 2008:** (2)(d) amended, p. 1978, § 26, effective January 1, 2009.

Editor's note: Subsections (4)(b) and (5)(b) provided for the repeal of subsections (4) and (5), respectively, effective July 1, 2005. (See L. 2003, p. 2600.)

26-2-805. Services - eligibility - assistance provided - rules. (1) (a) Subject to available appropriations, and pursuant to rules promulgated by the state department, a county shall provide child care assistance to a participant or any person or family whose income is not more than one hundred thirty percent of the federal poverty line.

(b) (I) Subject to available appropriations and pursuant to rules promulgated by the state department, and except as provided for in subparagraph (II) of this paragraph (b), a county shall provide child care assistance for a family transitioning off the works program due to employment or training without requiring the family to apply for low-income child care, but shall redetermine the family's eligibility within six months after the transition, and may provide child care assistance for any other family whose income does not exceed eighty-five percent of the state median income for a family of the same size. A recipient of child care assistance shall be responsible for paying a portion of such child care based upon the recipient's income and the formula developed by rules of the state board. For any participant or any person or family whose income rises to the level set by the county at which the county may deny said participant, person, or family child care assistance, the county is strongly encouraged to continue to provide such assistance for a period of six months; except that in no event shall assistance be provided if said income exceeds the maximum level for eligibility for services set by federal law for a family of the same size. During such period the county shall work with said participant, person, or family to provide a gradual transition off of the child care assistance provided pursuant to this paragraph (b) over a six-month period.

(II) A family transitioning off of the works program shall not be automatically transitioned to the Colorado child care assistance program pursuant to subparagraph (I) of this paragraph (b) if any of the following apply:

(A) The family is leaving the works program due to a violation of program requirements as defined in part 7 of this article, rule of the state board, or policy of a county department;

(B) The family is leaving the works program for training and the county in which the family resides does not include training as an eligible activity for low-income child care;

(C) The family is leaving the works program due to employment and will be at an income level that exceeds the county-adopted income eligibility limit for the county's child care assistance program; or

(D) The county in which the family resides has a waiting list for the county's child care assistance program.

(c) A participant who is employed shall pay a portion of his or her income for child care assistance under the Colorado child care assistance program. The amount that such a participant shall be required to pay under the provisions of this paragraph (c) shall be determined by a formula that shall be established by rules of the state board.

(d) On and after January 1, 2005, a county may require a person who receives child care assistance pursuant to this section and who is not otherwise a participant to apply, pursuant to section 26-13-106 (2), for child support establishment, modification, and enforcement services related to any support owed by obligors to their children and to cooperate with the delegate child support enforcement unit to receive these services; except that no person shall be required to submit a written application for child support establishment, modification, and enforcement services if the person shows good cause to the county implementing the Colorado child care assistance program for not receiving these services. On or before October 1, 2004, the state board shall promulgate rules for the implementation of this paragraph (d), including but not limited to rules establishing good cause for not receiving these services, and rules for the imposition of sanctions upon a person who fails, without good cause as determined by the county implementing the Colorado child care assistance program, to apply for child support enforcement services or to cooperate with the delegate child support enforcement unit as required by this paragraph (d).

(e) (I) For a family with a child who is enrolled in both the Colorado child care assistance program created in this part 8 and in a head start program, the family's eligibility

redetermination for child care assistance shall occur no sooner than the end of the last month of the child's first full twelve-month program year of enrollment in the head start program. Child care assistance program eligibility redetermination for a child enrolled in both programs shall occur once every twelve months thereafter.

(II) For a family with a child who is solely enrolled in the Colorado child care assistance program created in this part 8 or dually enrolled with an early education program other than head start or early head start, the family's eligibility redetermination for child care assistance shall occur once every twelve months.

(III) Notwithstanding the provisions of section 26-1-127 (2) (a), a family that receives child care assistance pursuant to this part 8 shall not be required to report income or activity changes during the twelve-month eligibility period; except that, within the twelve-month eligibility period, a family shall be required to report a change in income if the family's income exceeds eighty-five percent of the state median income. If a family is no longer participating in the eligible activity under which it was made eligible in the child care case, the family shall report that change within four weeks from the time it ceased participating in the eligible activity.

(IV) A parent shall not be determined ineligible to receive child care assistance pursuant to this part 8 as a result of:

(A) Taking maternity leave; or

(B) Being a separated spouse or parent under a validly issued temporary order for parental responsibilities or child custody where the other spouse or parent has disqualifying financial resources.

(1.5) If a county reduces its income eligibility requirements, a child receiving child care assistance services when the change is implemented shall continue to receive said services until the family's next eligibility redetermination or for six months, whichever is longer.

(2) A county shall have the authority to develop a voucher system for participants pursuant to which participants could secure relative or unlicensed child care.

(2.5) An early care and education provider may conduct a pre-eligibility determination for child care assistance for a family to facilitate the determination process. The early care and education provider shall submit its pre-eligibility documentation to the county for final determination of eligibility for child care assistance. The early care and education provider may provide services to the family prior to final determination of eligibility and shall be reimbursed for such services only if the county determines the family is eligible for services and there is no need to place the family on a waiting list. If the family is found ineligible for services, the early care and education provider shall not be reimbursed for any services provided during the period between its pre-eligibility determination and the county's final determination of eligibility.

(3) As used in this section, unless the context otherwise requires:

(a) "Early care and education provider" means a school district or provider that is licensed pursuant to part 1 of article 6 of this title or that participates in the Colorado preschool program pursuant to article 28 of title 22, C.R.S.

(b) "Head start program" means a program operated by a local public or private nonprofit agency designated by the federal department of health and human services to operate a head start program under the provisions of Title V of the federal "Economic Opportunity Act of 1964", as amended.

(c) "Participant" means a participant in the Colorado works program as defined in section 26-2-703 (15).

Source: **L. 97:** Entire part added, p. 1218, § 1, effective June 3. **L. 2000:** (1)(b) amended, p. 393, § 2, effective September 1. **L. 2004:** (1)(d) added, p. 117, § 1, effective March 17; (1)(b) amended, p. 257, § 1, effective August 4. **L. 2007:** (1)(d) amended, p. 1653, § 10, effective May 31. **L. 2008:** (1)(b)(I) amended and (1.5) added, pp. 455, 456, §§ 1, 2, effective August 5. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2116, § 155, effective August 11; (1)(e) and (2.5) added and (1.5) and (3) amended, (HB 10-1035), ch. 337, pp. 1549, 1550, §§ 2, 4, 3, effective June 1, 2011.

Cross references: (1) For the legislative declaration contained in the 2000 act amending subsection (1)(b), see section 1 of chapter 109, Session Laws of Colorado 2000. For the legislative declaration in the 2010 act adding subsections (1)(e) and (2.5) and amending subsections (1.5) and (3), see section 1 of chapter 337, Session Laws of Colorado 2010.

(2) For the federal head start program in general, see 42 U.S.C. sec. 9801 et seq. For federal designation of head start agencies, see 42 U.S.C. sec. 9836.

26-2-805.5. Exemptions - requirements. (1) Notwithstanding any provision of section 26-2-805 to the contrary, an exempt family child care home provider, as defined in section 26-6-102 (3.7), shall not be eligible to receive child care assistance moneys through the Colorado child care assistance program if he or she fails to meet the criteria established in section 26-6-120.

(2) As a prerequisite to entering into a valid Colorado child care assistance program contract with a county office or to being a party to any other payment agreement for the provision of care for a child whose care is funded in whole or in part with moneys received on the child's behalf from publicly funded state child care assistance programs, an exempt family child care home provider shall sign an attestation that affirms he or she, and any qualified adult residing in the exempt family child care home, has not been determined to be insane or mentally incompetent by a court of competent jurisdiction and a court has not entered, pursuant to part 3 or 4 of article 14 of title 15, C.R.S., or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the provider cannot safely operate an exempt family child care home.

Source: L. 2006: Entire section added, p. 1083, § 4, effective May 25. L. 2007: (2) amended, p. 318, § 2, effective April 2. L. 2010: (2) amended, (SB 10-175), ch. 188, p. 803, § 74, effective April 29.

26-2-806. No individual entitlement. (1) Nothing in this part 8 or any rules promulgated pursuant to this part 8 shall be interpreted to create a legal entitlement in any person to child care assistance.

(2) No county may create or shall be deemed to create a legal entitlement in any person to assistance under this part 8.

Source: L. 97: Entire part added, p. 1219, § 1, effective June 3.

26-2-807. Child care provider reimbursement rate task force - creation - duties - repeal. (Repealed)

Source: L. 2008: Entire section added, p. 2176, § 2, effective June 4.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2009. (See L. 2008, p. 2176.)

26-2-808. Pilot program to continue child care assistance with modifications - legislative declaration - county participation - report - repeal. (1) The general assembly declares that the purpose of this section is to create a pilot program to study whether a new approach to the Colorado child care assistance program can mitigate the circumstance, referred to in this section as the "cliff effect", that sometimes occurs when working parents who are participants in the Colorado child care assistance program receive a minor increase in their income that makes them ineligible for child care assistance and the increase in wages is not enough to cover the costs for child care without the child care assistance. The general assembly finds that this phenomenon often creates disincentives for families to achieve self-sufficiency. The general assembly also encourages counties participating in the pilot program to create effective public and private partnerships with nonprofit organizations and businesses to find additional innovative ways to continue child care assistance for working parents as an economic benefit to families and for continuity of quality early

education for the child. The general assembly finds that allowing working parents to continue to receive child care assistance through the pilot program established in this section will be beneficial to:

- (a) Children who are able to continue in a stable day care environment;
- (b) Working parents who are able to continue to work and advance in their jobs and become more self-sufficient; and
- (c) Employers who have a work force that is more stable because their employees have consistent child care arrangements and have an incentive to stay with and advance in the same employment.

(2) Beginning on April 13, 2012, the state department is authorized to develop and oversee a pilot program in which the Colorado child care assistance program as outlined in section 26-2-805 is modified to mitigate the cliff effect for low-income families that are working and receiving child care assistance, referred to in this section as the "pilot program". County departments of social services may apply to the executive director or his or her designee to participate in the pilot program. The executive director or his or her designee may select up to ten counties that will participate in the pilot program as described in this section. In selecting the counties, the executive director or his or her designee shall seek diversity in the size of population, regional location, and demographic composition.

(3) Subject to available appropriations, a county that is participating in the pilot program shall continue to provide child care assistance for a period of up to two years for any person who has been receiving child care assistance from the county and whose income exceeds the county-adopted income eligibility limit for the county's child care assistance program. The county shall require a parent who is receiving extended child care assistance to pay a series of incremental increases in the portion of the parental share of the child care costs on a scheduled basis based upon a formula established by the county; except that assistance shall not be provided if said income exceeds the maximum level for eligibility for services set by federal law for a family of the same size. The county shall work with the person to provide a gradual transition off of the child care assistance over a two-year period. Each county department shall set its own parental fee schedule and may consult with the state department on setting the parental fee schedule.

(4) A family that is receiving child care assistance for an extended period of time under the pilot program shall report income changes to the county during the two-year period and is subject to a redetermination by the county after the first twelve months.

(5) As part of the pilot program, a county is encouraged to create effective public and private partnerships with nonprofit organizations and businesses to find innovative ways to supplement its child care assistance program funds to help parents continue to pay for child care, including the possibility of using the Colorado child care contribution credit pursuant to section 39-22-121, C.R.S., to leverage additional moneys to provide a stipend to assist the family through the time period after the family's income makes them ineligible or at risk of being ineligible for child care assistance.

(6) A county may participate in the pilot program on and after July 1, 2012, and through July 1, 2016. A county shall operate the pilot program for at least two years. A county may apply to participate in the pilot program on or before January 1, 2014. Each participating county shall collect data on the pilot program and shall work with the state department to evaluate and report on the pilot program using measurable outcomes.

(7) The state department shall compile the data submitted by the counties pursuant to subsection (6) of this section and submit a report on the pilot program with the state department's findings and recommendations to the house health and environment committee and to the senate health and human services committee, or any successor committees. The state department shall submit its report on or before October 1, 2015.

(8) This section is repealed, effective July 1, 2016.

PART 9

COLORADO SELF-SUFFICIENCY AND EMPLOYMENT ACT

26-2-901 to 26-2-905. (Repealed)

Editor's note: (1) Section 26-2-905 provided for the repeal of this part 9, effective July 1, 2003. (See L. 1998, p. 1013.)

(2) This part 9 was added in 1998 and was not amended prior to its repeal in 2003. For the text of this part 9 prior to 2003, consult the 2002 Colorado Revised Statutes.

PART 10

INCENTIVES FOR SELF-SUFFICIENCY

26-2-1001. Short title. This part 10 shall be known and may be cited as the "Individual Development Account Act".

Source: L. 2000: Entire part added, p. 1469, § 1, effective May 31.

26-2-1002. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The unrealized and lost human resource potential of low-income and working-poor individuals of this state results in an overall loss to the potential of the entire state;

(b) It is in the best interests of all Coloradans to structure incentives in a way that will result in a greater likelihood that low-income and working-poor individuals will attain self-sufficiency;

(c) It is in the best interests of all Coloradans to concentrate appropriate assets and investments on low-income and working-poor individuals and in low-income and working-poor neighborhoods and communities in order to allow low-income individuals, neighborhoods, and communities to benefit from the developments achieved through the growth in assets and investments;

(d) Achieving self-sufficiency and assessing economic opportunity for low-income and working-poor individuals can be addressed through public policy that invests in asset accumulation and is supported by private sector philanthropy;

(e) Providing a structured savings situation for low-income and working-poor individuals enhances such individuals' chances of fulfilling major life goals and opportunities and incorporates such individuals into the economic mainstream; and

(f) Such self-sufficiency may, in turn, result in fewer people needing to seek public assistance.

(2) Therefore, the general assembly hereby authorizes the implementation of an individual development account program to provide incentives and motivation for low-income and working-poor individuals and families to develop and concentrate assets and investments for use by such individuals who are striving for self-sufficiency and need a jump-start for economic opportunity.

Source: L. 2000: Entire part added, p. 1469, § 1, effective May 31.

26-2-1003. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Charitable donor" means a person who contributes to a sponsoring organization for the purposes of the IDA program.

(2) "Financial institution" means an organization that is federally insured and is authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(3) "Individual development account" means a contract of deposit between a depositor and a financial institution selected by a sponsoring organization.

(4) “Program” or “IDA program” means the individual development account program established pursuant to this part 10.

(5) “Service provider” means an institution of higher education; a provider of occupational or vocational education; a trade school; a bank, savings and loan, or other mortgage lender; a title company; or the lessor or vendor of any office supplies, office equipment, retail space or office space or other business space, or such other provider of goods or services to be used for the commencement of a business.

(6) “Sponsoring organization” means a nonprofit organization that is exempt from taxation under section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, as amended, that participates in IDA programs, and that verifies authorized use of individual development accounts.

Source: L. 2000: Entire part added, p. 1470, § 1, effective May 31.

26-2-1004. Individual development account program - rules. (1) The IDA program shall provide that eligible individuals who establish individual development accounts, as set forth in section 26-2-1005, shall receive the benefit of matching moneys payable directly to the service provider at the time of the eligible individual’s expenditure of the moneys in his or her individual development account for any of the following purposes:

(a) Securing postsecondary education, including but not limited to community college courses, courses at a four-year college or university, or post-college, graduate courses for either the individual or the individual’s dependent;

(b) Securing postsecondary occupational training, including but not limited to vocational or trade school training for either the individual or the individual’s dependent;

(c) Purchasing a home for the first time, either individually or with another family member; or

(d) Business capitalization.

(2) In addition to the purposes set forth in subsection (1) of this section, an eligible individual may expend up to ten percent of the total moneys from his or her individual development account for supportive counseling, mentoring, tutoring, or other related services as provided by sponsoring organizations and as approved by such individual development account holders.

Source: L. 2000: Entire part added, p. 1471, § 1, effective May 31.

26-2-1005. Eligibility for participation in the individual development account program. (1) Sponsoring organizations that elect to participate in the program shall recruit individuals or households to participate in the IDA program and shall determine the eligibility of prospective participants based upon the criteria set forth in this subsection (1). All individuals within one family or a single individual shall be eligible to be selected for participation in the IDA program if the individual or household meets the following requirements:

(a) The individual’s or household’s income may not exceed two hundred percent of the federal poverty line when applied to the savings goals of postsecondary education or business capitalization. The individual’s or household’s income may not exceed eighty percent of the area median income when applied to the savings goal of home ownership.

(b) An individual within a household has entered into an individual development account agreement with a sponsoring organization.

(c) An individual within a household has established an individual development account with a financial institution selected by the sponsoring organization and has made a commitment, as set forth in this section, to save and match philanthropic sources of moneys that are available to match the individual or household contributions to the individual development account. The individual development account shall accrue interest.

(d) The individual or the household may only open one individual development account.

(e) The individual submitting the application is a citizen of the United States and is a legal resident of the state.

(2) All of the following duties shall be undertaken by one or more sponsoring organizations:

(a) To determine the eligibility of individuals or households to participate in the IDA program;

(b) To counsel such individuals and households about the IDA program;

(c) To conduct orientations with individuals or households on the philosophy underlying the IDA program and the general requirements of the program;

(d) To facilitate the opening of individual development accounts with participating financial institutions;

(e) To provide credit counseling, budgeting, and financial management training to the program participants;

(f) To jointly develop specific goals and performance criteria with each program participant;

(g) To set appropriate matching ratios of philanthropic moneys to contributions made by program participants;

(h) Repealed.

(i) To raise contributions for the IDA program.

(3) The program participant may withdraw contributions made by the participant for uses other than those uses authorized under this program one time but, upon the second such action, shall be terminated from the IDA program. A participant who has been terminated from the IDA program may withdraw all moneys that the participant contributed to the account along with any interest accrued on the participant's contribution.

(4) The maximum amount of moneys in an individual development account that may be matched by a charitable donor is ten thousand dollars. The individual may deposit an amount greater than ten thousand dollars, but funds in excess of ten thousand dollars are subject to any applicable state and federal income taxes, and shall not be matched by a charitable donor. Only one account per family may be established in the IDA program; except that every member of the family may utilize the account.

(5) Nothing in this part 10 shall be construed to create an entitlement to matching moneys. The number of individuals who may receive disbursement of matching philanthropic moneys by sponsoring organizations pursuant to the IDA program shall necessarily be limited by the amount of philanthropic moneys available in any given year for such purpose.

(6) and (7) Repealed.

Source: L. 2000: Entire part added, p. 1471, § 1, effective May 31. L. 2001: (1)(e) added and (4) and (6) amended, p. 412, §§ 1, 2, effective April 19. L. 2010: (2)(h), (6), and (7) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (1)(a) amended, (HB 10-1422), ch. 419, p. 2116, § 156, effective August 11.

ARTICLE 3

Protective Services

26-3-101 to 26-3-114. (Repealed)

Source: L. 91: Entire article repealed, p. 1784, § 16, effective July 1.

Editor's note: This article was numbered as article 6 of chapter 119 in C.R.S. 1963. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 3.1

Protective Services for Adults
at Risk of Mistreatment or Self-neglect

Editor’s note: This article was added in 1983. This article was repealed and reenacted in 1991, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following the relocated sections.

PART 1		26-3.1-108.	Rules.
PROTECTIVE SERVICES FOR AT-RISK ADULTS		26-3.1-109.	Limitation.
		PART 2	
		FINANCIAL EXPLOITATION OF AT-RISK ADULTS	
26-3.1-101.	Definitions.		
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26-3.1-104.	Provision of protective services for at-risk adults - consent - nonconsent - least restrictive intervention.	PART 3	
		ELDER ABUSE TASK FORCE	
26-3.1-105.	Prior consent form.	26-3.1-301.	Elder abuse task force - legis-
26-3.1-106.	Training.		lative declaration - creation -
26-3.1-107.	Background check.		duties - report - repeal.

PART 1

PROTECTIVE SERVICES FOR AT-RISK ADULTS

- 26-3.1-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “At-risk adult” means an individual eighteen years of age or older who is susceptible to mistreatment, self-neglect, or exploitation because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.
 - (2) “Caretaker” means a person who:
 - (a) Is responsible for the care of an at-risk adult as a result of a family or legal relationship;
 - (b) Has assumed responsibility for the care of an at-risk adult; or
 - (c) Is paid to provide care or services to an at-risk adult.
 - (3) “County department” means a county or district department of social services.
 - (4) “Exploitation” means an act or omission committed by a person that:
 - (a) Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of his or her money, assets, or property;
 - (b) In the absence of legal authority:
 - (I) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; or
 - (II) Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or
 - (c) Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult’s ability to receive health care or health care benefits or to pay bills for basic needs or obligations.
 - (5) “Financial institution” has the same meaning as set forth in section 6-21-102 (6), C.R.S.

(6) “Least restrictive intervention” means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of actual mistreatment, self-neglect, or exploitation.

(7) “Mistreatment” means an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. “Mistreatment” includes, but is not limited to:

(a) Abuse that occurs:

(I) Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

(II) Where unreasonable confinement or restraint is imposed; or

(III) Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the “Colorado Criminal Code”, title 18, C.R.S.;

(b) Caretaker neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this paragraph (b), “medical directive or order” includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-104, C.R.S., a medical orders for scope of treatment form executed pursuant to article 18.7 of title 15, C.R.S., and a CPR directive executed pursuant to article 18.6 of title 15, C.R.S.

(c) (Deleted by amendment, L. 2012.)

(8) “Person” means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(9) “Protective services” means services provided by the state or political subdivisions or agencies thereof in order to prevent the mistreatment, self-neglect, or exploitation of an at-risk adult. Such services include, but are not limited to: Receiving and investigating reports of mistreatment, self-neglect, or exploitation, providing casework and counseling services, and arranging for, coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs, protection from mistreatment, assistance with application for public benefits, referral to community service providers, and initiation of probate proceedings.

(10) “Self-neglect” means an act or failure to act whereby an at-risk adult substantially endangers his or her health, safety, welfare, or life by not seeking or obtaining services necessary to meet his or her essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect. Refusal of medical treatment, medications, devices, or procedures by an adult or on behalf of an adult by a duly authorized surrogate medical decision maker or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. As used in this subsection (10), “medical directive or order” includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-104, C.R.S., a medical orders for scope of treatment form executed pursuant to article 18.7 of title 15, C.R.S., and a CPR directive executed pursuant to article 18.6 of title 15, C.R.S.

Source: L. 91: Entire article R&RE, p. 1772, § 1, effective July 1. L. 2000: (4)(c) amended, p. 1155, § 2, effective January 1, 2001. L. 2012: Entire part amended, (SB 12-078), ch. 226, p. 991, § 1, effective May 29.

Editor’s note: This section is similar to former § 26-3.1-101 as it existed prior to 1991.

ANNOTATION

Law reviews. For article, “Legislative Update”, see 12 Colo. Law. 1251 (1983). For article, “Financial Abuse of Elderly Adults”, see 23 Colo. Law. 1077 (1994).

Applied in Goldman v. Krane, 786 P.2d 437 (Colo. App. 1989).

26-3.1-102. Reporting requirements. (1) (a) An immediate oral report should be made or caused to be made within twenty-four hours to a county department or during non-business hours to a local law enforcement agency responsible for investigating violations of state criminal laws protecting at-risk adults by any person specified in paragraph (b) of this subsection (1) who has observed the mistreatment, self-neglect, or exploitation of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated, is self-neglected, or has been exploited and is at imminent risk of mistreatment, self-neglect, or exploitation.

(b) The following persons are urged to make an oral report within twenty-four hours:

(I) Physicians, surgeons, physicians’ assistants, osteopaths, physicians in training, podiatrists, and occupational therapists;

(II) Medical examiners and coroners;

(III) Registered nurses, licensed practical nurses, and nurse practitioners;

(IV) Hospital and long-term care facility personnel engaged in the admission, care, or treatment of patients;

(V) Psychologists and other mental health professionals;

(VI) Social work practitioners;

(VII) Dentists;

(VIII) Law enforcement officials and personnel;

(IX) Court-appointed guardians and conservators;

(X) Fire protection personnel;

(XI) Pharmacists;

(XII) Community-centered board staff;

(XIII) Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions; and

(XIV) (Deleted by amendment, L. 2012.)

(XV) A caretaker, staff member, or employee of or volunteer or consultant for a licensed or certified care facility, agency, home, or governing board, including but not limited to home health providers.

(c) In addition to those persons urged by this subsection (1) to report known or suspected mistreatment, self-neglect, or exploitation of an at-risk adult and circumstances or conditions that might reasonably result in mistreatment, self-neglect, or exploitation, any other person may report such known or suspected mistreatment, self-neglect, or exploitation and circumstances or conditions that might reasonably result in mistreatment, self-neglect, or exploitation of an at-risk adult to the local law enforcement agency or the county department. Upon receipt of such report, the receiving agency shall prepare a written report within forty-eight hours.

(2) Pursuant to subsection (1) of this section, the report shall include:

(a) The name and address of the at-risk adult;

(b) The name and address of the at-risk adult’s caretaker, if any;

(c) The age, if known, of the at-risk adult;

(d) The nature and extent of the at-risk adult’s injury, if any;

(e) The nature and extent of the condition that will reasonably result in mistreatment, self-neglect, or exploitation; and

(f) Any other pertinent information.

(3) A copy of the report prepared by the county department in accordance with subsections (1) and (2) of this section shall be forwarded within twenty-four hours to the district attorney’s office and a local law enforcement agency. A report prepared by a local law enforcement agency shall be forwarded within twenty-four hours to the county department and to the district attorney’s office.

(4) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of mistreatment, self-neglect, or exploitation to a county department or local law enforcement agency. Any person who willfully violates the provisions of this subsection (4) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and shall be liable for damages proximately caused thereby.

(5) Any person, except a perpetrator, complicitor, or coconspirator, who makes a report pursuant to this section shall be immune from any civil or criminal liability on account of such report, testimony, or participation in making such report, so long as such action was taken in good faith and not in reckless disregard of the truth or in violation of subsection (4) of this section.

(6) No person shall take any discriminatory, disciplinary, or retaliatory action against any person who, in good faith, makes a report or fails to make a report of suspected mistreatment, self-neglect, or exploitation of an at-risk adult.

(7) (a) Except as provided in paragraph (b) of this subsection (7), reports of the mistreatment, self-neglect, or exploitation of an at-risk adult, including the name and address of any at-risk adult, member of said adult's family, or informant, or any other identifying information contained in such reports, shall be confidential, and shall not be public information.

(b) Disclosure of a report of the mistreatment, self-neglect, or exploitation of an at-risk adult and information relating to an investigation of such a report shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when:

(I) A criminal complaint, information, or indictment based on the report is filed;

(II) There is a death of a suspected at-risk adult from mistreatment, self-neglect, or exploitation and a law enforcement agency files a formal charge or a grand jury issues an indictment in connection with the death; or

(III) Such disclosure is necessary for the coordination of multiple agencies' investigation of a report or for the provision of protective services to an at-risk adult.

(c) Any person who violates any provision of this subsection (7) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

Source: L. 91: Entire article R&RE, p. 1774, § 1, effective July 1. L. 2004: (4) amended, p. 275, § 1, effective July 1. L. 2012: Entire part amended, (SB 12-078), ch. 226, p. 994, § 1, effective May 29.

Editor's note: This section is similar to former § 26-3.1-104 as it existed prior to 1991.

ANNOTATION

Law reviews. For article, "Financial Abuse of Elderly Adults", see 23 Colo. Law. 1077 (1994). For article, "Protecting Clients From

Abuse and Identity Theft", see 34 Colo. Law. 43 (October 2005).

26-3.1-103. Evaluations - investigations - rules. (1) The agency receiving a report of mistreatment, self-neglect, or exploitation of an at-risk adult shall immediately make a thorough evaluation of the reported level of risk. The immediate concern of the evaluation shall be the protection of the at-risk adult. The evaluation, at a minimum, shall include a determination of a response time frame and whether an investigation of the allegations is required. If a county department determines that an investigation is required, the county department shall arrange for an investigation and subsequent provision of protective services to be conducted by persons trained to conduct such investigations and provide protective services.

(2) Each county department, law enforcement agency, district attorney's office, and other agency responsible under federal law or the laws of this state to investigate mistreatment, self-neglect, or exploitation of at-risk adults shall develop and implement cooperative agreements to coordinate the investigative duties of such agencies. The focus

of such agreements shall be to ensure the best protection for at-risk adults. The agreements shall provide for special requests by one agency for assistance from another agency and for joint investigations. The agreements shall further provide that each agency shall maintain the confidentiality of the information exchanged pursuant to such joint investigations.

(3) Each county or contiguous group of counties in the state in which a minimum number of reports of mistreatment, self-neglect, or exploitation of at-risk adults are annually filed shall establish an at-risk adult protection team. The state board shall promulgate rules to specify the minimum number of reports that will require the establishment of an adult at-risk protection team. The at-risk adult protection team shall review the processes used to report and investigate mistreatment, self-neglect, or exploitation of at-risk adults, review the provision of protective services for such adults, facilitate interagency cooperation, and provide community education on the mistreatment, self-neglect, and exploitation of at-risk adults. The director of each county department shall create or coordinate a protection team for the respective county in accordance with rules adopted by the state board of human services, which rules shall govern the establishment, composition, and duties of the team and shall be consistent with this subsection (3).

(4) Notwithstanding any provision of section 24-72-204, C.R.S., or section 11-105-110, C.R.S., or any other applicable law concerning the confidentiality of financial records to the contrary, agencies investigating the exploitation of an at-risk adult shall be permitted to inspect all records of the at-risk adult on whose behalf the investigation is being conducted, including the at-risk adult's financial records, upon execution of a prior written consent form by the at-risk adult, in accordance with section 6-21-103, C.R.S.

Source: L. 91: Entire article R&RE, p. 1776, § 1, effective July 1. L. 94: (3) amended, p. 2704, § 265, effective July 1. L. 2007: (3) amended, p. 1014, § 1, effective May 22. L. 2012: Entire part amended, (SB 12-078), ch. 226, p. 996, § 1, effective May 29.

Editor's note: Subsections (1), (2), and (3) were enacted as subsections (1)(a), (1)(b), and (1)(c), respectively, by Senate Bill 91-84, Session Laws of Colorado 1991, chapter 288, section 1, but have been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Once a mistreatment report is made, a thorough investigation must commence immediately, as opposed to being completed immediately. In addition, once begun, the investigation must proceed as quickly as is reasonable

under the circumstances. In re Matter of Stepanek, 924 P.2d 1142 (Colo. App. 1996), aff'd in part and rev'd in part on other grounds, 940 P.2d 364 (Colo. 1997).

26-3.1-104. Provision of protective services for at-risk adults - consent - nonconsent - least restrictive intervention. (1) If a county director or such director's designee determines that an at-risk adult is being mistreated, self-neglected, or exploited, or is at risk thereof, and the at-risk adult consents to protective services, the county director or designee shall immediately provide or arrange for the provision of protective services, which services shall be provided in accordance with the provisions of 28 CFR part 35, subpart B.

(2) If a county director or designee determines that an at-risk adult is being or has been mistreated, self-neglected, or exploited, or is at risk thereof, and if the at-risk adult appears to lack capacity to make decisions and does not consent to the receipt of protective services, the county director is urged, if no other appropriate person is able or willing, to petition the court, pursuant to part 3 of article 14 of title 15, C.R.S., for an order authorizing the provision of specific protective services and for the appointment of a guardian, for an order authorizing the appointment of a conservator pursuant to part 4 of article 14 of title 15, C.R.S., or for a court order providing for any combination of these actions.

(3) Any protective services provided pursuant to this section shall include only those services constituting the least restrictive intervention.

Source: **L. 91:** Entire article R&RE, p. 1777, § 1, effective July 1. **L. 2012:** Entire part amended, (SB 12-078), ch. 226, p. 997, § 1, effective May 29.

Editor's note: This section is similar to former §§ 26-3.1-102 and 26-3.1-103 as they existed prior to 1991.

ANNOTATION

County attorney filing petition for temporary guardianship is immune from liability for attorney fees under § 13-17-102, but may be liable for sanctions under Rule 11, C.R.C.P. *Stepanek v. Delta County*, 940 P.2d 364 (Colo. 1997).

26-3.1-105. Prior consent form. A financial institution shall offer eligible account holders, as defined in section 6-21-102, C.R.S., the option of signing a prior consent form in accordance with section 6-21-103, C.R.S.

Source: **L. 91:** Entire article R&RE, p. 1777, § 1, effective July 1. **L. 2012:** Entire part amended, (SB 12-078), ch. 226, p. 997, § 1, effective May 29.

Editor's note: This section is similar to former § 26-3.1-206 as it existed prior to 2012.

26-3.1-106. Training. The general assembly strongly encourages training that focuses on detecting circumstances or conditions that might reasonably result in mistreatment, self-neglect, or exploitation of an at-risk adult for those persons who are urged by section 26-3.1-102 (1) to report known or suspected mistreatment, self-neglect, or exploitation of an at-risk adult.

Source: **L. 91:** Entire article R&RE, p. 1777, § 1, effective July 1. **L. 2012:** Entire part amended, (SB 12-078), ch. 226, p. 997, § 1, effective May 29.

Editor's note: This section is similar to former § 26-3.1-207 as it existed prior to 2012.

26-3.1-107. Background check. Each county department shall require each protective services employee hired on or after May 29, 2012, to complete a fingerprint-based criminal history records check utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation. The employee shall pay the cost of the fingerprint-based criminal history records check unless the county department chooses to pay the cost. Upon completion of the criminal history records check, the Colorado bureau of investigation shall forward the results to the county department. The county department may require a name-based criminal history records check for an applicant or an employee who has twice submitted to a fingerprint-based criminal history records check and whose fingerprints are unclassifiable.

Source: **L. 2012:** Entire part amended, (SB 12-078), ch. 226, p. 998, § 1, effective May 29.

26-3.1-108. Rules. The state department shall promulgate appropriate rules for the implementation of this article.

Source: **L. 2012:** Entire part amended, (SB 12-078), ch. 226, p. 998, § 1, effective May 29.

Editor's note: This section is similar to former § 26-3.1-105 as it existed prior to 2012.

26-3.1-109. Limitation. Nothing in this article shall be construed to mean that a person is mistreated, neglected, exploited, or in need of emergency or protective services for the

sole reason that he or she is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of that person's recognized church or religious denomination, nor shall anything in this article be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such a person.

Source: L. 2012: Entire part amended, (SB 12-078), ch. 226, p. 998, § 1, effective May 29.

Editor's note: This section is similar to former § 26-3.1-106 as it existed prior to 2012.

PART 2

FINANCIAL EXPLOITATION OF AT-RISK ADULTS

26-3.1-201 to 26-3.1-208. (Repealed)

Source: L. 2012: Entire part repealed, (SB 12-078), ch. 226, p. 998, § 2, effective May 29.

Editor's note: This part 2 was added in 2000. For amendments to this part 2 prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Some sections of this part 2 were relocated to part 1 of this article. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 3

ELDER ABUSE TASK FORCE

26-3.1-301. Elder abuse task force - legislative declaration - creation - duties - report - repeal. (1) The general assembly hereby finds, determines, and declares that:

(a) It is within the power of the general assembly to address issues related to protections for elderly at-risk adults;

(b) At-risk elderly adults may be subjected to mistreatment and exploitation, and the state has a responsibility to protect these persons;

(c) Issues related to protections for at-risk elderly adults are a matter of statewide concern and should be addressed by the general assembly; and

(d) It is the intent of the general assembly that the recommendations of the task force created in this section will lead to the implementation of a complete system of reporting of mistreatment and exploitation of at-risk elderly adults by September 1, 2013, subject to the availability of sufficient funding for such implementation at the state and county levels, and the enactment of such statutory changes as may be necessary for such implementation.

(2) There is hereby created the elder abuse task force, referred to in this section as the "task force", which shall meet during the interim after the second regular session of the sixty-eighth general assembly.

(3) The task force shall study the problem of mistreatment and exploitation of at-risk elderly adults in Colorado and prepare recommendations for the consideration of the general assembly, which recommendations, at a minimum, shall include:

(a) Recommendations concerning how to require certain persons, on and after September 1, 2013, to report known or suspected mistreatment or exploitation of at-risk elderly adults;

(b) Recommendations concerning the provision of protective services by county departments to at-risk elderly adults who are mistreated or exploited;

(c) Recommendations concerning the minimum age for a person to be considered an "at-risk elderly adult" for the purposes of this part 3;

(d) An estimate of the costs, including workload impacts, to be incurred by the state department, county departments, and law enforcement agencies of the state as a result of requiring certain persons, on and after September 1, 2013, to report known or suspected mistreatment and exploitation of at-risk elderly adults;

(e) Identification of sustainable sources of funding, including but not limited to new revenues, that may be used to offset the costs to be incurred by the state department, county departments, and law enforcement agencies of the state as a result of requiring certain persons, on and after September 1, 2013, to report known or suspected mistreatment and exploitation of at-risk elderly adults;

(f) Recommendations for training employees of the state department and county departments to use outcome-based best practices in the provision of protective services to at-risk elderly adults;

(g) Recommendations regarding the adequacy or inadequacy of existing criminal penalties for offenses against at-risk adults, as described in article 6.5 of title 18, C.R.S.; and

(h) Recommendations concerning the reconciliation of the definition of "at-risk adult" in section 26-3.1-101 with the definition of "at-risk adult" in section 18-6.5-102 (1), C.R.S.

(4) The task force shall consist of the following members:

(a) The executive director of the state department or his or her designee; and

(b) The following members, to be appointed by the executive director of the state department:

(I) A representative of a statewide organization of social workers;

(II) A representative of a statewide organization of district attorneys;

(III) A representative of a statewide organization of long-term care providers for at-risk adults;

(IV) A representative of a statewide organization of persons who provide legal advice to at-risk adults;

(V) A representative of a statewide organization of banks and other financial entities;

(VI) A representative of a statewide organization of law enforcement officers;

(VII) A representative of a statewide society of health care professionals;

(VIII) The attorney general or his or her designee;

(IX) A representative of a statewide organization that advocates on behalf of elderly persons;

(X) A representative of a statewide organization that advocates on behalf of crime victims;

(XI) A representative of a statewide organization that advocates on behalf of persons with disabilities;

(XII) A representative of county departments who has experience in the provision of protective services to at-risk adults;

(XIII) A representative of state and local long-term care ombudsmen;

(XIV) A representative of a hospice care organization;

(XV) A representative of one or more agencies that provide non-medical home care to at-risk adults; and

(XVI) A representative of a statewide organization that represents counties.

(c) All appointments to the task force shall be made on or before June 15, 2012.

(5) The task force shall submit a written report of its findings and recommendations to the health and human services committee of the senate and to the health and environment committee of the house of representatives, or any successor committees, on or before December 1, 2012. Upon request of a member of the task force, summaries of dissenting opinions shall be prepared and attached to the final report of findings and recommendations.

(6) (a) The first meeting of the task force shall occur no later than July 18, 2012. The task force shall meet at least four times.

(b) Meetings of the task force shall be public meetings.

(7) The task force shall solicit and accept reports and public testimony and may request other sources to provide testimony, written comments, and other relevant data to the task force.

(8) Members of the task force shall serve without compensation and shall not be entitled to reimbursement for expenses.

(9) The legislative council staff and the office of legislative legal services shall not provide staff support to the task force.

(10) This part 3 is repealed, effective November 2, 2013.

Source: L. 2012: Entire part added, (SB 12-078), ch. 226, p. 998, § 3, effective May 29.

ARTICLE 4

Colorado Medical Assistance Act

26-4-101 to 26-4-1408. (Repealed)

Source: L. 2006: Entire article repealed, p. 1997, § 27, effective July 1.

Editor's note: (1) This article was numbered as article 5 of chapter 119, C.R.S. 1963. For amendments to this article prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to part 2 of article 3 and articles 4, 5, and 6 of title 25.5. For the location of specific provisions, see the editor's notes following each section in said articles and the comparative tables located in the back of the index.

Cross references: For current provisions concerning the Colorado medical assistance act, see articles 4, 5, and 6 of title 25.5. For current provisions concerning the comprehensive primary and preventive care grant program, see part 2 of article 3 of title 25.5.

ARTICLE 4.5

Alternatives to Long-term Nursing Home Care

26-4.5-101 to 26-4.5-404. (Repealed)

Source: L. 91: Entire article repealed, p. 1853, § 1, effective April 11.

Editor's note: (1) This article was added in 1980. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to article 4 of this title prior to its repeal in 2006. For the location of specific provisions prior to 2006, see the comparative tables located in the back of the index.

ARTICLE 4.6

Task Force on Long-term Health Care

26-4.6-101 to 26-4.6-105. (Repealed)

Editor's note: (1) Section 26-4.6-105 provided for the repeal of this entire article, effective July 1, 1990. (See L. 88, p. 1072.)

(2) This article was added in 1988. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 5

Child Welfare Services

Editor's note: This article was numbered as article 4 of chapter 119, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1973, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1973, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

26-5-101.	Definitions.	care management program -
26-5-102.	Provision of child welfare services - system reform goals.	county performance agreements - authorized - performance incentive cash fund created - repeal.
26-5-103.	Coordination with other programs.	26-5-105.7. Study of managed care - repeal. (Repealed)
26-5-103.5.	Child welfare allocations committee - organization - advisory duties.	26-5-106. Fraudulent acts. (Repealed)
26-5-104.	Funding of child welfare services - rules.	26-5-107. Limitations of article.
26-5-105.	Reimbursement procedure.	26-5-108. Developmental assessment - rules.
26-5-105.3.	Federal waivers.	26-5-109. Child welfare training academy established - rules.
26-5-105.5.	State department integrated	26-5-110. Guardianship assistance program - rules.

26-5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Capped allocation" means a capped amount of funds distributed to counties or a group of counties for the purpose of providing all or a portion of the child welfare services as defined in subsection (3) of this section.

(1.5) "Caseload" means the number of children who are eligible for child welfare services that are defined in subsection (3) of this section and who are currently receiving such child welfare services on a regular basis from a county.

(2) "Child welfare allocations committee" means a committee that is organized and authorized pursuant to the provisions of section 26-5-103.5.

(3) "Child welfare services" means the provision of necessary shelter, sustenance, and guidance to or for children who are or who, if such services are not provided, are likely to become neglected or dependent, as defined in section 19-3-102, C.R.S. "Child welfare services" includes but is not limited to:

- (a) Child protection;
- (b) Risk assessment;
- (c) Permanency planning;
- (d) Treatment planning;
- (e) Case management;
- (f) Core services, as defined in rules promulgated by the state department, as authorized in sections 26-5-102 and 26-5.5-104;
- (g) Adoption and subsidized adoption;
- (h) Emergency shelter;
- (i) Out-of-home placement, including foster care;
- (j) Utilization review;
- (k) Early intervention and prevention;
- (l) Youth-in-conflict functions;
- (m) Administration and support functions;
- (n) Services described in section 19-3-208, C.R.S.; and
- (o) (I) Provision of verifiable documents to youth who plan to emancipate from foster care.

(II) Verifiable documents shall include, but need not be limited to, a certified copy of the youth's birth certificate and a social security card. The cost of providing the verifiable documents shall not be borne by the youth.

(4) "County" means a county or a city and county or any two or more counties.

(5) "Governing body" means the board of county commissioners of a county or the city council and mayor of a city and county.

(6) "Targeted allocation" means a fixed amount of funds from a capped allocation to a group of counties that is designated for a specific county within that group of counties.

Source: L. 73: R&RE, p. 1195, § 3. C.R.S. 1963: § 119-4-1. L. 78: (1) amended, p. 367, § 14, effective July 1. L. 86: (1) amended, p. 794, § 15, effective July 1. L. 87: (1) amended, p. 821, § 39, effective October 1. L. 96: (1) amended, p. 1696, § 40, effective January 1, 1997. L. 97: Entire section amended, p. 1426, § 1, effective June 3. L. 98: (1) and (2) amended and (1.5) added, p. 780, § 2, effective May 22. L. 2008: (3) amended, p. 10, § 1, effective August 5. L. 2009: (3)(m) and (3)(n) amended and (3)(o) added, (SB 09-104), ch. 218, p. 983, § 1, effective August 5.

26-5-102. Provision of child welfare services - system reform goals. (1) (a) The state department shall adopt rules to establish a program of child welfare services, administered by the state department or supervised by the state department and administered by the county departments, and, where applicable, in accordance with the conditions accompanying available federal funds for such purpose. The rules shall establish a fee based upon the child support guidelines set forth in section 14-10-115, C.R.S., requiring those persons legally responsible for the child to pay for all, or a portion, of the services provided under this article. Notwithstanding the rules establishing a fee for services provided under this article, when it serves the best interest of a child, a county department may exempt a family from responsibility for payment of fees for core services, as defined in rules promulgated by the state department. The state department is authorized to promulgate rules to implement the provisions of this article relating to the allocation of funds to counties for the delivery of child welfare services.

(b) Upon appropriate request and within available appropriations, child welfare services shall be provided for any child residing or present in the state of Colorado who is in need of such services. Foster care fees shall be considered child support obligations, and all remedies for the enforcement and collection of child support shall apply. Foster care fees established pursuant to section 14-10-115, C.R.S., may be collected pursuant to the administrative procedures to establish child support enforcement set forth in article 13.5 of this title. Due process is guaranteed in all actions regarding any such administrative process concerning foster care fees, and a court hearing of the matter before the district court may be obtained in the manner prescribed in section 26-13.5-105. Nothing contained in article 13.5 of this title shall be construed to deprive a court of competent jurisdiction from determining the duty of support of any obligor against whom an administrative order is issued pursuant to this article.

(2) Reforms in child welfare and related delivery systems shall be directed at the following objectives:

- (a) More efficient and responsive service systems for children, youth, and families;
- (b) Increased flexibility and collaboration across multiple agencies and funding streams to more appropriately meet consumer needs and avoid cost shifting between systems;
- (c) Encouragement and authorization for a truly integrated service system that incorporates blended funding and administration;
- (d) Focus on quality and outcome-driven services with accountability for an entire array of services that families need, rather than forcing families to be transferred from agency to agency;
- (e) Development of data systems to support these goals and to allow administrators and policy makers to better manage and evaluate;
- (f) Authority and incentives for creative solutions at the local level that are not bound by the constraints of current agency barriers and categorical funding streams, including authority for local policy makers to create new entities incorporating blended funding and administration;
- (g) Successful training efforts directed at county staff, judges, court staff, providers, parents, and families and other appropriate entities that are involved in managed care service systems, which training efforts shall include, but not be limited to, the operation of the child welfare training academy created in section 26-5-109. Notwithstanding any limitation of the "M" notation of the appropriation in the annual appropriation act for child welfare services, the state department is authorized to expend any additional federal or private funding that may be available to support the training efforts identified in this subsection (2).

(h) Promotion of the development of a family-centered, community-based strategy for placement decisions that includes team decision making, family-group decision making, or other agency decision making processes that involve the family and community supports;

(i) Promotion of the local placement of children with families by recruiting and supporting family foster homes within the neighborhoods and communities in which identified children reside.

Source: **L. 73:** R&RE, p. 1195, § 3. **C.R.S. 1963:** § 119-4-2. **L. 87:** Entire section amended, p. 594, § 21, effective July 10. **L. 91:** Entire section amended, p. 215, § 3, effective July 1. **L. 93:** Entire section amended, p. 1788, § 73, effective June 6; entire section amended, p. 1564, § 17, effective September 1. **L. 98:** Entire section amended, p. 707, § 1, effective May 18; entire section amended, p. 781, § 3, effective May 22. **L. 2005:** (2)(h) and (2)(i) added, p. 353, § 1, effective August 8. **L. 2009:** (2)(g) amended, (SB 09-164), ch. 276, p. 1239, § 1, effective May 19. **L. 2010:** (1)(a) amended, (HB 10-1115), ch. 120, p. 402, § 1, effective August 11.

Editor's note: (1) This section was amended in House Bill 93-1342. Those amendments were superseded by the amendment of the section in Senate Bill 93-154.

(2) Amendments to this section by House Bill 98-1137 and Senate Bill 98-165 were harmonized.

ANNOTATION

Trial court correctly determined, by relying on this section, §§ 14-7-102 and 19-1-115 (4)(d), that the obligation rests upon the parents of the child to make monthly payments, based on the parents' ability to pay, until placement costs are paid in full or until further order of the court. *People in Interest of L.R.S.*, 791 P.2d 1215 (Colo. App. 1990).

This section imposes a parental support obligation that complements § 19-1-115 (4)(d), which is computed according to their ability to pay. The purpose of the fee is to help pay the costs of child welfare services provided to qualifying children. *M.S. v. People*, 812 P.2d 632 (Colo. 1991).

The "all or a portion" language contained in this section indicates that partial reimburse-

ment is contemplated for parents who are financially unable to pay the entire cost of placement. *M.S. v. People*, 812 P.2d 632 (Colo. 1991).

The language of this section and § 19-1-115 (4)(d) conflicts with § 14-7-102 since those sections speak in terms of the parents ability to pay while § 14-7-102 imposes absolute liability without regard for the parents financial condition. *M.S. v. People*, 812 P.2d 632 (Colo. 1991).

This section and § 19-1-115 (4)(d) are specific provisions concerning dependency and neglect adjudications and, with regard to the parental support obligation, control over § 14-7-102. *M.S. v. People*, 812 P.2d 632 (Colo. 1991).

26-5-103. Coordination with other programs. The program of child welfare services established pursuant to this article shall be coordinated with other social services and assistance payments programs for children of this state and shall be rendered in complement of, and not in duplication of or contrary to, legal processes provided by the "Colorado Children's Code" and services rendered under any public assistance law or other law for the benefit of children, including assistance under the Colorado works program, as described in part 7 of article 2 of this title.

Source: **L. 73:** R&RE, p. 1195, § 3. **C.R.S. 1963:** § 119-4-3. **L. 97:** Entire section amended, p. 1243, § 46, effective July 1.

Cross references: For the "Colorado Children's Code", see title 19.

ANNOTATION

Power to make determinations as to custody and care of children. Given the broad power of the juvenile court to make determina-

tions as to the custody and care of a child under its jurisdiction, it would be inconsistent and contrary to the intent of the general assembly to

also find such a power in the Denver department of welfare. *City & County of Denver v. Juvenile Court*, 182 Colo. 157, 511 P.2d 898 (1973).

26-5-103.5. Child welfare allocations committee - organization - advisory duties.

(1) A child welfare allocations committee shall be convened by the state department as necessary in order to make advisory recommendations as described in this article.

(2) The child welfare allocations committee shall consist of eight members, four of whom shall be appointed by a statewide association of counties and four of whom shall be appointed by the state department. The appointing authorities shall consult with each other to ensure that the child welfare allocations committee is representative of the counties in the state. If a statewide association of counties does not appoint a representative from the county that has the greatest percentage of the state's child welfare caseload, the state department shall appoint such a representative from such county.

(3) The child welfare allocations committee shall develop its own operating procedures.

(4) No later than January 15, 1999, the state department, with input from the child welfare allocations committee, shall make recommendations to the joint budget committee of the general assembly for a definition of what shall constitute administration and support functions as referred to in section 26-5-101 (3) (m) and a method for identifying costs for such functions.

Source: L. 98: Entire section added, p. 781, § 4, effective May 22.

26-5-104. Funding of child welfare services - rules. (1) **Reimbursement.** The state department shall, within the limits of available appropriations, reimburse the county departments eighty percent of amounts expended by county departments for child welfare services, up to the amount of the county's allocation as determined pursuant to the provisions of this section, except as otherwise authorized in accordance with the close-out process described in subsection (7) of this section.

(2) **Parental fees.** The fiscal year beginning July 1, 1990, shall constitute the base fiscal year for the purpose of computing a base amount of parental fee collections by each county on behalf of children in foster care. Commencing with the fiscal year beginning July 1, 1991, any increased amount of parental fees over and above the base amount shall be retained by the county that collected such parental fees. Any moneys retained by each county pursuant to this subsection (2) may be used for child welfare services directed toward early intervention, placement prevention, and family preservation, or any other program funded pursuant to sections 19-2-211, 19-2-212, and 19-2-310, C.R.S.

(3) **Allocation formula.** (a) For state fiscal year 1997-98, and for each state fiscal year thereafter, the state department, after input from the child welfare allocations committee, shall develop formulas for capped and targeted allocations that shall include, effective for state fiscal year 1998-99, the estimated caseload for the delivery of those specific child welfare services to be funded by the moneys in such capped or targeted allocations. If a county receives more than one capped or targeted allocation for the delivery of child welfare services, the formula shall identify the specific caseload estimate attributable to each capped or targeted allocation. The determination of the formulas pursuant to the provisions of this subsection (3) shall also take into consideration such factors as:

(I) (Deleted by amendment, L. 98, p. 782, § 5, effective May 22, 1998.)

(II) The county's allocations and expenditures for child welfare services in the three previous state fiscal years and a comparison of the spending in those prior years with the caseloads in the respective prior state fiscal years;

(III) (Deleted by amendment, L. 98, p. 782, § 5, effective May 22, 1998.)

(III.5) Beginning with the 2012-13 state fiscal year, the county's prior fiscal year expenditures on preventive family preservation services and the number of families served; and

(IV) Other factors determined by the state department and the child welfare allocations committee that directly affect the population of children in need of child welfare services in a county.

(b) In the event that the state department and the child welfare allocations committee do not reach an agreement on the allocation formula on or before June 15 of any state fiscal year for the succeeding state fiscal year, the state department and the child welfare allocations committee shall submit alternatives to the joint budget committee of the general assembly from which such joint budget committee shall select an allocation formula before the beginning of such succeeding state fiscal year.

(c) The formulas developed by the state department, after input from the child welfare allocations committee, shall identify the portion of the amounts appropriated for child welfare services that shall be allocated to the counties for the provision of child welfare services.

(d) A county's election to make a transfer of federal funds pursuant to section 26-2-714 (9) for the provision of child welfare services shall not be the basis of an adjustment to the formula for developing such county's capped or targeted allocation under the provisions of this article.

(e) A county's cost savings shall not be the basis of an adjustment to the formula for developing such county's capped or targeted allocation under the provisions of this article.

(4) **Allocations.** (a) For state fiscal year 1997-98, and for each state fiscal year thereafter, all counties shall receive capped allocations for child welfare services. A county may receive one or more capped allocations for the provision of child welfare services. The counties may use capped allocation moneys for child welfare services without category restriction within a specific capped allocation if not prohibited by federal law.

(b) (I) The state department shall make capped allocations for counties serving at least eighty percent of the total child welfare services population.

(II) For the balance of the state, the state department shall create one capped allocation or a series of capped allocations for the provision of child welfare services in the balance of the state. The state department shall establish a targeted allocation for each county in such group of counties designated for the purpose of such capped allocation or capped allocations.

(c) The state department, in consultation with the child welfare allocations committee, shall adopt rules for when a county may exceed its capped or targeted allocation or allocations.

(d) The state department may only seek additional funding from the general assembly in a supplemental appropriations bill based upon caseload growth, subject to the provisions of subsection (7) of this section, or changes in federal law or federal funding. For fiscal years 2006-07 and 2007-08, the state department may seek supplemental funding related to the implementation of the placement of children in a residential child health care program as specified in section 25.5-5-306, C.R.S.

(e) A county's allocation or allocations may be amended due to caseload growth, subject to the provisions of subsection (7) of this section, or changes in federal law or federal funding.

(5) **Management training.** The state department shall develop a management training package to be delivered to the counties no later than October 1, 1997, that shall assist the counties in the development of more effective management strategies for the utilization of resources in the delivery of child welfare services. The state department may utilize portions of the child welfare administration appropriations toward this end and is hereby authorized to pursue any private or public grants to fund such efforts.

(6) **County negotiations with providers.** (a) Subject to rules promulgated by the state department pursuant to paragraph (b) of this subsection (6), a county shall be authorized to negotiate rates, services, and outcomes with providers if the county has a request for proposal process in effect for soliciting bids from providers or another mechanism for evaluating the rates, services, and outcomes that it is negotiating with such providers that is acceptable to the state department.

(b) No later than January 1, 2008, the state department shall promulgate rules governing the methodology by which counties may negotiate rates, services, and outcomes with licensed providers.

(c) A county that negotiates or renegotiates rates, services, and outcomes pursuant to paragraph (a) of this subsection (6) shall include as part of such negotiations or renegotiations cost of living adjustments and provider rate increases approved by the general assembly.

(d) By July 1, 2008, and by July 1 of each even-numbered year thereafter, the state department shall complete a review of the methodology by which counties negotiate rates, services, and outcomes with licensed providers, which methodology is governed by rules promulgated by the state department pursuant to paragraph (b) of this subsection (6). In preparing for and conducting the review, the state department shall invite and accept the participation of representatives of the counties and the provider community.

(6.5) The state department shall analyze and evaluate expenditures as reported by child placement agencies each year and compare such expenditures to county expenditures for the provision of foster care services. The state department shall provide, at least on an annual basis, such analyses and comparisons to county departments.

(7) **Close-out process for county allocations.** (a) For state fiscal year 1998-99, and for each state fiscal year thereafter, and subject to the limitations set forth in this subsection (7), the state department may, at the end of a state fiscal year based upon the recommendations of the child welfare allocations committee, allocate any unexpended capped funds for the delivery of specific child welfare services to any one or more counties whose spending has exceeded a capped allocation for such specific child welfare services.

(b) A county may only receive funds pursuant to the provisions of paragraph (a) of this subsection (7) if the requirements of section 26-5-103.5 (4) have been satisfied, for expenditures other than those attributable to administrative and support functions as referred to in section 26-5-101 (3) (m), as defined in accordance with the provisions of section 26-5-103.5 (4), and for authorized expenditures attributable to caseload increases beyond the caseload estimate established pursuant to subsection (3) of this section for a specific capped allocation.

(c) A county may not receive funds pursuant to the provisions of paragraph (a) of this subsection (7) for authorized expenditures attributable to caseload increases for services in one capped allocation from unexpended capped funds in another capped allocation.

(d) As used in this section, "unexpended capped funds" means funds that have been appropriated for child welfare services, allocated to a county or group of counties as a capped allocation or allocations pursuant to the provisions of subsection (4) of this section, but not spent by such county or group of counties or subject to the provisions of section 26-5-105.5 (3).

Source: L. 73: R&RE, p. 1195, § 3. C.R.S. 1963: § 119-4-4. L. 91: Entire section amended, p. 216, § 4, effective July 1. L. 96: (2) amended, p. 1697, § 41, effective January 1, 1997. L. 97: Entire section amended, p. 1427, § 2, effective June 3. L. 98: (1), (3), and (4) amended and (7) added, p. 782, § 5, effective May 22. L. 2001: (3)(e) and (6.5) added, pp. 740, 742, §§ 2, 9, effective June 1. L. 2006: (4)(d) amended, p. 1204, § 3, effective May 26. L. 2007: (6) amended, p. 617, § 1, effective August 3. L. 2011: (3)(a)(II) amended and (3)(a)(III.5) added, (HB 11-1196), ch. 160, p. 553, § 4, effective August 10.

ANNOTATION

Apparent conflict with § 19-1-116 concerning the rate of reimbursement to counties by the department of social services was resolved in favor of this § 26-5-104 when legislative intent was examined. Colo. Dept. of Soc. Servs.

v. Montezuma County Dept. of Soc. Servs., 844 P.2d 1341 (Colo. App. 1992).

Review of decision not to reimburse. An administrative decision by the state department of social services not to reimburse the city and

county of Denver department of social services for the care and maintenance of a minor may not be reviewed in the juvenile court. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195

Colo. 22, 575 P.2d 843 (1978).

Applied in State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

26-5-105. Reimbursement procedure. Claims for state reimbursement under this article shall be presented by the county departments to the state department at such times and in such manner as the state department may prescribe. The state department shall certify to the controller the amount approved, specifying the amount of each county's capped or targeted allocation. The amount so certified shall be paid from the state treasury, upon the voucher of the state department and warrant of the controller, to the respective county treasurers of the counties seeking the reimbursement, from money appropriated to the state department for the purpose of administering the provisions of this article.

Source: L. 73: R&RE, p. 1195, § 3. C.R.S. 1963: § 119-4-5. L. 97: Entire section amended, p. 1429, § 3, effective June 3.

26-5-105.3. Federal waivers. The state department shall pursue as soon as possible any waivers that may be necessary to implement this article, including but not limited to waivers for Title IV-E foster care services and medicaid.

Source: L. 97: Entire section added, p. 1429, § 4, effective June 3.

26-5-105.5. State department integrated care management program - county performance agreements - authorized - performance incentive cash fund created - repeal.

(1) (a) There is hereby created the state department integrated care management program. In administering the state department integrated care management program, the state department shall develop, by rule, principles of integrated care management and a process to allow counties or groups of counties specified in section 26-5-104 (4) (b) (I) to participate in the program. Individual counties or groups of counties specified in section 26-5-104 (4) (b) (I) may participate in the integrated care management program for the delivery of child welfare services.

(b) and (c) (Deleted by amendment, L. 2002, p. 526, § 1, effective May 24, 2002.)

(2) The state department is hereby authorized to enter into performance agreements with individual counties or groups of counties specified in section 26-5-104 (4) (b) (I). A county that enters into a performance agreement with the state department shall be exempt from the rules of the state department and state board governing the delivery of child welfare services, as such exemptions are identified in the performance agreement.

(3) Any county that has entered into a performance agreement with the state department and underspends the general fund portion of its capped or targeted allocation may use those funds, not to exceed five percent of the general fund portion of its total capped or targeted allocation for child welfare services, to either reduce its county share by the amount of the underexpenditure or spend such moneys on additional services for children in the county. Any balance of the general fund portion of its capped or targeted allocation shall be used for additional services for children in the county.

(3.2) Repealed.

(3.5) **Evaluation.** (a) The state department is authorized to contract for an external evaluation of the performance agreements authorized pursuant to subsection (1) of this section. Any such external evaluation shall include any evaluation that may be required in connection with any waiver authorized pursuant to section 26-5-105.3. Criteria for and components of the evaluation shall be developed by the state department with input from the counties authorized pursuant to this section.

(b) (Deleted by amendment, L. 2001, p. 1172, § 9, effective August 8, 2001.)

(c) This subsection (3.5) is repealed on the date the executive director of the state department notifies the revisor of statutes that the state is no longer participating in the waiver authorized pursuant to Title IV-E of the federal "Social Security Act", as amended.

(3.7) The state board shall promulgate rules necessary to implement the integrated care management program established pursuant to this section.

(4) (Deleted by amendment, L. 2002, p. 526, § 1, effective May 24, 2002.)

Source: L. 97: Entire section added, p. 1430, § 4, effective June 3. L. 98: Entire section amended, p. 708, § 2, effective May 18. L. 2001: (3.5) amended, p. 1172, § 9, effective August 8. L. 2002: Entire section amended, p. 526, § 1, effective May 24. L. 2003: (3.2) amended, p. 387, § 3, effective March 5. L. 2004: (3.2)(c) added, p. 1554, § 2, effective May 28.

Editor's note: Subsection (3.2)(c) provided for the repeal of subsection (3.2), effective July 1, 2006. (See L. 2004, p. 1554.)

26-5-105.7. Study of managed care - repeal. (Repealed)

Source: L. 97: Entire section added, p. 1430, § 4, effective June 3.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 1998. (See L. 97, p. 1430.)

26-5-106. Fraudulent acts. (Repealed)

Source: L. 73: R&RE, p. 1196, § 3. C.R.S. 1963: § 119-4-6. L. 77: Entire section repealed, p. 1335, § 7, effective January 1, 1978.

Cross references: For present provision relating to fraudulent acts in obtaining child welfare, see § 26-1-127.

26-5-107. Limitations of article. All child welfare services granted under this article shall be granted and held subject to the provisions of any amending or repealing law that may be passed after July 1, 1973, and no recipient shall have any claim for compensation or otherwise by reason of his services being affected in any way by any amending or repealing law.

Source: L. 73: R&RE, p. 1196, § 3. C.R.S. 1963: § 119-4-7.

26-5-108. Developmental assessment - rules. The appropriate county department of human services shall refer each child under five years of age who is the subject of a substantiated case of abuse or neglect to the appropriate state or local agency for developmental screening within sixty days after abuse or neglect has been substantiated. The state board shall promulgate rules to implement this section.

Source: L. 2008: Entire section added, p. 1234, § 4, effective January 1, 2009.

26-5-109. Child welfare training academy established - rules. (1) There is hereby established within the state department the child welfare training academy, referred to in this section as the "academy", to ensure that certain persons hired to work within child welfare services receive the necessary training to perform the functions of their jobs responsibly and effectively. The state department shall administer the academy in accordance with rules promulgated by the state department pursuant to subsection (2) of this section.

(2) On or before September 15, 2009, the state department shall promulgate rules for the administration of the academy. The rules shall include:

(a) Identification of specific job titles within child welfare services that shall be required to attain certification from the academy as a mandatory condition of employment;

- (b) Identification of specific job titles within child welfare services that shall be required to complete ongoing or occasional training from the academy as a mandatory condition of employment;
- (c) Establishment of minimum standards of competence that a person shall be required to demonstrate prior to receiving certification from the academy, which standards of competence shall include, but need not be limited to, a demonstrated ability to perform the duties described in section 19-3-313.5 (2), C.R.S.;
- (d) Identification of means by which a person may demonstrate the minimum standards established pursuant to paragraph (c) of this subsection (2); and
- (e) Establishment of alternative methods for attaining certification from the academy for persons who have already successfully completed comparable child welfare training, including a description of child welfare training that shall be deemed to be comparable to the training offered by the academy.

Source: L. 2009: Entire section added, (SB 09-164), ch. 276, p. 1239, § 2, effective May 19.

- 26-5-110. Guardianship assistance program - rules.** (1) There is hereby established a guardianship assistance program in the state department, referred to in this section as the “program”. Assistance from the program shall be made available to relatives, persons ascribed by the family as having a family-like relationship with the child, or persons who have had a prior significant relationship with the child who:
- (a) Are committed to the child’s or children’s permanency;
 - (b) Were the foster parent or parents of the child or children at the time they assumed guardianship; and
 - (c) Have assumed guardianship of the child or children.
- (2) The state department shall promulgate rules for the implementation of this section.
- (3) (Deleted by amendment, L. 2012.)

Source: L. 2009: Entire section added, (SB 09-245), ch. 436, p. 2424, § 2, effective June 4. **L. 2012:** Entire section amended, (SB 12-066), ch. 86, p. 284, § 1, effective August 8.

ARTICLE 5.3

Emergency Assistance for Families
with Children at Imminent Risk of
Out-of-Home Placement Act

26-5.3-101.	Short title.	26-5.3-105.	Eligibility requirements - pe-
26-5.3-102.	Legislative declaration.		riod of eligibility - services
26-5.3-103.	Definitions.		available.
26-5.3-104.	Emergency assistance for	26-5.3-106.	State’s savings - cash fund
	families with children at		created - use of moneys in
	imminent risk of being		fund - plan required.
	placed out of the home.		

26-5.3-101. Short title. This article shall be known and may be cited as the “Emergency Assistance for Families with Children at Imminent Risk of Out-of-Home Placement Act”.

Source: L. 93: Entire article added, p. 1998, § 1, effective June 9.

- 26-5.3-102. Legislative declaration.** (1) The general assembly hereby finds and declares that:
- (a) The state of Colorado recognizes its obligation to protect and provide for the children in Colorado’s child welfare system;

(b) The children at imminent risk of being placed out of the home are likely to be placed out of the home immediately if intervention services are not made available to such children and their families;

(c) Community and home-based services are effective in helping to avoid the need to place children out of their homes and to reunite children with their families. However, alternatives to out-of-home placement are available only to a small percentage of children in the state due to insufficient statewide resources.

(d) Families with children at imminent risk of being placed out of the home are families in crisis and in need of emergency assistance to avoid such placement or to reunite families when an emergency has resulted in an out-of-home placement, which assistance includes, but is not limited to, intensive family preservation services and other services designed to maintain a child at home;

(e) Federal financial participation is available to provide emergency assistance to needy families with children in the form of intake, assessment, counseling, treatment, and other family preservation services that meet needs of the family which are attributable to the emergency or crisis situation;

(f) The provision of emergency assistance is likely to reduce the escalating state general fund costs of out-of-home placements, thereby making moneys available for other necessary children and family services or programs; and

(g) Because the child welfare system is a contributing factor to the state's expenditures, it is important to maximize moneys available to the state for child welfare needs by making service delivery systems family-focused, cost-efficient, and accessible statewide.

(2) The general assembly further finds and declares that it is therefore appropriate to authorize the implementation of an emergency assistance program for families with children at imminent risk of being placed out of the home. In addition, it is appropriate to develop a plan for the use of moneys saved as a result of providing emergency assistance to families.

Source: L. 93: Entire article added, p. 1998, § 1, effective June 9.

26-5.3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) Repealed.

(2) "At imminent risk of being placed out of the home" means that without intercession a child will be placed out of the home immediately.

(3) "Emergency assistance program" or "program" means the program for emergency assistance for families with children at imminent risk of out-of-home placement as authorized by this article.

Source: L. 93: Entire article added, p. 1999, § 1, effective June 9. **L. 97:** (1) repealed, p. 1243, § 47, effective July 1.

26-5.3-104. Emergency assistance for families with children at imminent risk of being placed out of the home. (1) The executive director of the state department is hereby authorized to include in the state temporary assistance for needy families plan the establishment and implementation of an emergency assistance program for families with children at imminent risk of being placed out of the home. The purpose of the program shall be to meet the needs of the family in crisis due to the imminent risk of out-of-home placement by providing emergency assistance in the form of intake, assessment, counseling, treatment, and other family preservation services that meet the needs of the family which are attributable to the emergency or crisis situation.

(2) Nothing in this article shall prevent the state department from complying with federal requirements for a program of emergency assistance in order for the state of Colorado to qualify for federal funds under the federal "Social Security Act" and to use such federal funds for families with children at imminent risk of immediate out-of-home placement and to reunite children with their families, within the limits of available appropriations.

Source: L. 93: Entire article added, p. 1999, § 1, effective June 9. L. 97: Entire section amended, p. 1244, § 48, effective July 1.

26-5.3-105. Eligibility requirements - period of eligibility - services available.

(1) Families with children at imminent risk of out-of-home placement shall be eligible for emergency assistance. Assistance shall be available to or on behalf of a needy child under twenty-one years of age and any other member of the household in which the child lives if:

(a) Such child is living with any of the relatives described in section 26-2-103 (4) (a) in a place of residence maintained by the relative as the relative's own home;

(b) Such child is without resources immediately accessible to meet the child's needs; and

(c) The emergency assistance is necessary to avoid destitution or to provide living arrangements for the child in a home.

(2) Assistance shall be authorized for a family no more than once during a twelve-month period.

(3) Emergency assistance provided pursuant to this article shall be used for, but shall not be limited to, the following:

(a) Twenty-four-hour emergency shelter facilities or caretakers for children who must be removed from their homes in emergency situations;

(b) Counseling, including crisis counseling available by telephone twenty-four hours a day;

(c) Information referral;

(d) Intensive family preservation services;

(e) In-home supportive homemaker services;

(f) Services used to develop and implement a discrete case plan, as provided by the federal "Social Security Act";

(g) Day treatment services for children.

Source: L. 93: Entire article added, p. 2000, § 1, effective June 9. L. 97: (3)(f) amended, p. 1244, § 49, effective July 1.

26-5.3-106. State's savings - cash fund created - use of moneys in fund - plan required. (1) There is hereby created a family issues cash fund. Moneys shall be deposited in the fund as follows:

(a) Any savings to the general fund realized as a result of federal financial participation available to the state based on the implementation of the emergency assistance program authorized by section 26-5.3-104;

(b) Any federal funds earned by the expenditure of moneys deposited in the cash fund.

(c) Repealed.

(1.5) All moneys in the fund shall be subject to annual appropriation by the general assembly and shall be used for the purposes set forth in the plan for improving the child welfare system in the state, developed in accordance with subsection (2) of this section, for the implementation of the emergency assistance program established pursuant to section 26-5.3-104, and for the family resource center program established pursuant to section 26-18-104. Federal funds received by the state for the emergency assistance program shall be used only for such program and not for any other purpose. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund. It is the general assembly's intent that no additional state or county general fund moneys shall be used to finance the implementation of the plan established in accordance with subsection (2) of this section.

(2) The state department shall develop a strategic plan for improving the child welfare system in the state and for using the moneys in the family issues cash fund created in subsection (1) of this section. The plan shall specify the source of general fund savings deposited in the cash fund. The plan shall provide that the moneys in the fund shall, at a minimum, be used for the following purposes:

(a) Repealed.

- (b) The provision of services aimed at reuniting families and avoiding out-of-home placements;
 - (c) The provision of support services and programs for children and families aimed at preventing out-of-home placements;
 - (d) The examination and assessment of the feasibility and effectiveness of alternative methods for the provision of services and placement procedures for homeless adolescents or adolescents who are at-risk of being placed out of the home;
 - (e) The development and implementation of county pilot programs for at-risk children and their families; and
 - (f) The provision of an expedited procedure for permanent placement of children five years of age or younger who have been placed out of the home.
- (3) Repealed.

Source: **L. 93:** Entire article added, p. 2001, § 1, effective June 9. **L. 96:** (1)(c) repealed, p. 1476, § 36, effective June 1. **L. 97:** (1.5) amended, p. 1116, § 5, effective May 28; (2)(a) and (3) repealed, p. 1023, § 45, effective August 6. **L. 2001:** (1.5) amended, p. 252, § 7, effective March 29.

ARTICLE 5.5

Family Preservation

Editor’s note: This article was added in 1991 and was not amended prior to 1993. The provisions of this article were repealed and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

26-5.5-101.	Short title.		and duties of agencies - lo-
26-5.5-102.	Legislative declaration.		cal oversight - feasibility
26-5.5-103.	Definitions.		report.
26-5.5-104.	Statewide family preservation	26-5.5-105.	Financing of family preserva-
	program - creation - single		tion program.
	state agency designated -	26-5.5-106.	Family preservation commis-
	program criteria established		sion - establishment or des-
	- available services - powers		ignation - duties.

26-5.5-101. Short title. This article shall be known and may be cited as the “Colorado Family Preservation Act”.

Source: **L. 93:** Entire article R&RE, p. 2006, § 1, effective July 1.

Editor’s note: This section is similar to former § 26-5.5-101 as it existed prior to 1993.

26-5.5-102. Legislative declaration. (1) The general assembly finds and declares that:

- (a) Maintaining a family structure to the greatest degree possible is one of the fundamental goals that all state agencies must observe, and the state’s intervention in family dynamics should not exceed that which is necessary to rectify the cause for intervention;
- (b) Out-of-home placement is often the most expensive and disruptive method of providing services to troubled families;
- (c) It is becoming increasingly difficult to attract foster parents for the number of children placed out of the home;
- (d) The principle of appropriate state intervention is a cornerstone of family preservation services. Such services, when properly targeted and administered, provide states with

an opportunity to initiate the systemic reform of children, youth, and families public services by providing services that are family-focused, outcome-driven, and cost-efficient.

(e) Family preservation programs implemented in other states, such as the “homebuilder’s” model in the state of Washington, have resulted in improved family-functioning rates. Placement prevention rates of up to eighty-eight percent have been reported in some of the thirty-one states that have initiated some form of a family preservation program.

(f) A statewide family preservation program may be financed to provide intensive services for families where a child is at risk of an out-of-home placement based on criteria established by the state board of human services and to provide phased-in services aimed at reunifying families where a child has been placed out of the home, where appropriate, by tapping into other available federal funds or through moneys realized from cost avoidance in prevention of placement;

(g) On the basis of the foregoing, it is appropriate to enact the provisions of this article providing for the implementation of a statewide family preservation program that provides for immediate intensive services for at-risk families and phased-in services aimed at reunifying families, where appropriate, when the targeted families for intensive or reunification services have been served.

(2) It is the general assembly’s intent that the implementation and financing of the statewide family preservation program be consistent with applicable federal mandates, including any federal financial participation requirements, and that the implementation of the program not place this state at risk of losing federal funds received by the state for children, youth, and families services prior to the enactment of this article.

Source: L. 93: Entire article R&RE, p. 2006, § 1, effective July 1. L. 94: (1)(f) amended, p. 1055, § 6, effective May 4. L. 97: (1)(f) amended, p. 1024, § 46, effective August 6.

Editor’s note: This section is similar to former § 26-5.5-102 as it existed prior to 1993.

26-5.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “At-risk family” means a family unit with a child who meets out-of-home placement criteria as established by the state board or who, without intervention, risks continued involvement with the child welfare system as established by the state board.

(1.5) Repealed.

(2) “Family preservation services” means services or assistance that focuses on family strengths and includes services that empower a family by providing alternative problem-solving techniques, child-rearing practices, responses to living situations that create stress upon the family, and resources that are available as support systems for the family. Family preservation services include, but are not limited to services and resources described in section 26-5.5-104.

(3) “Intensive services” means immediate, concentrated, and in-home crisis intervention by one or more family development specialists who assist a family in developing strengths to cope with family stress.

Source: L. 93: Entire article R&RE, p. 2007, § 1, effective July 1. L. 94: (1) amended, p. 2705, § 266, effective July 1. L. 2008: Entire section amended, p. 12, § 3, effective August 5. L. 2011: (1) amended and (1.5) repealed, (HB 11-1196), ch. 160, pp. 552, 555, §§ 1, 7, effective August 10.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-5.5-104. Statewide family preservation program - creation - single state agency designated - program criteria established - available services - powers and duties of agencies - local oversight - feasibility report. (1) The executive directors of the departments of health care policy and financing and human services, through the promul-

gation of rules, may jointly develop, finance, and implement a statewide family preservation program, which program shall be fully implemented no later than July 1, 1996. The state department is hereby designated as the single state agency to administer the program in accordance with this article and applicable federal law.

(2) The program shall be implemented as follows:

(a) No later than January 1, 1996, services aimed at reunification of families shall, within available appropriations, be made available to appropriate families where a child has been placed out of the home;

(b) No later than July 1, 1996, family preservation services shall, within available appropriations, be available to serve appropriate families who are involved in, or who are at risk of being involved in, the child welfare, mental health, and juvenile justice systems.

(3) Family preservation services shall, at a minimum, include the following:

(a) Screening to determine the appropriateness of providing family preservation services, including intensive services and reunification services, to a family;

(b) An assessment of the risk to a child and the needs of a child and the child's family, considering any special needs of a child and the cultural background of the family;

(c) Appropriate intervention to meet the assessed needs of the child and the child's family, taking into account the geographical location of the family and available resources in such locale;

(d) Referral to community services and support systems; and

(e) Follow-up care, where appropriate.

(4) (a) Intensive services shall be available for an at-risk family in the family home, as deemed necessary by the county department. Intensive services shall include, at a minimum:

(I) Family preservation services described in subsection (3) of this section; except that the screening of a family for intensive services shall occur within twenty-four hours after referral by the investigating or placement agency to decide the appropriateness of providing intensive services to the family where the child has been determined by the investigating or placement agency to be at imminent risk of out-of-home placement or at risk of continued involvement in the child welfare system;

(II) Crisis intervention, including in-home counseling, by a case manager or case worker, which intervention shall be available on a twenty-four-hour basis;

(III) Concentrated assistance in the development and enhancement of parenting skills, stress reduction, and problem-solving from a case manager or case worker; and

(IV) Individualized and group counseling.

(b) (Deleted by amendment, L. 2008, p. 11, § 2, effective August 5, 2008.)

(c) Intensive services shall be available to a family for a child who requires a more restrictive level of care but who may be maintained at a less restrictive out-of-home placement or in his or her own home with services for a period of time as determined by rule of the state department.

(5) The state department of human services and county departments of social services may seek the assistance of any public or private entity in carrying out the duties set forth in this article. In addition, the state department may contract with any public or private entity in providing the services described in this article. Priority shall be given to vendors who provide the most geographically and culturally relevant services.

(6) On and after July 1, 1994, the executive director of the state department shall annually evaluate the statewide family preservation program and shall determine the overall effectiveness and cost-efficiency of the program. On or before the first day of October of each year, the executive director of the state department shall report such findings and shall make recommended changes, including budgetary changes, to the program to the general assembly, the chief justice of the supreme court, and the governor. In evaluating the program, the executive director of the state department shall consider any recommendations made by the inter-agency family preservation commission in accordance with section 26-5.5-106. To the extent changes to the program may be made without requiring statutory amendment, the executive director may implement such changes, including changes recommended by the commission acting in accordance with subsection (7) of this section.

(7) The inter-agency family preservation commission, established pursuant to section 26-5.5-106, shall be responsible for providing oversight of the local implementation of the statewide family preservation program. In providing oversight, the commission shall, on and after July 1, 1994, annually evaluate the overall effectiveness and cost-efficiency of the program and shall make recommended changes to the executive director of the state department. The commission shall submit to the executive director of the state department a report of its findings on or before the first day of September of each year.

Source: **L. 93:** Entire article R&RE, p. 2008, § 1, effective July 1. **L. 94:** IP(4)(a) amended, p. 1055, § 7, effective May 4; (1) and (5) amended, pp. 2634, 2705, §§ 68, 267, effective July 1. **L. 2008:** (4) amended, p. 11, § 2, effective August 5. **L. 2011:** (2)(b), IP(4)(a), (4)(a)(I), (4)(a)(II), and (4)(a)(III) amended, (HB 11-1196), ch. 160, pp. 552, 555, §§ 2, 8, effective August 10.

Editor's note: Amendments to subsection (1) by sections 68 and 267 of House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (5), see section 1 of chapter 345, Session Laws of Colorado 1994.

26-5.5-105. Financing of family preservation program. The implementation of the statewide family preservation program shall be subject to the availability of federal financial participation for emergency assistance under Title IV-A of the federal "Social Security Act", other available federal funds, appropriations from the general assembly, and moneys realized from avoiding costs related to out-of-home placements. In addition, the executive director of the state department is hereby authorized to accept any grants, donations, gifts, or contributions from any other private or public entity.

Source: **L. 93:** Entire article R&RE, p. 2010, § 1, effective July 1; entire section R&RE, p. 2004, § 3, effective July 1. **L. 94:** Entire section amended, p. 1056, § 8, effective May 4.

Editor's note: This section is similar to former § 26-5.5-105 as it existed prior to 1993.

26-5.5-106. Family preservation commission - establishment or designation - duties. (1) The governing body of each county or city and county shall establish a family preservation commission for the county or city and county to carry out the duties described in subsection (2) of this section. The commission shall be interdisciplinary and multiagency in composition; except that such commission shall include at least two members from the public at large. The governing body may designate an existing board or group to act as the commission. A group of counties may agree to designate a regional commission to act collectively as the commission for all of such counties. A family preservation commission may be consolidated with other local advisory boards pursuant to section 24-1.7-103, C.R.S.

(2) It shall be the duty of each commission established or designated pursuant to subsection (1) of this section to hold periodic meetings and evaluate the family preservation program within the county or city and county, and to identify any recommended changes to such program. On and after July 1, 1994, the commission shall submit an annual report to the executive director of the state department. The report shall consist of an evaluation of the overall effectiveness and cost-efficiency of the program and any recommended changes to such program. The report shall be submitted on or before the first day of September of each year.

Source: **L. 93:** Entire article R&RE, p. 2011, § 1, effective July 1. **L. 97:** (1) amended, p. 1191, § 16, effective July 1.

ARTICLE 5.7**Homeless Youth**

26-5.7-101.	Short title.	26-5.7-106.	ity - duties.
26-5.7-102.	Definitions.	26-5.7-107.	Notification.
26-5.7-103.	Family reconciliation services.	26-5.7-107.	Voluntary alternative residence - parental agreement.
26-5.7-104.	Taking youth into custody - transporting to residence or child care facility or homeless youth shelter.	26-5.7-108.	Voluntary alternative residence - lack of parental agreement.
26-5.7-105.	Child care facilities - homeless youth shelters - author-	26-5.7-109.	No use of general fund moneys. (Repealed)

26-5.7-101. Short title. This article shall be known and may be cited as the “Homeless Youth Act”.

Source: L. 97: Entire article added, p. 977, § 2, effective May 22.

26-5.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “County department” means the county, city and county, or district department of social services.

(2) (a) “Homeless youth” means a child or youth who is at least eleven years of age but is less than twenty-one years of age and who:

(I) Lacks a fixed, regular, and adequate nighttime residence; or

(II) Has a primary nighttime residence that is:

(A) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations; or

(B) A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

(b) “Homeless youth” shall not include any individual imprisoned or otherwise detained pursuant to an act of congress or a state law.

(3) “Homeless youth shelter” means a facility that is licensed pursuant to section 26-6-104.

(3.5) “Licensed host family home” means a home that meets the requirements established by the state board by rule pursuant to section 26-6-106 (5).

(4) “Parent” means the legal custodian or guardian of the youth.

(5) “Youth” or “child” means any person who is at least eleven years of age but is less than twenty-one years of age.

Source: L. 97: Entire article added, p. 977, § 2, effective May 22. **L. 2011:** (2) and (5) amended and (3.5) added, (HB 11-1079), ch. 83, p. 223, § 1, effective August 10.

26-5.7-103. Family reconciliation services. (1) Out of moneys appropriated to the state department for family reconciliation services, the state department may elect to contract directly with private nonprofit organizations or entities for the provision of family intervention reconciliation services or pass the moneys to a county department electing to provide such services. In such circumstances, the county department may provide the family intervention reconciliation services directly or the county department may contract with private nonprofit organizations or entities for the provision of such services. The county may also contract with private nonprofit organizations or entities for the provision of voluntary alternative residences pursuant to sections 26-5.7-107 and 26-5.7-108.

(2) Any county department may elect to establish a program to provide services consistent with this article. If a county department so elects, it shall notify the state department of such action, and any homeless youth or any member of a family that is in conflict or is experiencing problems with a homeless youth may request family reconcili-

ation services from the county department. Such services may be provided to alleviate personal or family situations that present a serious and imminent threat to the health, safety, or welfare of the youth or family and to maintain intact families wherever possible. Services shall be provided at the discretion of the county department, within the county department's available resources.

(3) Family reconciliation services that may be established shall be designed to develop skills and support within families to resolve problems related to homeless youth or family conflicts and may include, but are not limited to, referral services for suicide prevention, family preservation services, psychiatric or other medical care, or psychological, welfare, legal, educational, mediation, or other social services such as temporary shelter or independent living, as appropriate to the needs of the youth and the family. County departments that elect to provide family educational reconciliation services shall work in cooperation with school district boards of education providing educational services to homeless children in order to jointly develop educational programs for homeless youth consistent with section 22-33-103.5, C.R.S.

Source: L. 97: Entire article added, p. 977, § 2, effective May 22.

26-5.7-104. Taking youth into custody - transporting to residence or child care facility or homeless youth shelter. (1) A law enforcement officer may take a youth into temporary custody without an order of the court under the following circumstances:

(a) If a law enforcement agency has been contacted by the youth's parent and informed that the youth is absent from parental custody without consent; or

(b) If an officer has reasonable cause to believe, considering the youth's age, the youth's location, and the time of day, that the youth is in circumstances that constitute a danger to the youth's safety.

(2) Law enforcement custody pursuant to this section shall not extend beyond the amount of time reasonably necessary to transport the youth to a destination authorized pursuant to subsection (4) of this section.

(3) Nothing in this section shall affect the authority of a law enforcement officer to take a youth into custody and follow the procedures established pursuant to article 2 or 3 of title 19, C.R.S.

(4) A law enforcement officer taking a youth into custody pursuant to this section shall inform the youth of the reason for such custody and shall comply with either of the following:

(a) The officer shall transport the youth to the home of the youth's parent. The officer releasing the youth into the custody of the youth's parent shall inform the parent of the reason for taking the youth into custody and shall inform the youth and the parent of the nature and location of any family reconciliation services available in their community.

(b) The officer shall take the youth to a licensed child care facility or to a licensed homeless youth shelter if:

(I) The youth evinces fear or distress at the prospect of being returned to the home of the youth's parent;

(II) It is not practical to transport the youth to the home of the youth's parent; or

(III) There is no parent available to accept custody of the youth.

Source: L. 97: Entire article added, p. 978, § 2, effective May 22.

26-5.7-105. Child care facilities - homeless youth shelters - authority - duties.

(1) Licensed child care facilities, licensed homeless youth shelters, and licensed host family homes may provide both crisis intervention services and alternative residential services to homeless youth.

(2) Any youth admitted to a licensed child care facility, licensed homeless youth shelter, or licensed host family home pursuant to this article and who is not returned to the home of the youth's parent or is not placed in a voluntary alternative residential placement pursuant to section 26-5.7-107 shall reside at a facility, shelter, or licensed host family home

described in subsection (1) of this section for a period not to exceed twenty-one days from the time of intake except as otherwise provided in this article. A licensed child care facility, licensed homeless youth shelter, or a licensed host family home shall make a concerted effort to achieve a reconciliation of the family. If a reconciliation and voluntary return of the youth have not been achieved within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, from the time of intake and the director of the facility or shelter, or other person in charge, does not consider it likely that reconciliation will be achieved within the twenty-one-day period, then the director of the facility or shelter, or other person in charge, shall provide the youth and the youth's parent with a statement identifying:

- (a) The availability of counseling services;
- (b) The availability of longer term residential arrangements; and
- (c) The possibility of referral to the county department.

(3) The state department shall develop a written statement of the rights and counseling services set forth in subsection (2) of this section and shall distribute the statement to each law enforcement agency, licensed child care facility, licensed homeless youth shelter, and licensed host family home. Each law enforcement officer taking a youth into custody pursuant to this article shall provide the youth and the youth's parent with a copy of the statement. Each licensed child care facility, licensed homeless youth shelter, and licensed host family home shall provide each resident youth and the youth's parent with a copy of the statement.

(4) When a youth under fifteen years of age is admitted to a licensed child care facility, licensed homeless youth shelter, or licensed host family home, the director of the facility, shelter, or other person in charge shall notify the county department of the county of residence of the parents of the youth within seventy-two hours of the youth's admission.

(5) If the director of the facility, shelter, or other person in charge determines that a referral for additional services needs to be made, the director or other person in charge shall make the referral to the county of residence of the parents of the youth.

(6) A licensed family foster home approved as a licensed host family home shall not accept a homeless youth for placement under this section if there are any foster children currently placed in the home.

(7) If a youth who is at least eleven years of age but less than fifteen years of age has been served up to twenty-one days and returns again to the licensed child care facility, licensed homeless youth shelter, or licensed host family home after leaving the facility, shelter, or host home, the director of the licensed child care facility or licensed homeless youth shelter or other person in charge shall make a referral for services to the county of residence of the parents of the youth.

Source: L. 97: Entire article added, p. 979, § 2, effective May 22. L. 2011: Entire section amended, (HB 11-1079), ch. 83, p. 224, § 2, effective August 10.

26-5.7-106. Notification. (1) Any person who provides shelter to a youth without the consent of the youth's parent and after said person knows that the youth is away from the home of the youth's parent without permission shall notify the youth's parent or a law enforcement officer that the youth is being sheltered within twenty-four hours after shelter has been provided and after acquiring knowledge that the youth is away from the home of the youth's parent without permission.

(2) Upon admission of a youth to a licensed child care facility or licensed homeless youth shelter pursuant to this article, the facility or shelter shall:

- (a) Immediately notify the youth's parent of the youth's whereabouts, physical and emotional condition, and the circumstances surrounding the youth's placement;
- (b) Notify the youth's parent that it is the paramount concern of the facility or shelter to achieve a reconciliation between the parent and the youth, to reunify the family, and to inform the parent about the alternatives that are available;
- (c) Arrange transportation for the youth to the residence of the youth's parent when the youth and the parent agree that the youth shall return to the home of the youth's parent. The parent shall reimburse the party who paid for the transportation costs to the extent of the parent's ability.

(d) Arrange transportation for the youth to an alternative residential placement facility when the youth and the youth's parent agree to such placement. The parent shall reimburse the appropriate person for transportation costs to the extent of the parent's ability.

Source: L. 97: Entire article added, p. 980, § 2, effective May 22.

26-5.7-107. Voluntary alternative residence - parental agreement. (1) Any available family reconciliation services shall be provided to a youth and the youth's family when the youth voluntarily resides elsewhere than with the youth's parent. A youth and the youth's parent may enter into an agreement for a voluntary alternative residence out of the home. Any agreement for voluntary alternative residence shall be in writing signed by both the youth and the youth's parent and may include, but is not limited to, residence with a relative or other responsible adult, in a licensed child care facility, or in a licensed homeless youth shelter. Voluntary alternative residence may continue as long as there is agreement between the youth and the youth's parent.

(2) Agreements for voluntary alternative residence pursuant to subsection (1) of this section may include arrangements for payment to the party providing the residence for the youth or other responsibilities.

(3) A person assuming responsibility under the agreement for the provision of a residence for the youth shall have the authority to:

(a) Enroll the youth in the school district in which the voluntary alternative residence is located; and

(b) Authorize and obtain preventive medical and dental care and treatment for the youth.

Source: L. 97: Entire article added, p. 980, § 2, effective May 22.

26-5.7-108. Voluntary alternative residence - lack of parental agreement. (1) If the youth and the youth's parent cannot agree on an initial voluntary alternative residence within twenty-one days after admission to the alternative out-of-home residence, a referral to the county department may be made.

(2) The licensed child care facility, licensed homeless youth shelter, or licensed host family home to which the youth has been admitted may arrange for the establishment of a supervised independent living arrangement or may arrange a voluntary residential agreement between the youth and a relative or other responsible adult, a licensed child care facility, a licensed homeless youth shelter, or a licensed host family home if the youth has been admitted to a licensed child care facility, licensed homeless youth shelter, or licensed host family home and:

(a) Twenty-one days have passed since admission;

(b) The youth's parent cannot be found after diligent effort by the facility or shelter to locate such parent, the youth's parent has failed to respond to a notice sent by the facility or shelter, or the youth's parent has renounced responsibility for the youth; and

(c) The youth has no suitable place to live other than the home of the youth's parent.

(3) A supervised independent living arrangement can only be established pursuant to subsection (2) of this section if:

(a) The youth has not been deemed to be dependent on controlled substances or alcohol and is in need of treatment;

(b) The youth is not currently demonstrating behavior that poses a danger to the youth or others;

(c) The youth is not engaging in persistent high-risk behavior that renders the youth inappropriate for an independent living arrangement through a placement alternative commission plan pursuant to section 19-1-116, C.R.S., or foster care placement through the county department; and

(d) The youth has an ability and capacity to manage his or her own affairs, demonstrates emotional independence, and has the opportunity and ability to achieve financial independence through legitimate activities and life skills, including the following:

- (I) Educational accomplishments or a plan for achieving educational goals;
 - (II) A vocational plan or goal; and
 - (III) An opportunity or ability to achieve adequate housing and living arrangements apart from the youth’s parent, guardian, or custodian.
- (4) (a) For the purposes of this article, a voluntary residential agreement shall not require the county department to assume custody of the youth or to exercise any parental power or control over the youth or require medical assistance under articles 4, 5, and 6 of title 25.5, C.R.S.
- (b) A person assuming responsibility for the youth shall have the authority to:
- (I) Enroll the youth in the school district in which the youth resides, pursuant to the voluntary residential agreement; and
 - (II) Authorize and obtain preventive medical and dental care and treatment for the youth.

Source: **L. 97:** Entire article added, p. 981, § 2, effective May 22. **L. 2006:** (4)(a) amended, p. 2018, § 104, effective July 1. **L. 2011:** (1), IP(2), and (2)(a) amended, (HB 11-1079), ch. 83, p. 225, § 3, effective August 10.

26-5.7-109. No use of general fund moneys. (Repealed)

Source: **L. 97:** Entire article added, p. 982, § 2, effective May 22. **L. 2007:** Entire section repealed, p. 286, § 1, effective August 3.

ARTICLE 5.9
Homeless Youth Services Act

26-5.9-101 to 26-5.9-105. (Repealed)

Source: **L. 2011:** Entire article repealed, (HB 11-1230), ch. 170, p. 590, §§ 6, 7, effective July 1.

Editor’s note: (1) This article was added in 2004 and was not amended prior to its repeal in 2011. For the text of this article prior to 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Some sections of this article were relocated to § 24-32-723. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

(2) Sections 26-5.9-103 (2) and 26-5.9-105 (3) as amended by House Bill 11-1079 were relocated to § 24-32-723 (2) and (4)(c), respectively, and harmonized with House Bill 11-1230.

ARTICLE 6
Child Care Centers

Cross references: For coordination of preschool programs with extended day services for children, see article 28 of title 22; for child care programs in nursing home facilities, see part 10 of article 1 of title 25.

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		26-6-102.5.	ployers. (Repealed)
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- 26-6-103.7. Application of part - neighborhood youth organizations - licensing - duties and responsibilities - definitions.
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- 26-6-105.7. Applications - materials waivers - appeals - rules.
- 26-6-106. Standards for facilities and agencies - rules.
- 26-6-106.1. Administration or monitoring of medications to persons - residential child care facilities.
- 26-6-106.5. Foster care - rules applying generally - rule-making.
- 26-6-107. Investigations and inspections - local authority - reports - rules.
- 26-6-107.5. Response to complaints - addition of child care facility inspectors.
- 26-6-107.7. Revocation of certification of foster care home - emergency procedures - due process.
- 26-6-108. Denial of license - suspension - revocation - probation - refusal to renew license - fines.
- 26-6-108.5. Notice of negative licensing action - filing of complaints.
- 26-6-109. Advisory committee - sunset review - institutes.
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- 26-6-112. Penalty.
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- 26-6-114. Civil penalties - fines - child care cash fund - created.
- 26-6-115. Criminal background checks - pilot program. (Repealed)
- 26-6-116. Child care resource and referral system - created.
- 26-6-117. Accreditation standards for county departments and child placement agencies - study.
- 26-6-118. Child placement agencies - information sharing - investigations by state department -

- recovery of moneys - rule-making.
- 26-6-119. Family child care homes - administration of routine medications - parental direction - rules.
- 26-6-120. Exempt family child care home providers - fingerprint-based criminal history record check - child care assistance program moneys - temporary care - definitions.
- 26-6-121. Preschools - unique student identifying numbers - rules.

PART 2

CHILD PLACEMENT AGENCIES

- 26-6-201 to
- 26-6-206. (Repealed)

PART 3

EARLY CHILDHOOD AND SCHOOL READINESS COMMISSION

- 26-6-301 to
- 26-6-307. (Repealed)

PART 4

DEDICATED FAMILY HOMES PILOT PROGRAM

- 26-6-401 to
- 26-6-406. (Repealed)

PART 5

TASK FORCE ON FOSTER CARE AND PERMANENCE

- 26-6-501 to
- 26-6-506. (Repealed)

PART 6

DEPARTMENT OF DEFENSE QUALITY CHILD CARE STANDARDS PILOT PROGRAM

- 26-6-601. Short title.
- 26-6-602. Legislative declaration.
- 26-6-603. Definitions.
- 26-6-604. Department of defense quality child care standards pilot program - creation - program scope - reporting requirements - rules.
- 26-6-605. Department of defense quality child care standards pilot program - funding.
- 26-6-606. Repeal of part.

PART 1

CHILD CARE LICENSING

26-6-101. Short title. This part 1 shall be known and may be cited as the “Child Care Licensing Act”.

Source: L. 67: p. 1039, § 3. C.R.S. 1963: § 119-8-1. L. 96: Entire section amended, p. 806, § 2, effective May 23; entire section amended, p. 251, § 1, effective July 1.

Editor’s note: Amendments to this section by House Bill 96-1006 and House Bill 96-1180 were harmonized.

ANNOTATION

Law reviews. For note, “Licensing of Occupations and Professions in Colorado”, see 35 Dicta 235 (1958). For article, “Child Care and Tort Liability”, see 18 Colo. Law. 1949 (1989).

26-6-101.4. Legislative declaration concerning the protections afforded by regulation. (1) The general assembly finds and declares that increasing numbers of children in Colorado are spending a significant portion of their day in care settings outside their own homes. In addition, some children are placed in facilities for residential care for their protection and well-being. The general assembly finds that regulation and licensing of child care facilities contribute to a safe and healthy environment for children. The provision of such environment affords benefits to children, their families, their communities, and the larger society. The general assembly acknowledges that there is a need to balance accessibility and quality of care when regulating child care facilities. It is the intent of the general assembly that those who regulate and those who are regulated work together to meet the needs of the children, their families, and the child care industry.

(2) In balancing the needs of children and their families with the needs of the child care industry, the general assembly also recognizes the financial demands with which the department of human services is faced in its attempt to ensure a safe and sanitary environment for those children of the state of Colorado who are in child care facilities. In an effort to reduce the risk to children outside their homes while recognizing the financial constraints placed upon the department, it is the intent of the general assembly that the limited resources available be focused primarily on those child care facilities that have demonstrated that children in their care may be at higher risk pursuant to section 26-6-107.

Source: L. 94: Entire section added, p. 1044, § 1, effective January 1, 1995. L. 96: Entire section amended, p. 251, § 2, effective July 1.

26-6-101.5. Legislative declaration concerning employer-sponsored on-site child care centers. (Repealed)

Source: L. 90: Entire section added, p. 1395, § 6, effective May 24; (2) added by revision, pp. 1395, 1400, §§ 6, 15.

Editor’s note: Subsection (2) provided for the repeal of this section, effective July 1, 1995. (See L. 90, pp. 1395, 1400.)

26-6-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Affiliate of a licensee” means:

(a) Any person or entity that owns more than five percent of the ownership interest in the business operated by the licensee or the applicant for a license; or

(b) Any person who is directly responsible for the care and welfare of children served;
or

(c) Any executive, officer, member of the governing board, or employee of a licensee; or

(d) A relative of a licensee, which relative provides care to children at the licensee's facility or is otherwise involved in the management or operations of the licensee's facility.

(1.1) "Application" means a declaration of intent to obtain or continue a license or certificate for a child care facility or a child placement agency.

(1.2) "Certificate" means a legal document granting permission to operate a family foster home.

(1.3) "Certification" means the process by which the county department of social services or a child placement agency approves the operation of a foster care home.

(1.5) "Child care center" means a facility, by whatever name known, that is maintained for the whole or part of a day for the care of five or more children who are eighteen years of age or younger and who are not related to the owner, operator, or manager thereof, whether the facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day care centers, school-age child care centers, before and after school programs, nursery schools, kindergartens, preschools, day camps, summer camps, and centers for developmentally disabled children and those facilities that give twenty-four-hour care for children and includes those facilities for children under the age of six years with stated educational purposes operated in conjunction with a public, private, or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private, or parochial elementary school system of at least six grades or operated as a component of a school district's preschool program operated pursuant to article 28 of title 22, C.R.S. The term shall not include any facility licensed as a family child care home, a foster care home, or a specialized group facility that is licensed to provide care for three or more children pursuant to subsection (10) of this section, but that is providing care for three or fewer children who are determined to have a developmental disability by a community centered board or who are diagnosed with a serious emotional disturbance.

(1.7) "Child care provider", as used in section 26-6-119, means a licensee, or an affiliate of a licensee, when the licensee holds a license to operate a family child care home pursuant to this part 1.

(2) "Child placement agency" means any corporation, partnership, association, firm, agency, institution, or person unrelated to the child being placed, who places, who facilitates placement for a fee, or who arranges for placement, for care of any child under the age of eighteen years with any family, person, or institution. A child placement agency may place, facilitate placement, or arrange for the placement of a child for the purpose of adoption, treatment, or foster care. The natural parents or guardian of any child who places said child for care with any facility licensed as a "family child care home" or "child care center" as defined by this section shall not be deemed a child placement agency.

(2.2) (a) "Children's resident camp" means a facility operating for three or more consecutive twenty-four-hour days during one or more seasons of the year for the care of five or more children. The facility shall have as its purpose a group living experience offering education and recreational activities in an outdoor environment. The recreational experiences may occur at the permanent camp premises or on trips off the premises.

(b) A children's resident camp shall serve children who have completed kindergarten or are six years of age or older through children younger than nineteen years of age; except that a person nineteen years of age or twenty years of age may attend a children's resident camp if, within six months prior to attending the children's resident camp, he or she has attended or has graduated from high school.

(2.4) "Cradle care home" means a facility that is certified by a child placement agency for the care of a child, or children in the case of multiple-birth siblings, who is twelve months of age or younger, in a place of residence for the purpose of providing twenty-four-hour family care for six months or less in anticipation of a voluntary relinquishment of the child or children pursuant to article 5 of title 19, C.R.S., or while a county prepares an expedited permanency plan for an infant in its custody.

(2.5) (a) "Day treatment center" means a facility that:

(I) Provides less than twenty-four-hour care for groups of five or more children who are:

(A) Five years of age or older, but less than eighteen years of age; or

(B) Less than twenty-one years of age and who are placed in the program by court order prior to their eighteenth birthday; and

(II) Provides a structured program of various types of psycho-social and behavioral treatment to prevent or reduce the need for placement of the child out of the home or community.

(b) "Day treatment center" shall not include special education programs operated by a public or private school system or programs that are licensed by other rules of the department for less than twenty-four-hour care of children, such as a child care center.

(2.7) Repealed.

(3) "Department" or "state department" means the state department of human services.

(3.5) Repealed.

(3.7) "Exempt family child care home provider" means a family child care home provider who is exempt from certain provisions of this part 1 pursuant to section 26-6-103

(1) (g).

(4) "Family child care home" means a facility for child care in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. "Family child care home" may include infant-toddler child care homes, large child care homes, experienced provider child care homes, and such other types of family child care homes designated by rules of the state board pursuant to section 26-6-106 (2) (p), as the state board deems necessary and appropriate.

(4.5) "Foster care home" means a facility that is certified by the county department or a child placement agency for child care in a place of residence of a family or person for the purpose of providing twenty-four-hour family care for a child under the age of eighteen years who is not related to the head of such home, except in the case of relative care. The term includes any foster care home receiving a child for regular twenty-four-hour care and any home receiving a child from any state-operated institution for child care or from any child placement agency, as defined in subsection (2) of this section. "Foster care home" also includes those homes licensed by the department of human services that receive neither moneys from the counties nor children placed by the counties.

(4.7) "Guardian" means a person who is entrusted by law with the care of a child under eighteen years of age.

(5) "Guest child care facility" means a facility operated by a ski area, as that term is defined in section 33-44-103 (6), C.R.S., where children are cared for:

(a) While parents or persons in charge of such child are patronizing the ski area;

(b) Fewer than ten total hours per day;

(c) Fewer than ten consecutive days per year; and

(d) Fewer than forty-five days in a calendar year, with thirty or fewer of such forty-five days occurring in either the winter or summer months.

(5.1) "Homeless youth shelter" means a facility that, in addition to other services it may provide, provides services and mass temporary shelter for a period of three days or more to youths who are at least eleven years of age, or older, and who otherwise are homeless youth as that term is defined in section 26-5.7-102 (2).

(5.2) "ICON" means the computerized database of court records known as the integrated Colorado on-line network used by the state judicial department.

(5.3) "Kindergarten" means any facility providing an educational program for children only for the year preceding their entrance to the first grade, whether such facility is called a kindergarten, nursery school, preschool, or any other name.

(5.4) "License" means a legal document issued pursuant to this part 1 granting permission to operate a child care facility or child placement agency. A license may be in the form of a provisional, probationary, permanent, or time-limited license.

(5.5) "Licensing" means, except as otherwise provided in subsection (4.5) of this section, the process by which the department approves a facility or agency for the purpose of conducting business as a child care facility or child placement agency.

(5.6) “Medical foster care” means a program of foster care that provides home-based care for medically fragile children and youth who would otherwise be confined to a hospital or institutional setting and includes, but is not limited to, the following:

- (a) Infants impacted by prenatal drug and alcohol abuse;
- (b) Children with developmental disabilities which require ongoing medical intervention;
- (c) Children and youth diagnosed with acquired immune deficiency syndrome or human immunodeficiency virus;
- (d) Children with a failure to thrive or other nutritional disorders; and
- (e) Children dependent on technology such as respirators, tracheotomy tubes, or ventilators in order to survive.

(5.7) (a) “Negative licensing action” means a final agency action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license issued pursuant to this part 1 or the demotion of such a license to a probationary license.

(b) For the purposes of this subsection (5.7), “final agency action” means the determination made by the department, after opportunity for hearing, to deny, suspend, revoke, or demote to probationary status a license issued pursuant to this part 1 or an agreement between the department and the licensee concerning the demotion of such a license to a probationary license.

(5.8) (a) “Neighborhood youth organization” means a nonprofit organization that is designed to serve youth as young as six years of age and as old as eighteen years of age and that operates primarily during times of the day when school is not in session and provides research-based, age-appropriate, and character-building activities designed exclusively for the development of youth from six to eighteen years of age. These activities shall occur primarily in a facility leased or owned by the neighborhood youth organization. The activities shall occur in an environment in which youth have written parental or legal guardian consent to become a youth member of the neighborhood youth organization and to arrive at and depart from the primary location of the activity on their own accord, without supervision by a parent, legal guardian, or organization.

(b) A neighborhood youth organization shall not include faith-based centers, organizations or programs operated by state or city parks or special districts, or departments or facilities that are currently licensed as child care centers as defined in subsection (1.5) of this section.

(5.9) “Out-of-home placement provider consortium” means a group of service providers that are formally organized and managed to achieve the goals of the county, group of counties, or mental health agency contracting for additional services other than treatment-related or child maintenance services.

(6) “Person” means any corporation, partnership, association, firm, agency, institution, or individual.

(6.5) “Place of residence” means the place or abode where a person actually lives and provides child care.

(6.7) “Public services short-term child care facility” means a facility that is operated by or for a county department of social services or a court and that provides care for a child:

- (a) While the child’s parent or the person in charge of the child is conducting business with the county department of social services or participating in court proceedings;
- (b) Fewer than ten total hours per day;
- (c) Fewer than fifteen consecutive days per year; and
- (d) Fewer than forty-five days in a calendar year.

(7) “Related” means any of the following relationships by blood, marriage, or adoption: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, niece, nephew, or cousin.

(7.5) “Relative”, except as otherwise used in subsection (4.5) of this section, means any of the following relationships by blood, marriage, or adoption: Parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew, or cousin.

(8) “Residential child care facility” means a facility licensed by the state department pursuant to this part 1 to provide twenty-four-hour group care and treatment for five or more

children operated under private, public, or nonprofit sponsorship. "Residential child care facility" includes community-based residential child care facilities, shelter facilities, and therapeutic residential child care facilities as defined in rule by the state board, and psychiatric residential treatment facilities as defined in section 25.5-4-103 (19.5), C.R.S. A residential child care facility may be eligible for designation by the executive director of the state department pursuant to article 65 of title 27, C.R.S.

(8.5) "Routine medications", as used in section 26-6-119, means any prescribed oral, topical, or inhaled medication, or unit dose epinephrine, that is administered pursuant to section 26-6-119.

(8.7) "Salaried foster parent" means a person who is employed by a child placement agency for the purposes of the demonstration pilot program authorized pursuant to section 26-6-104 (1) (d) (IV), and who is employed for the sole purpose of providing foster care and who serves in no other capacity for the child placement agency.

(9) "Secure residential treatment center" means a facility operated under private ownership that is licensed by the department pursuant to this part 1 to provide twenty-four-hour group care and treatment in a secure setting for five or more children or persons up to the age of twenty-one years over whom the juvenile court retains jurisdiction pursuant to section 19-2-104 (6), C.R.S., who are committed by a court pursuant to an adjudication of delinquency or pursuant to a determination of guilt of a delinquent act or having been convicted as an adult and sentenced for an act that would be a crime if committed in Colorado, or in the committing jurisdiction, to be placed in a secure facility.

(10) (a) "Specialized group facility" means a facility sponsored and supervised by a county department or a licensed child placement agency for the purpose of providing twenty-four-hour care for three or more children, but fewer than twelve children, whose special needs can best be met through the medium of a small group and who are:

(I) At least three years of age or older but less than eighteen years of age; or

(II) Less than twenty-one years of age and who are placed by court order prior to their eighteenth birthday.

(b) "Specialized group facility" includes specialized group homes and specialized group centers.

(10.3) "Substitute child care provider" means a person who provides temporary care for a child or children in a family child care home or homes in the absence of the licensed provider for more than fourteen days or one hundred twelve hours in any calendar year.

(10.5) "Supervisory employee" means for purposes of section 26-6-103.5:

(a) A person directly responsible for managing a guest child care facility and the employees of the facility; or

(b) A person directly responsible for managing a public services short-term child care facility and the employees of the facility.

(11) "Therapeutic foster care" means a program of foster care that incorporates treatment for the special physical, psychological, or emotional needs of a child placed with specially trained foster parents, but does not include medical foster care.

(12) "Treatment foster care" means a clinically effective alternative to residential treatment facilities that combines the treatment technologies typically associated with more restrictive settings with a nurturing and individualized family environment.

(13) "Youth member" means a youth who is six years of age through eighteen years of age whose parent or legal guardian has provided written consent for the youth to participate in the activities of a neighborhood youth organization and who pays the required dues of the neighborhood youth organization.

Source: **L. 67:** p. 1040, § 3. **C.R.S. 1963:** § 119-8-2. **L. 69:** p. 993, § 2. **L. 75:** (1) amended, p. 217, § 53, effective July 16. **L. 77:** (6) amended, p. 1005, § 6, effective May 16. **L. 81:** (8) added, p. 1034, § 10, effective July 1. **L. 86:** (1)(a) amended, p. 1001, § 1, effective May 28. **L. 88:** (1)(a) amended, p. 831, § 41, effective May 24. **L. 89:** (9) added, p. 1220, § 1, effective May 26. **L. 90:** (1)(a) amended and (3.5) added, p. 1395, §§ 4, 5, effective May 24; (3.5)(b) added by revision, pp. 1395, 1400, §§ 5, 15. **L. 91:** (9) amended, p. 1882, § 1, effective March 11. **L. 93:** (3) amended, p. 1156, § 112, effective July 1, 1994. **L. 94:** (8) amended, p. 2705, § 268, effective July 1; (4) amended, p. 1044, § 2,

effective January 1, 1995. **L. 96:** (8) and (9) amended, p. 806, § 3, effective May 23; (1), (2), and (4) amended and (1.5), (4.5), (5.3), (5.5), and (6.5) added, p. 252, § 3, effective July 1; (9) amended, p. 1697, § 42, effective January 1, 1997. **L. 97:** (5.1) added, p. 982, § 4, effective May 22. **L. 99:** (8) amended, p. 233, § 2, effective April 8; (1) amended and (1.3) and (5.7) added, p. 1034, § 1, effective May 29; (5.7) added, p. 1198, § 1, effective June 2. **L. 2000:** (4) amended and (2.5) and (10) added, p. 37, § 3, effective May 14. **L. 2001:** (5.2) added, p. 614, § 5, effective May 30; (1), (2), (3), and (8) amended and (11) added, pp. 743, 740, §§ 10, 3, effective June 1; (1), (2), (3), and (8) amended, p. 753, § 3, effective June 1; (1) amended, p. 508, § 1, effective July 1. **L. 2002:** (1.7) and (8.5) added, p. 128, § 2, effective March 26; (1.5) amended, p. 1785, § 50, effective June 7; (4.7) and (10.5) added and (5) amended, p. 406, § 1, effective July 1. **L. 2003:** (5.9) added, p. 558, § 1, effective March 7; (5.6) added and (11) amended, p. 1874, § 2, effective May 22; (7.5) added, p. 854, § 1, effective August 6. **L. 2004:** (2.7) added, p. 543, § 2, effective August 4; (5.6)(e) amended, p. 483, § 9, effective August 4. **L. 2005:** (2.7)(a) amended, p. 772, § 52, effective June 1; (2) amended, p. 969, § 1, effective June 2. **L. 2006:** (1.5) and IP(10)(a) amended and (12) added, p. 519, § 1, effective April 18; (1.5) amended, p. 699, § 46, effective April 28; (3.7) added, p. 1080, § 1, effective May 25; (8) amended, p. 1204, § 4, effective May 26; (1.1), (1.2), (2.2), (2.4), and (5.4) added and (4.7), (5.5), and (5.7)(a) amended, p. 724, § 1, effective August 7; (8.7) added, p. 284, § 1, effective August 7. **L. 2007:** (6.7) added and (10.5) amended, p. 861, § 1, effective May 14. **L. 2008:** (10.3) added, p. 367, § 1, effective August 5. **L. 2009:** (1.5) amended, (SB 09-292), ch. 369, p. 1975, § 100, effective August 5. **L. 2010:** (5.8) and (13) added, (HB10-1044), ch. 85, p. 284, § 1, effective April 14; (8) amended, (SB 10-175), ch. 188, p. 803, § 75, effective April 29. **L. 2011:** (5.1) amended, (HB 11-1079), ch. 83, p. 226, § 5, effective August 10. **L. 2012:** (2.2) amended, (SB 12-043), ch. 9, p. 24, § 1, effective March 9.

Editor's note: (1) Subsection (3.5)(b) provided for the repeal of subsection (3.5), effective July 1, 1995. (See L. 90, pp. 1395, 1400.)

(2) Amendments to subsection (9) by House Bill 96-1005 and House Bill 96-1180 were harmonized. Amendments to subsection (1) by Senate Bill 01-014, Senate Bill 01-012, and Senate Bill 01-221 were harmonized. Amendments to subsection (1.5) by House Bill 06-1375 and House Bill 06-1271 were harmonized.

(3) Subsection (2.7)(b) provided for the repeal of subsection (2.7), effective July 1, 2008. (See L. 2004, p. 543.)

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993; for the legislative declaration contained in the 1994 act amending subsection (8), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

Adoption of section permitting developmentally disabled persons to live in group

homes reflects legislative intent to assist such persons to live in normal residential surroundings. Double D Manor v. Evergreen Meadows, 773 P.2d 1046 (Colo. 1989).

26-6-102.5. Coordinating services for employers. (Repealed)

Source: **L. 90:** Entire section added, p. 1396, § 7, effective May 24; (3) added by revision, pp. 1396, 1400, §§ 7, 15.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1995. (See L. 90, pp. 1396, 1400.)

26-6-103. Application of part - study. (1) This part 1 shall not apply to:

(a) Special schools or classes operated primarily for religious instruction or for a single skill-building purpose;

(b) A child care facility which is approved, certified, or licensed by any other state agency, or by a federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility;

(c) Facilities operated in connection with a church, shopping center, or business where children are cared for during short periods of time while parents, persons in charge of such children, or employees of the church, shopping center, or business whose children are being cared for at such location are attending church services at such location or shopping, patronizing, or working on the premises of any such business;

(d) Occasional care of children that has no apparent pattern and occurs with or without compensation;

(e) The care of a child by a person in his or her private residence when the parent, guardian, or other person having legal custody of such child gives his consent to such care and when the person giving such care is not regularly engaged in the business of giving such care;

(f) Juvenile courts;

(g) A family child care home receiving one child for less than twenty-four-hour care or receiving two or more children who are related to each other as brother or sister from the same family household for less than twenty-four-hour care or such additional number of children as may be specified by rules promulgated by the state board of human services. The department shall conduct a study on whether rules should be modified to allow an additional number of children to be cared for in a family home that is exempt from licensing and shall present options and recommendations to the state board on or before October 1, 1996. The department shall consult with individuals and organizations who express to the department an interest in participating in the development of such recommendations, and the department shall notify such individuals and organizations of the date and location of the board hearing. The department shall examine the relationship between the licensing regulations governing larger family care homes and child care centers and shall present options and recommendations to the state board on or before October 1, 1996. In making such recommendations, the department shall consult with individuals and organizations who express to the department an interest in participating in the development of such recommendations, and the department shall notify such individuals and organizations of the date and location of the board hearing. Notwithstanding any provision of this paragraph (g) to the contrary, an exempt family child care home provider shall comply with the provisions of section 26-6-120 if he or she provides care for a child whose care is funded in whole or in part with moneys received on the child's behalf pursuant to the Colorado child care assistance program created in part 8 of article 2 of this title.

(h) Nursing homes which have children as residents.

(2) For purposes of this section, "short periods of time" means fewer than three hours in any twenty-four-hour period.

(3) A facility that has received a negative licensing action as defined in section 26-6-102 (5.7) is prohibited from operating pursuant to subsection (1) of this section.

(4) Repealed.

Source: **L. 67:** p. 1040, § 3. **C.R.S. 1963:** § 119-8-3. **L. 69:** p. 994, § 3. **L. 83:** (1)(g) added, p. 1131, § 1, effective May 25. **L. 90:** (1)(b) amended and (1)(h) added, p. 1388, § 2, effective May 4. **L. 94:** (1)(b) amended, p. 1045, § 3, effective January 1, 1995. **L. 96:** IP(1) amended, p. 806, § 4, effective May 23; (1)(g) amended, p. 254, § 4, effective July 1. **L. 2001:** (1)(c) amended and (2), (3), and (4) added, p. 872, § 1, effective August 8. **L. 2006:** (1)(g) amended, p. 1080, § 2, effective May 25; (1)(a) and (1)(d) amended, p. 725, § 2, effective August 7. **L. 2008:** (4) repealed, p. 1911, § 115, effective August 5.

Cross references: For the legislative declaration and report to the general assembly contained in the 1990 act amending this section, see sections 1 and 9 of chapter 219, Session Laws of Colorado 1990.

ANNOTATION

Law reviews. For article, "Child Care and Tort Liability", see 18 Colo. Law. 1949 (1989).

26-6-103.3. Application of part - substitute child care providers in family child care homes - rules. Substitute child care providers shall be subject only to the requirements of this section and shall be otherwise excluded from the requirements of this part 1. The state board shall promulgate rules for certification of substitute child care providers. At a minimum, the certification process shall require the substitute child care provider to demonstrate that he or she has appropriate training or certifications, including child safety and cardiopulmonary resuscitation training or certifications, to care for a child in the absence of the licensed child care provider in a family child care home. The rules of the state board shall require that each substitute child care provider, pursuant to section 26-6-107 (1) (a) (I) (C), pay for and submit to a fingerprint-based criminal history records check and a review of the records and reports of child abuse or neglect maintained by the state department to determine whether the substitute child care provider has been found to be responsible in a confirmed report of child abuse or neglect. The department shall not certify a substitute child care provider who is convicted of any of the crimes specified in section 26-6-104 (7) or who is found to be responsible in a confirmed report of child abuse or neglect. The state board shall establish by rule the circumstances under which a licensed family child care home shall be required to use a certified substitute child care provider in the family child care home during the licensed provider's absence and a procedure by which a licensed family child care home may verify that a person is certified to be a substitute child care provider pursuant to this section.

Source: L. 2008: Entire section added, p. 367, § 2, effective August 5.

26-6-103.5. Application of part - guest child care facilities - public services short-term child care facilities. (1) Guest child care facilities and public services short-term child care facilities shall be subject only to the requirements of this section and shall otherwise be excluded from the requirements of this part 1. Each guest child care facility and each public services short-term child care facility shall post a notice in bold print and in plain view on the premises of the child care facility. The notice shall specify the telephone number and address of the appropriate division within the state department for investigating child care facility complaints and shall state that any complaint about the guest child care facility's or the public services short-term child care facility's compliance with these requirements should be directed to such division.

(2) No person or entity shall operate a guest child care facility or a public services short-term child care facility unless the following requirements are met:

(a) The guest child care facility or public services short-term child care facility is inspected not less frequently than one time per year by the department of public health and environment, and it conforms to the sanitary standards prescribed by such department under the provisions of section 25-1.5-101 (1) (h), C.R.S.;

(b) The guest child care facility or public services short-term child care facility is inspected not less frequently than one time per year by the local fire department, and it conforms to the fire prevention and protection requirements of the local fire department in the locality of the facility, or in lieu thereof, the division of labor;

(c) The guest child care facility or public services short-term child care facility retains, on the premises at all times, the records of the inspections required by paragraphs (a) and (b) of this subsection (2) for the current calendar year and the immediately preceding calendar year;

(d) The guest child care facility or public services short-term child care facility retains, on the premises at all times, a record of children cared for over the course of the current calendar year and the immediately preceding calendar year;

(e) At least one supervisory employee, as that term is defined in section 26-6-102 (10.5), is on duty at the guest child care facility or public services short-term child care facility at all times when the facility is operating;

(f) (I) The guest child care facility or public services short-term child care facility requires all supervisory employees of the guest child care facility or public services short-term child care facility and applicants for supervisory employee positions at the guest child care facility or public services short-term child care facility to obtain a fingerprint-based criminal history check utilizing the Colorado bureau of investigation and, for supervisory employees hired on or after August 10, 2011, the federal bureau of investigation and requests the state department to ascertain whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I) or whether the person has been determined to have a pattern of misdemeanor convictions as described in section 26-6-104 (7) (a) (I) (E) and the guest child care facility or public services short-term child care facility prohibits the hiring of any such person as a supervisory employee or terminates the employment of any such person as a supervisory employee upon confirmation of such a criminal history;

(II) (Deleted by amendment, L. 2011, (HB 11-1145), ch. 163, p. 560, § 1, effective August 10, 2011.)

(III) The guest child care facility or public services short-term child care facility requests the state department to access records and reports of child abuse or neglect to determine whether the supervisory employee or applicant for a supervisory employee position has been found to be responsible in a confirmed report of child abuse or neglect and the guest child care facility or public services short-term child care facility prohibits the hiring of any such person as a supervisory employee or terminates the employment of any such person as a supervisory employee. Information shall be made available pursuant to section 19-1-307 (2) (r), C.R.S., and rules promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.

(IV) (A) The guest child care facility or public services short-term child care facility requests the state department to obtain a comparison search on the ICON system at the state judicial department with the name and date of birth information and any other available source of criminal history information that the state department determines is appropriate, whether or not the criminal history background check confirms a criminal history, in order to determine the crime or crimes, if any, for which the supervisory employee or applicant for a supervisory employee position was arrested or convicted and the disposition thereof; and

(B) The guest child care facility or public services short-term child care facility requests the state department to obtain such information concerning the supervisory employee or applicant for a supervisory employee position from any other recognized database, if any, that is accessible on a statewide basis as set forth by rules promulgated by the state board;

(g) (I) The guest child care facility or public services short-term child care facility requires all other employees of the guest child care facility or public services short-term child care facility to obtain a fingerprint-based criminal history check utilizing the Colorado bureau of investigation and, for employees hired on or after August 10, 2011, the federal bureau of investigation and requests the state department to ascertain whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I) or whether the person has been determined to have a pattern of misdemeanor convictions as described in section 26-6-104 (7) (a) (I) (E) and the guest child care facility or public services short-term child care facility terminates the employment of any such person as an employee upon confirmation of such a criminal history;

(II) (Deleted by amendment, L. 2011, (HB 11-1145), ch. 163, p. 560, § 1, effective August 10, 2011.)

(III) The guest child care facility or public services short-term child care facility requests the state department to access records and reports of child abuse or neglect to determine whether the employee has been found to be responsible in a confirmed report of child abuse or neglect and the guest child care facility or public services short-term child care facility terminates the employment of any such person. Information shall be made available pursuant to section 19-1-307 (2) (r), C.R.S., and rules promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.

(IV) (A) The guest child care facility or public services short-term child care facility requests the state department to obtain a comparison search on the ICON system at the state judicial department with the name and date of birth information and any other available source of criminal history information that the state department determines is appropriate, whether or not the criminal history background check confirms a criminal history, in order to determine the crime or crimes, if any, for which the employee was arrested or convicted and the disposition thereof; and

(B) The guest child care facility or public services short-term child care facility requests the state department to obtain such information concerning the employee from any other recognized database, if any, that is accessible on a statewide basis as set forth by rules promulgated by the state board; and

(h) The guest child care facility or public services short-term child care facility maintains the following employee-to-child ratios at all times when the facility is operating:

(I) One child care facility employee for every five children ages six weeks to eighteen months;

(II) One child care facility employee for every five children ages twelve months to thirty-six months;

(III) One child care facility employee for every seven children ages twenty-four months to thirty-six months;

(IV) One child care facility employee for every eight children ages two and one-half years to three years;

(V) One child care facility employee for every ten children ages three years to four years;

(VI) One child care facility employee for every twelve children ages four years to five years;

(VII) One child care facility employee for every fifteen children ages five years of age and older; and

(VIII) One child care facility employee for every ten children in a mixed age group, ages two and one-half years to six years.

(2.5) In addition to the requirements specified in subsection (2) of this section, a public services short-term child care facility shall ensure that at least one employee is on duty at the facility at all times when the facility is operating who holds a current department-approved first aid and safety certificate that includes certification in cardiopulmonary resuscitation training for all ages of children.

(3) (a) If the guest child care facility or public services short-term child care facility refuses to hire a supervisory employee or terminates the employment of a supervisory employee as a result of information disclosed in an investigation of the supervisory employee or applicant therefor pursuant to paragraph (f) of subsection (2) of this section, the guest child care facility or public services short-term child care facility shall not be subject to civil liability for such refusal to hire.

(b) If the guest child care facility or public services short-term child care facility terminates the employment of an employee as a result of the information disclosed in an investigation of the employee pursuant to paragraph (g) of subsection (2) of this section, the guest child care facility or public services short-term child care facility shall not be subject to civil liability for such termination of employment.

(4) A guest child care facility employee or supervisory employee applicant who has obtained a fingerprint-based criminal history check pursuant to paragraph (f) or (g) of subsection (2) of this section, or pursuant to subsection (5) of this section, shall not be required to obtain a new fingerprint-based criminal history check if he or she returns to a guest child care facility to work in subsequent seasons. The state department shall maintain the results of the initial background check and receive subsequent notification of activity on the record for the purpose of redetermining, if necessary, whether the employee or supervisory employee applicant has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I), or whether the employee or supervisory employee applicant has a pattern of misdemeanor convictions as described in section 26-6-108 (8) (b), and the guest child care facility shall contact the state department for information concerning subsequent convictions, if any, prior to rehiring such employee.

(5) The requirements of paragraphs (f) and (g) of subsection (2) of this section shall not apply to those employees of guest child care facilities concerning whom criminal history background checks were conducted on or after July 1, 2001, and before July 1, 2002, for purposes of state child care licensure requirements.

(6) For purposes of this section, a “guest child care facility” does not include a ski school. For purposes of this section, “ski school” means a school located at the ski area in which the guest child care facility is located for purposes of teaching children how to ski or snowboard.

(7) The state department shall have the authority to receive, respond to, and investigate any complaint concerning compliance with the requirements set forth in this part 1 for a guest child care facility or a public services short-term child care facility.

Source: **L. 2002:** Entire section added, p. 407, § 2, effective July 1. **L. 2003:** (2)(f)(III) and (2)(g)(III) amended, p. 1409, § 17, effective January 1, 2004. **L. 2006:** (2)(f)(I), (2)(f)(II), (2)(g)(I), and (2)(g)(II) amended, p. 731, § 9, effective August 7. **L. 2007:** Entire section amended, p. 862, § 2, effective May 14. **L. 2011:** (2)(f)(I), (2)(f)(II), (2)(g)(I), and (2)(g)(II) amended, (HB 11-1145), ch. 163, p. 560, § 1, effective August 10.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (2)(f)(III) and (2)(g)(III), see section 1 of chapter 196, Session Laws of Colorado 2003.

26-6-103.7. Application of part - neighborhood youth organizations - licensing - duties and responsibilities - definitions. (1) Notwithstanding any provision of this part 1 to the contrary, a neighborhood youth organization that is not otherwise licensed to operate under this part 1 may obtain a neighborhood youth organization license pursuant to this section. A neighborhood youth organization that obtains a license pursuant to this section shall be subject only to the requirements of this section and shall otherwise be exempt from the requirements of this part 1.

(2) The state board shall promulgate rules to establish a neighborhood youth organization license, including but not limited to the fee required to apply for and obtain the license. The rules shall not concern staff-to-youth ratios.

(3) A neighborhood youth organization licensed pursuant to this section and operating in the state of Colorado shall have the following duties and responsibilities:

(a) To inform a parent or legal guardian of the requirements of this subsection (3) and to post a notice in bold print and in plain view on the premises of the facility in which the neighborhood youth organization operates that lists the following information:

(I) The requirements of this subsection (3); and

(II) The telephone number and address of the appropriate division within the state department for investigating complaints concerning a neighborhood youth organization, with the instruction that any complaint regarding the neighborhood youth organization's compliance with these requirements be directed to that division;

(b) Prior to admitting an interested youth member into the neighborhood youth organization, to require the youth member's parent or legal guardian to sign a statement authorizing the youth member to arrive and depart from the organization without supervision by a parent, legal guardian, or the organization;

(c) To establish a process to receive and resolve complaints from parents or legal guardians;

(d) To establish a process to report known or suspected child abuse or neglect to appropriate authorities pursuant to section 19-3-304, C.R.S.;

(e) To maintain, either at the neighborhood youth organization or at a central administrative facility, records for each youth member admitted into the neighborhood youth organization containing, at a minimum, the following information:

(I) The youth member's full name;

(II) The youth member's date of birth;

(III) The name, address, and telephone number of a parent or legal guardian of the youth member;

(IV) The name and telephone number of at least one emergency contact person for the youth member; and

(V) A parent's or legal guardian's written authorization for the youth member to attend the neighborhood youth organization;

(f) To require a youth member's parent or legal guardian to sign a statement authorizing the neighborhood youth organization to provide transportation prior to field trips or to and from the neighborhood youth organization; and

(g) To follow the requirements specified in subsection (4) of this section for a fingerprint-based or other criminal history record check of each employee and volunteer who works with or will work with youth members five or more days in a calendar month.

(4) A licensed neighborhood youth organization shall require all employees and volunteers who work directly with or will work directly with youth members five or more days in a calendar month to obtain, prior to employment, and every two years thereafter, one of the following:

(a) A fingerprint-based criminal history records check utilizing the Colorado bureau of investigation and request the state department to ascertain whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S. The neighborhood youth organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

(b) A federal bureau of investigation fingerprint-based criminal history records check utilizing the Colorado bureau of investigation if the employee, volunteer, or applicant has resided in the state of Colorado less than two years. The neighborhood youth organization shall request the state department to ascertain whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S. The neighborhood youth organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

(c) A comparison search by the state department on the ICON system of the state judicial department or a comparison search on any other database that is recognized on a statewide basis by using the name, date of birth, and social security number information that the state department determines is appropriate to determine whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S. The neighborhood youth organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

(d) A separate background check by a private entity regulated as a consumer reporting agency pursuant to 15 U.S.C. sec. 1681 et seq. that shall disclose, at a minimum, sexual offenders and felony convictions and include a social security number trace, a national criminal file check, and a state or county criminal file search. The separate background check shall ascertain whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S. The neighborhood youth organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

(5) A person who visits or takes part in the activities of a licensed neighborhood youth organization but who is not required to obtain a criminal history record check pursuant to subsection (4) of this section shall at all times be under the supervision of an employee or volunteer who has been hired or approved after obtaining a criminal history record check pursuant to subsection (4) of this section.

(6) The governing board of each licensed neighborhood youth organization shall adopt minimum standards for operating the licensed neighborhood youth organization, including but not limited to standards concerning staff, staff training, health and safety, and mechanisms for assessing and enforcing the licensed neighborhood youth organization's compliance with the standards adopted.

(7) The state department shall have the authority to receive, respond to, and investigate any complaint concerning compliance with the requirements set forth in this section for a licensed neighborhood youth organization.

(8) A licensed neighborhood youth organization shall not be required to obtain or keep on file immunization records for youth members participating in the organization's activities.

(9) As used in this section, unless the context otherwise requires:

(a) "Employee" means a paid employee of a neighborhood youth organization who is eighteen years of age or older.

(b) "Volunteer" means a person who volunteers his or her assistance to a neighborhood youth organization and who is eighteen years of age or older.

Source: L. 2010: Entire section added, (HB 10-1044), ch. 85, p. 285, § 2, effective April 14. L. 2011: (4) amended, (HB 11-1145), ch. 163, p. 561, § 2, effective August 10. L. 2012: (4) amended, (HB 12-1228), ch. 130, p. 448, § 1, effective April 23.

26-6-104. Licenses - out-of-state notices and consent - demonstration pilot program. (1) (a) Except as otherwise provided in this part 1, no person shall operate any agency or facility defined in this part 1 without first being licensed to operate or maintain such agency or facility by the state department and paying the fee prescribed therefor. Except as otherwise provided in subparagraph (II) of paragraph (b) of this subsection (1) and paragraph (c) of this subsection (1), any such license issued by the state department shall be permanent unless otherwise revoked or suspended pursuant to section 26-6-108.

(b) (I) A person operating a foster care home shall not be required to obtain a license from the state department to operate the foster care home if such person holds a certificate to operate such home from any county department or a child placement agency licensed under the provisions of this part 1. All such certificates shall be considered licenses for the purpose of this part 1, including but not limited to the investigation and criminal history background checks required under section 26-6-107. Each certificate shall be in such form as prescribed and provided by the state department, shall certify that such person and any other adults residing in the home who are acting as care givers are suitable persons to operate a foster care home or provide care for a child, and shall contain such information as the state department requires. A child placement agency issuing or renewing any such certificate shall transmit a copy or report thereof to the state department.

(II) On and after July 1, 2002, and contingent upon the time lines for implementation of the computer "trails" enhancements, the state board shall promulgate rules requiring the annual recertification of foster care homes and setting forth the procedural requirements associated with recertification. Such rules shall include requirements that the certifying entity shall perform on-site visits to each foster care home applying for certification or recertification and shall require inspections of the entire premises of the foster care home, including sleeping areas, as well as other assessments of the foster care home. No foster care home shall be certified at any one time by more than one child placement agency or county department.

(III) A foster care home, when certified by a child placement agency or county department, may receive for care a child from sources other than the certifying child placement agency or county department upon the written consent and approval of the child placement agency or county department as to each such child.

(IV) A facility may be certified as a foster care home and licensed as a family child care home so long as the licensure and certification are provided by two separate licensing entities. The state board shall promulgate rules governing the communication requirements between two entities that license and certify the same facility.

(c) (I) On and after July 1, 2002, and contingent upon the time lines for implementation of the computer "trails" enhancements, child placement agencies that certify foster care homes shall be licensed annually until the implementation of any risk-based schedule for the renewal of child placement agency licenses pursuant to subparagraph (II) of this paragraph (c). The state board shall promulgate rules specifying the procedural requirements associated with the renewal of such child placement agency licenses. Such rules shall include requirements that the state department conduct assessments of the child placement agency.

(II) (A) On and after January 1, 2004, and upon the functionality of the computer "trails" enhancements, the state department may implement a schedule for relicensing of child placement agencies that certify foster care homes that is based on risk factors such that child placement agencies with low risk factors shall renew their licenses less frequently than child placement agencies with higher risk factors.

(B) Prior to January 1, 2004, and contingent upon the time lines for implementation of the computer "trails" enhancements, the state department shall create classifications of child placement agency licenses that certify foster care homes that are based on risk factors as those factors are established by rule of the state board.

(d) (I) Notwithstanding any other provision of this part 1, no person shall operate a foster care home that is certified by a county department if such person is a relative of any employee of the child welfare division or unit of the county department certifying the foster care home. If such person files an application with a county department that would violate the provisions of this subparagraph (I) by certifying the foster care home, the county department shall refer the application to another county department or to a child placement agency. Unless otherwise prohibited, the county department or child placement agency to which the application was referred may certify and supervise a foster care home operated by such person. The county department that referred the application may place children in the county-certified foster care home upon written agreement of the two county departments.

(II) Notwithstanding any other provision of this part 1, no person shall operate a foster care home that is certified by a child placement agency if such person is a relative of any owner, officer, executive, member of the governing board, or employee of the child placement agency certifying the foster care home. If such person files an application with a child placement agency that would violate the provisions of this subparagraph (II) by certifying the foster care home, the child placement agency shall refer the application to a county department or to another child placement agency that would not violate the provisions of this subparagraph (II) by certifying the foster care home.

(III) Notwithstanding any other provision of this part 1, no owner, officer, executive, member of the governing board, or employee of a child placement agency licensed pursuant to this part 1, or any relative of said owner, officer, executive, member, or employee, shall hold a beneficial interest in any property operated, or intended to be operated, as a foster care home, when the property is certified by the child placement agency as a foster care home. The provisions of this subparagraph (III) shall not apply to salaried foster parents.

(IV) Repealed.

(2) No person shall receive or accept a child under eighteen years of age for placement, or place any child either temporarily or permanently in a home, other than with persons related to the child, without first obtaining a license as a child placement agency from the department, and paying the fee prescribed therefor.

(2.5) (Deleted by amendment, L. 96, p. 254, § 5, effective July 1, 1996.)

(3) A provisional license or certificate for a period of six months may be issued once to an applicant for an original license or certificate, permitting the applicant to operate a family child care home, foster care home, or child care center if the applicant is temporarily unable to conform to all standards required under this part 1, upon proof by the applicant that attempts are being made to conform to such standards or to comply with any other requirements. The applicant has the right to appeal any standard that the applicant believes works an undue hardship or has been applied too stringently by the representatives of the department. Upon filing an appeal, the department shall proceed in the manner prescribed for licensee appeals in section 26-6-106 (3).

(4) No license for a child care center, residential child care facility, or secure residential treatment center shall be issued by the department until the facilities to be operated or maintained by the applicant or licensee are approved by the department of public health and environment as conforming to the sanitary standards prescribed by said department under the provisions of section 25-1.5-101 (1) (h), C.R.S., and unless such facilities conform to fire prevention and protection requirements of local fire departments in the locality of the facility or, in lieu thereof, of the division of labor.

(8) A licensed neighborhood youth organization shall not be required to obtain or keep on file immunization records for youth members participating in the organization's activities.

(9) As used in this section, unless the context otherwise requires:

(a) "Employee" means a paid employee of a neighborhood youth organization who is eighteen years of age or older.

(b) "Volunteer" means a person who volunteers his or her assistance to a neighborhood youth organization and who is eighteen years of age or older.

Source: L. 2010: Entire section added, (HB 10-1044), ch. 85, p. 285, § 2, effective April 14. L. 2011: (4) amended, (HB 11-1145), ch. 163, p. 561, § 2, effective August 10. L. 2012: (4) amended, (HB 12-1228), ch. 130, p. 448, § 1, effective April 23.

26-6-104. Licenses - out-of-state notices and consent - demonstration pilot program. (1) (a) Except as otherwise provided in this part 1, no person shall operate any agency or facility defined in this part 1 without first being licensed to operate or maintain such agency or facility by the state department and paying the fee prescribed therefor. Except as otherwise provided in subparagraph (II) of paragraph (b) of this subsection (1) and paragraph (c) of this subsection (1), any such license issued by the state department shall be permanent unless otherwise revoked or suspended pursuant to section 26-6-108.

(b) (I) A person operating a foster care home shall not be required to obtain a license from the state department to operate the foster care home if such person holds a certificate to operate such home from any county department or a child placement agency licensed under the provisions of this part 1. All such certificates shall be considered licenses for the purpose of this part 1, including but not limited to the investigation and criminal history background checks required under section 26-6-107. Each certificate shall be in such form as prescribed and provided by the state department, shall certify that such person and any other adults residing in the home who are acting as care givers are suitable persons to operate a foster care home or provide care for a child, and shall contain such information as the state department requires. A child placement agency issuing or renewing any such certificate shall transmit a copy or report thereof to the state department.

(II) On and after July 1, 2002, and contingent upon the time lines for implementation of the computer "trails" enhancements, the state board shall promulgate rules requiring the annual recertification of foster care homes and setting forth the procedural requirements associated with recertification. Such rules shall include requirements that the certifying entity shall perform on-site visits to each foster care home applying for certification or recertification and shall require inspections of the entire premises of the foster care home, including sleeping areas, as well as other assessments of the foster care home. No foster care home shall be certified at any one time by more than one child placement agency or county department.

(III) A foster care home, when certified by a child placement agency or county department, may receive for care a child from sources other than the certifying child placement agency or county department upon the written consent and approval of the child placement agency or county department as to each such child.

(IV) A facility may be certified as a foster care home and licensed as a family child care home so long as the licensure and certification are provided by two separate licensing entities. The state board shall promulgate rules governing the communication requirements between two entities that license and certify the same facility.

(c) (I) On and after July 1, 2002, and contingent upon the time lines for implementation of the computer "trails" enhancements, child placement agencies that certify foster care homes shall be licensed annually until the implementation of any risk-based schedule for the renewal of child placement agency licenses pursuant to subparagraph (II) of this paragraph (c). The state board shall promulgate rules specifying the procedural requirements associated with the renewal of such child placement agency licenses. Such rules shall include requirements that the state department conduct assessments of the child placement agency.

(II) (A) On and after January 1, 2004, and upon the functionality of the computer "trails" enhancements, the state department may implement a schedule for relicensing of child placement agencies that certify foster care homes that is based on risk factors such that child placement agencies with low risk factors shall renew their licenses less frequently than child placement agencies with higher risk factors.

(B) Prior to January 1, 2004, and contingent upon the time lines for implementation of the computer "trails" enhancements, the state department shall create classifications of child placement agency licenses that certify foster care homes that are based on risk factors as those factors are established by rule of the state board.

(d) (I) Notwithstanding any other provision of this part 1, no person shall operate a foster care home that is certified by a county department if such person is a relative of any employee of the child welfare division or unit of the county department certifying the foster care home. If such person files an application with a county department that would violate the provisions of this subparagraph (I) by certifying the foster care home, the county department shall refer the application to another county department or to a child placement agency. Unless otherwise prohibited, the county department or child placement agency to which the application was referred may certify and supervise a foster care home operated by such person. The county department that referred the application may place children in the county-certified foster care home upon written agreement of the two county departments.

(II) Notwithstanding any other provision of this part 1, no person shall operate a foster care home that is certified by a child placement agency if such person is a relative of any owner, officer, executive, member of the governing board, or employee of the child placement agency certifying the foster care home. If such person files an application with a child placement agency that would violate the provisions of this subparagraph (II) by certifying the foster care home, the child placement agency shall refer the application to a county department or to another child placement agency that would not violate the provisions of this subparagraph (II) by certifying the foster care home.

(III) Notwithstanding any other provision of this part 1, no owner, officer, executive, member of the governing board, or employee of a child placement agency licensed pursuant to this part 1, or any relative of said owner, officer, executive, member, or employee, shall hold a beneficial interest in any property operated, or intended to be operated, as a foster care home, when the property is certified by the child placement agency as a foster care home. The provisions of this subparagraph (III) shall not apply to salaried foster parents.

(IV) Repealed.

(2) No person shall receive or accept a child under eighteen years of age for placement, or place any child either temporarily or permanently in a home, other than with persons related to the child, without first obtaining a license as a child placement agency from the department, and paying the fee prescribed therefor.

(2.5) (Deleted by amendment, L. 96, p. 254, § 5, effective July 1, 1996.)

(3) A provisional license or certificate for a period of six months may be issued once to an applicant for an original license or certificate, permitting the applicant to operate a family child care home, foster care home, or child care center if the applicant is temporarily unable to conform to all standards required under this part 1, upon proof by the applicant that attempts are being made to conform to such standards or to comply with any other requirements. The applicant has the right to appeal any standard that the applicant believes works an undue hardship or has been applied too stringently by the representatives of the department. Upon filing an appeal, the department shall proceed in the manner prescribed for licensee appeals in section 26-6-106 (3).

(4) No license for a child care center, residential child care facility, or secure residential treatment center shall be issued by the department until the facilities to be operated or maintained by the applicant or licensee are approved by the department of public health and environment as conforming to the sanitary standards prescribed by said department under the provisions of section 25-1.5-101 (1) (h), C.R.S., and unless such facilities conform to fire prevention and protection requirements of local fire departments in the locality of the facility or, in lieu thereof, of the division of labor.

(5) No person shall send or bring into this state any child for the purposes of foster care or adoption without sending notice of the pending placement and receiving the consent of the department or its designated agent to the placement. The notice shall contain:

- (a) The name and the date and place of birth of the child;
- (b) The identity and address or addresses of the parents or legal guardian;
- (c) The identity and address of the person sending or bringing the child;
- (d) The name and address of the person to or with which the sending person proposes to send, bring, or place the child;
- (e) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(6) The state board of human services shall establish rules and regulations for the approval of foster care homes and child care centers that provide twenty-four-hour care of children between eighteen and twenty-one years of age for whom the county department is financially responsible and when placed in foster care by the county department.

(6.5) On and after July 1, 2005, and subject to designation as a qualified accrediting entity as required by the "Intercountry Adoption Act of 2000", 42 U.S.C. sec. 14901 et seq., the state department may license and accredit a child placement agency for purposes of providing adoption services for convention adoptions pursuant to the "Intercountry Adoption Act of 2000", 42 U.S.C. sec. 14901 et seq. The state board of human services may adopt rules consistent with federal law governing the procedures for adverse actions regarding accreditation, which procedures may vary from the procedures set forth in the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(7) (a) (I) The state department, a county department, or a child placement agency licensed under the provisions of this part 1 shall not issue a license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential treatment center, or a child placement agency, and any license or certificate issued prior to August 7, 2006, shall be revoked or suspended, if the applicant for the license or certificate, an affiliate of the applicant, a person employed by the applicant, or a person who resides with the applicant at the facility has been convicted of:

- (A) Child abuse, as specified in section 18-6-401, C.R.S.;
- (B) A crime of violence, as defined in section 18-1.3-406, C.R.S.;
- (C) Any felony offenses involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(D) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(D.5) Any felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate;

(E) A pattern of misdemeanor convictions, as defined by rule of the state board, within the ten years immediately preceding the date of submission of the application;

(F) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in sub-subparagraphs (A) to (E) of this subparagraph (I).

(II) For purposes of this paragraph (a), "convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(b) The convictions identified in paragraph (a) of this subsection (7) shall be determined according to the records of the Colorado bureau of investigation, the ICON system at the state judicial department, or any other source, as set forth in section 26-6-107 (1) (a) (I.5). A certified copy of the judgment of a court of competent jurisdiction of such conviction, deferred judgment and sentence agreement, deferred prosecution agreement, or deferred adjudication agreement shall be prima facie evidence of such conviction or agreement. No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued if the state department has a certified court order from another state indicating that the person applying for such a license or certificate has been convicted of child abuse or any unlawful sexual offense against a child under a law of

any other state or the United States or the state department has a certified court order from another state that the person applying for the license or certificate has entered into a deferred judgment or deferred prosecution agreement in another state as to child abuse or any sexual offense against a child.

(7.5) No later than January 1, 2004, the state board shall promulgate rules that require all current and prospective employees of a county department who in their position have direct contact with any child in the process of being placed, or who has been placed, in foster care to submit a set of fingerprints for purposes of obtaining a fingerprint-based criminal history record check, unless the person has already submitted a set of fingerprints. The check shall be conducted in the same manner as provided in subsection (7) of this section and in section 26-6-107 (1) (a). The person's employment shall be conditional upon a satisfactory criminal background check and subject to the same grounds for denial or dismissal as set forth in subsection (7) of this section and in section 26-6-107 (1) (a). The costs for the fingerprint-based criminal history record check shall be borne by the applicant.

(8) The state department, a county department, or a child placement agency licensed under the provisions of this part 1 shall not issue a license or certificate to operate any agency or facility defined in this part 1 if the person applying for such license or certificate or an affiliate of the applicant, a person employed by the applicant, or a person who resides with the applicant at the facility:

(a) Has been determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the applicant is incapable of operating a family child care home, foster care home, child care center, or child placement agency, the record of such determination and entry of such order being conclusive evidence thereof.

(b) (Deleted by amendment, L. 2006, p. 725, § 3, effective August 7, 2006.)

(9) The state department is strongly encouraged to examine and report to the general assembly on the benefits of licensing any private, nonprofit child placement agency that is dedicated to serving the special needs of foster care children through services delivered by specialized foster care parents in conjunction with and supported by staff of the child placement agency. Such child placement agencies examined shall be able to:

(a) Offer the following services:

- (I) Provision of educated, skilled, and experienced foster care parents;
- (II) Social work support for the foster care child and foster care family;
- (III) Twenty-four-hour, on-call availability;
- (IV) Monthly foster care parent support group meetings;
- (V) On-going educational and networking opportunities for any foster care family;
- (VI) Individualized treatment plans developed through team collaboration;
- (VII) Professional and family networking opportunities; and
- (VIII) Respite support and reimbursement;

(b) Provide a form of specialized foster care including, but not limited to, the following types of care:

- (I) (Deleted by amendment, L. 2003, p. 1874, § 3, effective May 22, 2003.)
- (II) Medical foster care;
- (III) Respite foster care;
- (IV) (Deleted by amendment, L. 2003, p. 1874, § 3, effective May 22, 2003.)
- (V) Therapeutic foster care;
- (VI) Developmentally disabled foster care; and
- (VII) Treatment foster care.

Source: L. 67: p. 1041, § 3. C.R.S. 1963: § 119-8-4. L. 69: p. 994, § 4. L. 72: p. 617, § 148. L. 75: (4) amended, p. 217, § 54, effective July 16. L. 77: (5) added, p. 1006, § 7, effective May 16; (1) amended and (6) added, p. 1359, § 1, effective June 1. L. 83: (7) added, p. 1133, § 1, effective May 31. L. 86: (7) amended, p. 1001, § 2, effective May 28. L. 90: (1), (3), and (4) amended and (2.5) added, p. 1396, § 8, effective May 24. L. 94: (4) amended, p. 2796, § 547, effective July 1; (3) amended, p. 1045, § 4, effective January

1, 1995. **L. 96:** (1), (2.5), (3), and (7) amended, p. 806, § 5, effective May 23; (1) to (4), (6), and (7) amended, p. 254, § 5, effective July 1. **L. 99:** (1) and (7) amended, p. 1198, § 2, effective June 2. **L. 2000:** (1) amended, p. 38, § 4, effective May 14. **L. 2001:** (7)(b) amended, p. 614, § 7, effective May 30; (1) and (7) amended and (8) added, p. 743, § 11, effective June 1; (7) amended and (9) added, p. 754, § 4, effective June 1. **L. 2002:** (1)(a) amended, p. 411, § 5, effective July 1; (7)(a)(I)(C) amended, p. 1190, § 34, effective July 1; (7)(a)(I)(B) amended, p. 1540, § 277, effective October 1. **L. 2003:** (1)(b)(II), (7)(a)(I)(A), (7)(a)(I)(E), (7)(b), and (9)(b) amended and (7.5) added, p. 1874, § 3, effective May 22; (4) amended, p. 713, § 50, effective July 1; (1)(d) added, p. 854, § 2, effective August 6. **L. 2004:** IP(7)(a)(I) amended, p. 543, § 3, effective August 4. **L. 2005:** (6.5) added, p. 969, § 2, effective June 2. **L. 2006:** (9)(b) amended, p. 520, § 2, effective April 18; (1)(b)(I), (3), (7)(a)(I), and (8) amended and (1)(b)(IV) added, p. 725, § 3, effective August 7; (1)(d)(III) amended and (1)(d)(IV) added, p. 284, § 2, effective August 7; IP(7)(a)(I) amended, p. 1517, § 86, effective August 7. **L. 2010:** (8)(a) amended, (SB 10-175), ch. 188, p. 804, § 76, effective April 29.

Editor's note: (1) Amendments to subsections (1), (2.5), (3), and (7) by House Bill 96-1006 and House Bill 96-1180 were harmonized. Amendments to subsection (7) by Senate Bill 01-012, Senate Bill 01-014, and Senate Bill 01-032 were harmonized.

(2) Subsection (9) was originally numbered as (8) in Senate Bill 01-014 but has been renumbered on revision for ease of location.

(3) Subsection (1)(d)(IV)(B) provided for the repeal of subsection (1)(d)(IV), effective July 1, 2009. (See L. 2006, p. 284.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994; for the legislative declaration contained in the 2002 act amending subsection (7)(a)(I)(B), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958). For article, "Adoption Proce-

dures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

26-6-104.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure. (1) The department shall require any child care facility seeking licensure pursuant to section 26-6-104 to comply with any applicable zoning regulations of the municipality, city and county, or county where the facility is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a facility.

(2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where a child care facility is situated, including the address of the facility and the population and number of persons to be served by the facility, when any of the following occurs:

(a) A person applies for a license to operate a child care facility pursuant to section 26-6-104;

(b) A license is granted to operate a child care facility pursuant to section 26-6-104; or

(c) A change is made in the license of a residential child care facility, specialized group facility, homeless youth shelter, or secure residential treatment center.

(d) (Deleted by amendment, L. 2006, p. 727, § 4, effective August 7, 2006.)

(3) Notwithstanding any other provision of law, in the event of a zoning or other delay or dispute between a child care facility and the municipality, city and county, or county where the facility is situated, the department may grant a provisional license to the facility for up to six months pending resolution of the delay or dispute.

(4) The provisions of this section shall not apply to any foster care home certified pursuant to this part 1 or to any specialized group facility that is licensed to provide care

for three or more children pursuant to this part 1 but that is providing care for three or fewer children who are determined to have a developmental disability by a community centered board or who have a serious emotional disturbance.

Source: L. 2000: Entire section added, p. 1517, § 4, effective June 1. **L. 2006:** (4) amended, p. 520, § 3, effective April 18; (2) and (3) amended, p. 727, § 4, effective August 7.

Cross references: For the legislative declaration contained in the 2000 act enacting this section, see section 1 of chapter 319, Session Laws of Colorado 2000.

26-6-105. Fees - when original applications, reapplications, and renewals for licensure are required - creation of child care licensing cash fund. (1) (a) The state department is hereby authorized to establish, pursuant to rules promulgated by the state board, permanent, time-limited, and provisional license fees and fees for continuation or renewal, whichever is applicable, of a license for the following types of child care arrangements:

(I) Family child care homes, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), but excluding homes certified by county departments or child placement agencies;

(II) Child care centers;

(III) Secure residential treatment centers;

(IV) Residential child care facilities;

(V) Child placement agencies;

(VI) Repealed.

(VII) Homeless youth shelters;

(VIII) Day treatment centers;

(IX) Specialized group facilities; and

(X) Children's resident camps.

(b) The state department may also establish fees pursuant to rules promulgated by the state board of human services for the following situations:

(I) Issuance of a duplicate license;

(II) Change of license due to an increase in licensing capacity or a change in the age of children served;

(III) Obtaining the criminal record of an applicant and any person living with or employed by the applicant, which may include costs associated with the taking of fingerprints;

(IV) Checking the records and reports of child abuse or neglect maintained by the state department for an owner, employee, or resident of a facility or agency or an applicant for a license to operate a facility or agency;

(V) Filing of appeals;

(VI) Duplication of licensing records for the public;

(VII) Duplication of licensing records in electronic format for the public;

(VIII) Accrediting a child placement agency for purposes of providing adoption services for convention adoptions pursuant to the "Intercountry Adoption Act of 2000", 42 U.S.C. sec. 14901 et seq.;

(IX) Insufficient funds payment and collection of overdue fees and fines; and

(X) Collection of fees for scanning of adoption records pursuant to section 19-5-307, C.R.S.

(c) The fees established pursuant to this subsection (1) shall not exceed the direct and indirect costs incurred by the department. The division involved in licensing child care facilities shall develop and implement an objective and systematic approach for setting, monitoring, and revising child care licensing fees by developing and using an ongoing method to track all direct and indirect costs associated with child care inspection licensing, developing a methodology to assess the relationship between licensing costs and fees, and annually reassessing costs and fees and reporting the results to the state board. In

developing a fee schedule, the department should consider the licensed capacity of facilities and the time needed to license facilities.

(2) (a) The fees specified in subsection (1) of this section shall be paid when application is made for any license or when renewal of a child placement agency license is sought and shall not be subject to refund. Applications for licenses shall be required in the situations that are set forth in paragraph (b) of this subsection (2) and shall be made on forms prescribed by the state department. Each completed application shall set forth such information as required by the state department. All licenses shall continue in force until revoked, surrendered, or expired.

(b) (I) An original application and fee shall be required:

(A) When an individual, partnership, corporation, or association plans to open a child care center, children's resident camp, secure residential treatment center, residential child care facility, homeless youth shelter, day treatment center, specialized group facility, or child placement agency;

(B) When the child care center, children's resident camp, secure residential treatment center, residential child care facility, homeless youth shelter, day treatment center, or specialized group facility plans to move the center or facility to a different building at a different location;

(C) When the management or governing body of a child care center, children's resident camp, secure residential treatment center, residential child care facility, homeless youth shelter, day treatment center, specialized group facility, or child placement agency is acquired by a different individual, association, partnership, or corporation or a change occurs in the operating entity resulting in a new federal employee identification number;

(D) When a family or person plans to open a family child care home, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), or foster care home;

(E) When a family or person who operates a family child care home, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), or foster care home moves to a new residence.

(II) A reapplication and fee shall be required and received by the state department in the manner specified in rules promulgated by the state board. An individual, partnership, corporation, or association seeking to renew a child placement agency license shall submit a reapplication and fee to the state department as specified in rules promulgated by the state board.

(3) Nothing in this section shall prevent any city or city and county from imposing additional fees to those specified under this section.

(4) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the child care licensing cash fund, which is hereby created. The general assembly shall make annual appropriations from the child care licensing cash fund for expenditures incurred by the department in the performance of its duties under this part 1. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

Source: **L. 67:** p. 1041, § 3. **C.R.S. 1963:** § 119-8-5. **L. 69:** p. 994, § 5. **L. 77:** (1) and (2) amended, p. 1360, § 2, effective June 1. **L. 83:** (2) amended, p. 1131, § 2, effective May 25. **L. 89:** (1)(d) added, p. 1220, § 2, effective May 26. **L. 90:** (1) R&RE, (2) and (3) amended, and (4) added, p. 1389, §§ 3, 4, effective May 4; (1)(a), (2)(b)(I)(A), and (2)(b)(I)(B) amended, p. 1397, §§ 9, 10, effective May 24; (1)(a)(VI)(B) added by revision, pp. 1397, 1400, §§ 9, 15. **L. 94:** IP(1)(a), (2)(a), and (2)(b)(II) amended, p. 1045, § 5, effective January 1, 1995. **L. 96:** (4) amended, p. 808, § 6, effective May 23; IP(1)(a), (1)(a)(I), (1)(b), (1)(c), and (2)(b) amended, p. 256, § 6, effective July 1. **L. 99:** (4) amended, p. 1200, § 3, effective June 2. **L. 2000:** (1)(a)(I), (2)(b)(I)(D), and (2)(b)(I)(E) amended and (1)(a)(VII), (1)(a)(VIII) and (1)(a)(IX) added, p. 38, § 5, effective May 14. **L. 2001:** IP(1)(a), (2)(a), and (2)(b)(II) amended, p. 746, § 12, effective June 1. **L. 2003:**

IP(1)(b) and (1)(b)(IV) amended, p. 1410, § 18, effective January 1, 2004. **L. 2005:** (1)(b)(VIII) added, p. 970, § 3, effective June 2. **L. 2006:** (1)(a), (1)(b), (2)(a), and (2)(b)(I) amended, p. 728, § 5, effective August 7.

Editor's note: Subsection (1)(a)(VI)(B) provided for the repeal of subsection (1)(a)(VI), effective July 1, 1995. (See L. 90, pp. 1397, 1400.)

Cross references: For the legislative declaration and report to the general assembly contained in the 1990 act amending subsections (1) to (3) and enacting subsection (4), see sections 1 and 9 of chapter 219, Session Laws of Colorado 1990. For the legislative declaration contained in the 2003 act amending the introductory portion to subsection (1)(b) and amending subsection (1)(b)(IV), see section 1 of chapter 196, Session Laws of Colorado 2003.

26-6-105.5. Application forms - criminal sanctions for perjury. (1) (a) (I) All applications for the licensure of a child care facility or the certification of a foster care home pursuant to this part 1 shall include the notice to the applicant that is set forth in paragraph (b) of this subsection (1).

(II) Every application used in the state of Colorado for employment with a child care provider or facility shall include the notice to the applicant that is set forth in paragraph (b) of this subsection (1).

(b) Each application described in paragraph (a) of this subsection (1) shall contain the following notice to the applicant:

Any applicant who knowingly or willfully makes a false statement of any material fact or thing in this application is guilty of perjury in the second degree as defined in section 18-8-503, Colorado Revised Statutes, and, upon conviction thereof, shall be punished accordingly.

(2) Any person applying for the licensure of a child care facility or the certification of a foster care home pursuant to this part 1 or any person applying to work at such a facility as an employee who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury in the second degree as defined in section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly.

(3) Every application for certification or licensure as a foster care home shall provide notice to the applicant that the applicant may be subject to immediate revocation of certification or licensure or other negative licensing action as set forth in this section, section 26-6-107.7, and as described by rule of the state board.

Source: **L. 99:** Entire section added, p. 1200, § 4, effective June 2. **L. 2001:** (3) added, p. 747, § 13, effective June 1; (3) added, p. 756, § 5, effective June 1.

26-6-105.7. Applications - materials waivers - appeals - rules. (1) A child care center that is subject to the licensing requirements of this part 1 is also subject to the provisions of this section.

(2) (a) The department shall make available to licensed child care centers and include with every application form for licensure information concerning the manner in which a child care center may apply for a waiver to use certain materials in its program and curriculum. The waiver request shall be included in a center's application for licensure or, in the case of a licensed child care center, may be submitted at any time.

(b) A child care center seeking a waiver for the use of certain materials shall adopt a policy that:

(I) Ensures that instructors in the child care center are trained in the use of the materials in a way that provides reasonable safety provisions for use by children; and

(II) Requires parental notification of the use of the materials in the child care center and the potential safety risks associated with the materials. The policy shall require the child care center to obtain signed parental consent forms acknowledging awareness of the risks in using the materials in the child care center.

(3) If a licensed child care center receives notice of a violation pursuant to this part 1, information concerning the waiver and appeal process described in this section shall be included in the notification to the child care center.

(4) The state board shall promulgate rules for the implementation of this section, including:

(a) The requirements for the granting of a waiver request, which requirements shall include that the department make a decision on the waiver request and notify the child care center of its decision no later than sixty calendar days after receipt of the request;

(b) The requirements for the denial of a waiver request, which requirements shall include that the department make a decision on the waiver request and notify the child care center of its decision no later than sixty calendar days after receipt of the request;

(c) The process by which a child care center may appeal a denial of a waiver request, which process shall include, but need not be limited to:

(I) That upon the receipt of a denial of a waiver request, a child care center has up to forty-five calendar days to appeal the denial decision to the department;

(II) That the department shall act upon the appeal within forty-five calendar days;

(III) That the department shall provide notice of its decision on the appeal within ten calendar days after its decision to the appealing child care center; and

(IV) That the appealing child care center has the right to meet in person with department personnel concerning the appeal, but that the entire appeals process shall last no more than one hundred calendar days after the date of the notice of denial of the waiver request.

(5) Whenever practicable, the department shall use the same inspector for:

(a) Multiple visits to a single child care center seeking a waiver pursuant to this section; or

(b) Multiple visits to two or more individually licensed child care centers that are wholly owned, operated, and controlled by a common ownership group.

(6) The department shall not post a denial of a waiver made pursuant to this section on its web site until the appeal is final.

Source: L. 2012: Entire section added, (HB 12-1276), ch. 185, p. 700, § 1, effective May 18.

26-6-106. Standards for facilities and agencies - rules. (1) (a) The department shall prescribe and publish standards for licensing. Such standards shall be applicable to the various types of facilities and agencies for child care regulated and licensed by this part 1; except that the department shall prescribe and publish separate standards for the licensing of child placement agencies operating for the purpose of adoptive placement and adoption-related services. The department shall seek the advice and assistance of persons representative of the various types of child care facilities and agencies in establishing such standards. Such standards shall be established by rules promulgated by the state board of human services and shall be issued and published only in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., and shall become effective only as provided in said article.

(b) (Deleted by amendment, L. 96, p. 258, § 7, effective July 1, 1996.)

(2) Standards prescribed by such rules shall be restricted to:

(a) The operation and conduct of the facility or agency and the responsibility it assumes for child care;

(b) The character, suitability, and qualifications of the applicant for a license and of other persons directly responsible for the care and welfare of children served, including whether an affiliate of the licensee has ever been the subject of a negative licensing action;

(c) The general financial ability and competence of the applicant for a license to provide necessary care for children and to maintain prescribed standards;

(d) The number of individuals or staff required to insure adequate supervision and care of children served;

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire protection and prevention and health standards in

conformance with state laws and municipal ordinances, to provide for the physical comfort, care, well-being, and safety of children served;

- (f) Keeping of records for food, clothing, equipment, and individual supplies;
- (g) Provisions to safeguard the legal rights of children served;
- (h) Maintenance of records pertaining to the admission, progress, health, and discharge of children;
- (i) Filing of reports with the department;
- (j) Discipline of children;
- (k) Standards for the short-term confinement of a child in defined emergency situations.

An emergency situation means any situation where the child is determined to be a danger to himself or others and to be beyond control, all other reasonable means to calm the child have failed, and the child's welfare or the welfare of those around the child demand that the child be confined for a period not to exceed two hours. Standards for such short-term confinement shall include:

- (I) Definition of emergency purposes for the short-term confinement in accordance with this paragraph (k);
- (II) Duration and frequency of the confinement;
- (III) Facility staff requirements;
- (IV) Criteria for the short-term placement of a child in the short-term confinement room;
- (V) Documentation and review of the confinement;
- (VI) Review and biannual inspection by the department of the short-term confinement facility;
- (VII) Physical requirements for the short-term confinement room;
- (VIII) Certification or approval from the department prior to the establishment of the short-term confinement room;
- (IX) A neutral fact finder to determine if the child's situation merits short-term confinement;
- (X) At a minimum, a fifteen minute checking and review by staff of a child placed in short-term confinement;
- (XI) Review by staff of any confinement subsequent to each period of such confinement;
- (XII) Daily review of the use of the short-term confinement rooms; and
- (XIII) Revocation or suspension of licensure for failure to comply with the standards set forth in this paragraph (k).

(l) Standards for security in secure residential treatment centers and residential child care facilities provided through the physical environment and staffing. Such standards shall include, but not be limited to, the following:

- (I) Locked doors;
- (II) Fencing;
- (III) The staff requirements to ensure security;
- (IV) Inspections;
- (V) Physical requirements for program space and for secure sleeping of the residents in the secure residential treatment center or residential child care facility;
- (VI) Other security considerations that are necessary to protect the residents of the secure residential treatment center or residential child care facility or the public.

(m) Standards for the appropriateness, safety, and adequacy of transportation services of children to and from child care centers;

(n) Provisions that ensure that verification in accordance with part 9 of article 4 of title 25, C.R.S., is undertaken by family child care homes, foster care homes, and child care centers ensuring that each child has received appropriate immunizations against contagious diseases as follows:

- (I) Children up to twenty-four months of age shall be required to be immunized in accordance with the "Infant Immunization Act", part 17 of article 4 of title 25, C.R.S.;
- (II) Children over twenty-four months of age shall be required to be immunized in accordance with part 9 of article 4 of title 25, C.R.S.;
- (o) Standards for adoption agencies that may include but need not be limited to:

(I) Specific criteria and minimum credentials, qualifications, training, and education of staff necessary for each of the types of adoption for which an applicant may seek to be licensed, including but not limited to:

- (A) Traditional adoptions with adopting parents who are unknown;
- (B) Family adoptions, including stepparent and grandparent adoptions;
- (C) Interstate adoptions;
- (D) International adoptions;
- (E) Identified or designated adoptions; and
- (F) Special needs adoptions;

(II) The continuing education requirements necessary to maintain the adoption agency's license, taking into account the type and specialty of such agency's license;

(III) The operation and conduct of the agency and the responsibility it assumes in adoption cases;

(IV) The character, suitability, and qualifications of the applicant for a license and for all direct service staff employed or contracted with by the agency;

(V) The general financial ability and competence of the applicant for license, either original or renewal, to provide necessary services for the adoption of children and to maintain prescribed standards;

(VI) Proper maintenance of records; and

(VII) Provisions to safeguard the legal rights of children served;

(p) Rules governing different types of family child care homes, as that term is defined in section 26-6-102 (4), as well as any other types of family child care homes that may by necessity be established by rule of the state board;

(q) (I) Standards for the training of foster care parents, which shall include, at a minimum:

(A) Twenty-seven hours of initial training, consisting of at least twelve hours of training prior to the placement of a child and completion of the remaining training within three months after such placement;

(B) Twenty hours per year of continuing training for foster care parents;

(C) In addition to the hours described in sub-subparagraph (B) of this subparagraph (I), twelve hours per year for foster care parents providing therapeutic foster care; and

(D) Training concerning individualized education programs as defined in section 22-20-103 (15), C.R.S. The departments of human services and education shall ensure coordination between local county departments of human or social services and local school districts or administrative units to make such training available upon the request of a foster parent.

(II) The training described in subparagraph (I) of this paragraph (q) may include, but shall not be limited to, in-home training.

(III) The department shall consult with county departments and child placement agencies in prescribing such standards in order to insure a more uniform application throughout the state.

(IV) The hours of training prior to the placement of a child that is described in sub-subparagraph (A) of subparagraph (I) of this paragraph (q) may be completed within four months after such placement if such placement was an emergency placement, as such term shall be defined by rule of the state board.

(r) Initial and ongoing training of providers of foster care services in facilities licensed and certified pursuant to this part 1, including orientation and prelicensing training for child placement agency staff;

(s) Standards for the training of providers of cradle care home services that shall be substantially similar to the training required of adoptive parents prior to adopting an infant, including ongoing training hours appropriate to the services provided.

(3) Any applicant or person licensed to operate a child care facility or agency under the provisions of this part 1 has the right to appeal any standard that, in his or her opinion, works an undue hardship or when, in his or her opinion, a standard has been too stringently applied by representatives of the department. The department shall designate a panel of persons representing various state and local governmental agencies with an interest in and concern for children to hear such appeal and to make recommendations to the department.

The membership of the appeals review panel shall include, but need not be limited to, a representative from child care providers, a representative from a local early childhood council or local child care resource and referral agency, a state-level early childhood representative with early care and education expertise, and a parent representative. All members to the appeals review panel shall be appointed by the executive director or his or her designee and shall serve terms of no more than three years. Representatives to the appeals review panel may serve successive terms.

(4) The state board may promulgate rules to regulate the operation of out-of-home placement provider consortia. The regulation shall not include licensure of out-of-home placement provider consortia.

(5) The state board shall promulgate rules to define the requirements for licensure for a licensed host family home serving homeless youth pursuant to the "Homeless Youth Act", article 5.7 of this title.

(6) (a) A county director of social services, or his or her designee, may approve, at his or her discretion, a waiver of non-safety licensing standards for kinship foster care. A waiver may only be approved if:

(I) It concerns non-safety licensing standards, as set forth by rule of the state board pursuant to paragraph (d) of this subsection (6);

(II) The safety and well-being of the child or children receiving care is not compromised; and

(III) The waiver request is in writing.

(b) In addition to an approved waiver of non-safety licensing standards, a county director of social services, or his or her designee, may limit or restrict a license issued to a kinship foster care entity or require that entity to enter into a compliance agreement to ensure the safety and well-being of the child or children in that entity's care.

(c) A kinship foster care entity may not appeal a denial of a waiver requested pursuant to paragraph (a) of this subsection (6).

(d) The state board shall promulgate rules concerning the waiver of non-safety licensing standards for kinship foster care. The rules shall include, but need not be limited to, a listing of non-safety licensing standards that may not be waived and circumstances in which waivers do not apply. The state board shall also define by rule the meaning of "kinship foster care" for the purposes of this subsection (6).

Source: L. 67: p. 1042, § 3. C.R.S. 1963: § 119-8-6. L. 81: (2)(k) added, p. 1034, § 11, effective July 1. L. 89: (1) amended and (2)(l) added, pp. 1220, 1221, §§ 3, 4, effective May 26. L. 90: (1) amended and (2)(m) added, pp. 1398, 1399, §§ 11, 12, effective May 24. L. 94: (3) amended, p. 2705, § 269, effective July 1; (2)(n) added and (3) amended, p. 1046, §§ 6, 7, effective January 1, 1995. L. 96: (1)(a) and (3) amended, p. 808, § 7, effective May 23; (1), (2)(b), (2)(c), IP(2)(l), (2)(l)(V), (2)(l)(VI), and IP(2)(n) amended and (2)(o) added, p. 258, § 7, effective July 1. L. 99: (2)(b) amended, p. 1035, § 2, effective May 29. L. 2000: (2)(p) added, p. 39, § 6, effective May 14. L. 2001: (2)(q) and (2)(r) added, p. 740, § 4, effective June 1. L. 2003: (4) added, p. 558, § 2, effective March 7; (2)(q)(I)(C) amended, p. 1877, § 6, effective May 22. L. 2006: (2)(s) added, p. 729, § 6, effective August 7. L. 2009: (2)(q)(I)(C) amended and (2)(q)(I)(D) added, (HB 09-1078), ch. 28, p. 119, § 1, effective August 5. L. 2011: (5) added, (HB 11-1079), ch. 83, p. 226, § 7, effective August 10. L. 2012: (3) amended, (HB 12-1276), ch. 185, p. 702, § 2, effective May 18; (6) added, (HB 12-1047), ch. 42, p. 145, § 1, effective August 8.

Editor's note: Amendments to subsection (3) by Senate Bill 94-107 and House Bill 94-1029 were harmonized. Amendments to subsection (1) by House Bill 96-1006 and House Bill 96-1180 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

county departments to which the applicant had previously applied, to obtain information about the application and any certification given by such child placement agencies and county departments. A child placement agency or county department from whom the certification is sought shall conduct a reference check of the applicant and any adult resident of the foster care home who is acting as a care giver by contacting all of the child placement agencies and county departments identified by the applicant before issuing the certification for that foster care home. Child placement agencies and county departments shall be held harmless for information released, in good faith, to other child placement agencies or county departments.

(a.7) For all family foster care or kinship care applicants, regardless of reimbursement, the county department or child placement agency shall require each adult who is eighteen years of age or older and who resides in the home to obtain a fingerprint-based criminal history records check through the Colorado bureau of investigation and the federal bureau of investigation. In addition to the fingerprint-based criminal history records check, the county department or child placement agency shall contact the appropriate entity in each state in which the applicant or any adult residing in the home has resided within the preceding five years to determine whether the adult has been found to be responsible in a confirmed report of child abuse or neglect. The screening request in Colorado shall be made pursuant to section 19-1-307 (2) (k.5), C.R.S., rules promulgated by the state board pursuant to section 19-3-313.5, C.R.S., and 42 U.S.C. 671 (a) (20). An investigation pursuant to this paragraph (a.7) shall be conducted for any new resident adult whenever the adult is added to the family foster care home or kinship care home. Information obtained from any state records of abuse or neglect shall not be used for any purpose other than conducting the investigation for placement or certification.

(b) (I) When the state department, county department, or child placement agency is able to certify that the applicant or licensee is competent and will operate adequate facilities to care for children under the requirements of this part 1 and that standards are being met and will be complied with, it shall issue the license for which applied. The state department shall inspect or cause to be inspected the facilities to be operated by an applicant for an original license before the license is granted and shall thereafter inspect or cause to be inspected the facilities of all licensees that, during the period of licensure, have been found to be the subject of complaints or to be out of compliance with the standards set forth in section 26-6-106 and the rules of the state department or that otherwise appear to be placing children at risk. The state department may make such other inspections as it deems necessary to ensure that the requirements of this article are being met and that the health, safety, and welfare of the children being placed are protected. If, as a result of an inspection of a certified foster care home, the state department determines that any child residing in such foster care home is subject to an immediate and direct threat to his or her safety and welfare as defined by rules promulgated by the state board or that a substantial violation of a fundamental standard of care warrants immediate action, the state department may require a county department to immediately remove such child from the foster care home.

(II) The state board shall adopt rules concerning the on-site public availability of the most recent inspection report results of child care center facilities and family child care home facilities, when requested. The state board shall also adopt rules concerning a requirement that all facilities licensed under this part 1 post their licenses and information regarding the procedures for filing a complaint under this part 1 directly with the state department, which rules shall require that each such facility display its license and complaint procedures in a prominent and conspicuous location at all times during operational hours of the facility; except that such rules shall not require foster care homes to post their licenses and such rules shall not require foster care homes and child placement agencies to post information regarding the procedures for filing a complaint under this part 1 directly with the state department. The state board shall adopt rules requiring foster care homes to make their licenses available to their patrons for inspection, upon request, and requiring foster care homes and child placement agencies to make the information concerning the filing of complaints available to their patrons for inspection, upon request.

(III) If, as a result of an inspection of a licensed child care center facility or family child care home facility, the state department determines that there were no serious violations of

any of the standards prescribed and published by the state department or any of the provisions of this part 1, within twenty days after completing the inspection the state department shall send a written notice to such facility indicating such fact. Within ten days after receipt of such written notice, the licensee shall provide a copy of the written notice to the parents and legal guardians of the children cared for at the child care center facility or family child care home facility.

(1.5) Repealed.

(2) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), the state department may authorize or contract with any county department, the county department of health, or any other publicly or privately operated organization that has a declared interest in children and experience working with children or on behalf of children to investigate and inspect the facilities applying for an original or renewal license or applying for a permanent license following the issuance of a probationary or provisional license under this part 1 and may accept reports on such investigations and inspections from such agencies or organizations as a basis for such licensing. When contracting for investigations and inspections, the state department shall assure that the contractor is qualified by training and experience and has no conflict of interest with respect to the facilities to be inspected.

(II) The state department shall not authorize or contract with any county department, the county department of health, or any other publicly or privately operated organization that has a declared interest in children and experience working with children or on behalf of children for investigations and inspections described in subparagraph (I) of this paragraph (a) of any facilities that provide twenty-four-hour care and are licensed pursuant to this part 1.

(b) A city, county, or city and county may impose and enforce higher standards and requirements for facilities licensed under this part 1 than the standards and requirements specified under this part 1.

(3) Every facility licensed under this part 1 shall keep and maintain such records as the department may prescribe pertaining to the admission, progress, health, and discharge of children under the care of the facility, and shall report relative thereto to the department whenever called for, upon forms prescribed by the department. All records regarding children and all facts learned about children and their relatives shall be kept confidential both by the facility and the department.

(4) Within available appropriations, the state department shall monitor, on at least a quarterly basis, the county department certification of foster care homes.

Source: L. 67: p. 1043, § 3. C.R.S. 1963: § 119-8-7. L. 77: (1) amended, p. 1360, § 3, effective June 1. L. 83: (1) amended, p. 1131, § 3, effective May 25. L. 86: (1) amended, p. 1002, § 3, effective May 28. L. 90: (1)(a) R&RE and (2) amended, pp. 1390, 1391, §§ 5, 6, effective May 4. L. 93: (1)(a)(I) amended, p. 872, § 1, effective May 6. L. 96: (1)(b), (2), and (3) amended, p. 808, § 8, effective May 23; (1)(a)(I), (1)(b), and (2) amended and (1.5) added, p. 260, § 8, effective July 1. L. 99: (1)(a)(I) and (1)(b) amended and (1)(a.5) added, pp. 1201, 1202, §§ 5, 6, effective June 2. L. 2000: (1)(a)(I) amended, p. 39, § 7, effective May 14; (1)(b)(I) amended, p. 1260, § 2, effective May 26. L. 2001: (1)(a)(I) amended and (1)(a)(1.5) added, p. 615, § 8, effective May 30; (1)(a)(I), (1)(a.5), (1)(b), and (2) amended, p. 747, § 14, effective June 1. L. 2002: (1)(b)(II) amended, p. 15, § 1, effective March 13. L. 2003: (1)(b)(I) and (2) amended and (4) added, p. 1876, § 4, effective May 22; (1.5) repealed, p. 855, § 3, effective August 6; (1)(a)(I) amended, p. 1410, § 19, effective January 1, 2004. L. 2006: (1)(a)(I)(A) and (1)(a)(I)(B) amended, p. 730, § 7, effective August 7. L. 2007: (1)(a.7) added, p. 1020, § 12, effective May 22. L. 2010: (1)(a)(I)(C) amended and (1)(a)(I)(C.5) added, (HB 10-1106), ch. 278, p. 1271, § 1, effective May 26. L. 2011: (1)(a)(I)(C) amended and (1)(a)(I)(C.7) added, (HB 11-1102), ch. 29, p. 72, § 1, effective March 18; (1)(a)(I)(C) and (1)(a)(I)(C.5) amended, (HB 11-1145), ch. 163, p. 562, § 3, effective August 10.

Editor's note: Amendments to subsections (1)(b) and (2) by House Bill 96-1006 and House Bill 96-1180 were harmonized. Amendments to subsection (1)(a)(I) by Senate Bill 01-012 and Senate Bill 01-032 were harmonized. Amendments to subsection (1)(a)(I)(C) by House Bill 11-1102 and House Bill 11-1145 were harmonized.

Cross references: For the legislative declaration and report to the general assembly contained in the 1990 act amending this section, see sections 1 and 9 of chapter 219, Session Laws of Colorado 1990. For the legislative declaration contained in the 2003 act amending subsection (1)(a)(I), see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Applied in <i>Cavanaugh v. State Dept. of Soc. Servs.</i> , 644 P.2d 1 (Colo. 1982), appeal dismissed for want of substantial federal question,	459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).
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26-6-107.5. Response to complaints - addition of child care facility inspectors.

(1) When the state department receives a serious complaint about a child care facility licensed pursuant to this part 1 alleging the immediate risk of health or safety of the children cared for in such facility, the state department shall respond to and conduct an on-site investigation concerning such complaint within forty-eight hours of its receipt.

(2) (a) (I) The general assembly hereby finds that an audit completed by the state auditor's office in 1995 reported that the state department had not properly and timely carried out all of its child care facility licensing functions due to insufficient staff. The general assembly further finds that, in an effort to use the state department's limited child care resources more effectively and efficiently, it passed legislation in 1996 implementing a risk-based approach to inspecting and monitoring child care facilities in place of the mandatory biennial reviews of every facility. The general assembly finds that it was determined in a follow-up audit conducted by the state auditor's office in 1998, that the state department was still at least one month late in conducting inspections of approximately twenty-two percent of the child care facilities in Colorado. In addition, of those facilities assigned a high risk factor and thereby requiring inspections more frequently than every twelve months, twenty-six percent were at least three months past due. In evaluating the implementation of the risk-based approach to inspection and monitoring of child care facilities, the general assembly finds that the implementation of this approach has actually increased the state department's workload by approximately sixteen percent.

(II) The general assembly further finds that a national study conducted by the center for career development in early care and education at Wheelock College concluded that Colorado's child care facility licensing staff had caseloads of approximately two hundred fifty child care centers per full-time equivalent employee and five hundred family child care homes per full-time equivalent employee. The general assembly finds that the caseloads of Colorado child care employees within the division greatly exceed the number of cases recommended by the national association for the education of young children, which organization has recommended that child care regulators' caseloads should not exceed seventy-five centers and large family homes per full-time equivalent employee.

(III) The general assembly further finds that the insufficient number of child care facility inspectors puts children at risk particularly when serious complaints of an immediate nature concerning a child care facility are lodged with the state department and the department is unable to respond promptly and conduct an on-site investigation of the complaint.

(IV) The general assembly hereby determines that the health and safety of the children of the state of Colorado in child care facilities is of utmost concern and importance to the state. The general assembly further finds that the timely and proper inspection of child care facilities and prompt responses to serious complaints about a child care facility are priorities and that, in order to facilitate such timely inspections and responses to complaints, the state department should be provided with the ability to contract with the necessary personnel needed to conduct the required inspections and investigations on a thorough and timely basis. Accordingly, the general assembly determines that it is in the best interests of the

citizens of the state of Colorado that the number of persons contracted for and charged with the duty of inspecting, monitoring, and responding to complaints in child care facilities in the state of Colorado be increased.

(b) For the purposes of conducting thorough and timely inspections of child care facilities licensed pursuant to this part 1 and for the purposes of providing sufficient inspectors to conduct prompt responses and investigations as directed in subsection (1) of this section when the state department receives a serious complaint against a child care facility licensed pursuant to this part 1, in fiscal year 2000-01, the number of inspectors shall be increased by eighteen contract inspectors from the number of inspectors in fiscal year 1999-2000.

Source: L. 2000: Entire section added, p. 1258, § 1, effective May 26.

26-6-107.7. Revocation of certification of foster care home - emergency procedures - due process. Notwithstanding any other provision of law to the contrary, a county department may act immediately to revoke the certification of a county-certified foster care home when the county department has reason to believe that a child residing in such foster care home is subject to an immediate and direct threat to his or her safety and welfare or when a substantial violation of a fundamental standard of care warrants immediate action. If the county department acts pursuant to this section, a due process hearing shall be held within five days after such action and conducted as such hearing would normally be conducted pursuant to article 4 of title 24, C.R.S.

Source: L. 2001: Entire section added, p. 749, § 15, effective June 1; entire section added, p. 756, § 6, effective June 1.

26-6-108. Denial of license - suspension - revocation - probation - refusal to renew license - fines. (1) When an application for a license has been denied by the department, the department shall notify the applicant in writing of the denial by mailing a notice to him or her at the address shown on the application. Any applicant believing himself or herself aggrieved by the denial may pursue the remedy for review as provided in subsection (3) of this section if he or she, within thirty days after receiving the notice, petitions the department to set a date and place for hearing, affording him or her an opportunity to be heard in person or by counsel. All hearings on the denial of licenses shall be conducted in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., as in the case of the suspension and revocation of licenses.

(2) The department may deny an application, or suspend, revoke, or make probationary the license of any facility regulated and licensed under this part 1 or assess a fine against the licensee pursuant to section 26-6-114 should the licensee, an affiliate of the licensee, a person employed by the licensee, or a person who resides with the licensee at the facility:

(a) Be convicted of any felony, other than those offenses specified in section 26-6-104 (7), or child abuse, as specified in section 18-6-401, C.R.S., the record of conviction being conclusive evidence thereof, notwithstanding section 24-5-101, C.R.S., or have entered into a deferred judgment agreement or a deferred prosecution agreement to any felony, other than those offenses specified in section 26-6-104 (7), child abuse, as specified in section 18-6-401, C.R.S., or should the department have a certified court order from another state indicating that the applicant, licensee, person employed by the licensee, or any person residing with the licensee has been convicted of a felony, other than those offenses specified in section 26-6-104 (7), under a law of any other state or the United States or has entered into a deferred judgment agreement or a deferred prosecution agreement in another state as to a felony, other than those offenses specified in section 26-6-104 (7); or

(a.5) Be convicted of third degree assault, as described in section 18-3-204, C.R.S., any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S., the violation of a protection order, as described in section 18-6-803.5, C.R.S., any misdemeanor offense of child abuse as defined in section 18-6-401, C.R.S., or any misdemeanor offense

in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in this paragraph (a.5). For purposes of this paragraph (a.5), "convicted" shall have the same meaning as set forth in section 26-6-104 (7) (a) (II); or

(b) Be determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of operating a family child care home, foster care home, or child care center, the record of such determination and entry of such order being conclusive evidence thereof; or

(c) Use any controlled substance, as defined in section 18-18-102 (5), C.R.S., or consume any alcoholic beverage during the operating hours of the facility or be under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility; or

(c.5) Be convicted of unlawful use of a controlled substance as specified in section 18-18-404, C.R.S., unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance as specified in section 18-18-403.5, 18-18-405, or 18-18-405.5, C.R.S., or unlawful offenses relating to marijuana or marijuana concentrate as specified in section 18-18-406, C.R.S.; or

(d) Consistently fail to maintain standards prescribed and published by the department; or

(e) Furnish or make any misleading or any false statement or report to the department; or

(f) Refuse to submit to the department any reports or refuse to make available to the department any records required by it in making investigation of the facility for licensing purposes; or

(g) Fail or refuse to submit to an investigation or inspection by the department or to admit authorized representatives of the department at any reasonable time for the purpose of investigation or inspection; or

(h) Fail to provide, maintain, equip, and keep in safe and sanitary condition premises established or used for child care pursuant to standards prescribed by the department of public health and environment and the department of human services or by ordinances or regulations applicable to the location of such facility; or

(i) Willfully or deliberately violate any of the provisions of this part 1; or

(j) Fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provision for personal care, medical services, clothing, and other essentials in the proper care of children; or

(k) Be charged with the commission of an act of child abuse or an unlawful sexual offense, as specified in section 18-3-411 (1), C.R.S., if:

(I) Such individual has admitted committing the act or offense and the admission is documented or uncontroverted; or

(II) The administrative law judge finds that such charge is supported by substantial evidence; or

(l) Admit to an act of child abuse or if substantial evidence is found that the licensee, person employed by the licensee, or person who resides with the licensee in the licensed facility has committed an act of child abuse. For the purposes of this paragraph (l), "child abuse" has the same meaning as that ascribed to the term "abuse" or "child abuse or neglect" in section 19-1-103 (1), C.R.S.; or

(m) Be the subject of a negative licensing action; or

(n) Misuse any public funds that are provided to any foster care home or any child placement agency that places or arranges for placement of a child in foster care for the purposes of providing foster care services, child placement services related to the provision of foster care, or any administrative costs related to the provision of such foster care services or such foster-care-related child placement services. The state board shall promulgate rules defining the term "misuse", which rules shall take into account similar definitions in federal law and may include references to relevant circulars of the federal office of management and budget.

(2.2) The state department may deny an application to renew a license based on the grounds set forth in subsection (2) of this section. The denial is effective upon the expiration of the existing license. The existing license shall not continue in effect even though the applicant for renewal files a request for hearing or appeal.

(2.3) The state department may deny an application for a child care facility license pursuant to this part 1 if such applicant is a relative affiliate of a licensee, as described in section 26-6-102 (1) (d), of a child care facility licensed pursuant to this part 1, which licensee is the subject of a previous negative licensing action or is the subject of a pending investigation by the state department that may result in a negative licensing action.

(2.4) The state department may deny an application for a child placement agency license pursuant to this part 1 if such applicant is a relative affiliate of a licensee, as described in section 26-6-102 (1) (d), of a child placement agency licensed pursuant to this part 1, which licensee is the subject of a previous negative licensing action or is the subject of a pending investigation by the state department that may result in a negative licensing action.

(2.5) (a) (I) The state department shall deny an application for a license under the circumstances described in section 26-6-104 (7). The state department shall revoke or suspend a license previously issued if:

(A) The licensee, person employed by the licensee, or person residing with the licensee is thereafter convicted or if it is later discovered that the licensee, person employed by the licensee, or person residing with the licensee had previously been convicted of any of the criminal offenses set forth in section 26-6-104 (7); or

(B) The department has a certified court order from another state indicating that the licensee, person employed by the licensee, or person residing with the licensee is thereafter convicted of, or if it is later discovered that the licensee, person employed by the licensee, or person residing with the licensee had previously been convicted of a criminal offense under a law of any other state or of the United States that is similar to any of the criminal offenses set forth in section 26-6-104 (7); or

(C) The licensee, an affiliate of the licensee, a person employed by the licensee, or a person who resides with the licensee at the facility has been determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of operating a family child care home, foster care home, or child care center, the record of such determination and entry of such order being conclusive evidence thereof.

(II) For purposes of this paragraph (a), “convicted” means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(b) A certified copy of the judgment of a court of competent jurisdiction of such conviction or deferred judgment and sentence agreement, deferred prosecution agreement, deferred adjudication agreement, or a certified court order from another state indicating such an agreement from another state shall be prima facie evidence of such conviction or agreement.

(2.7) The department may assess fines, pursuant to the provisions of section 26-6-114, against a licensee or a person employed by the licensee who willfully and deliberately or consistently violates the standards prescribed and published by the department or the provisions of this part 1.

(2.9) The convictions identified in this section shall be determined according to the records of the Colorado bureau of investigation, the ICON system at the state judicial department, or any other source, as set forth in section 26-6-107 (1) (a) (1.5).

(3) The department shall suspend or revoke a license only in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., and after a hearing thereon as provided in said article 4; except that all hearings under this part 1 shall be conducted by an administrative law judge of the department who shall render his or her recommendation to the executive director of the department of human services who shall

render the final decision of the department, and no licensee shall be entitled to a right to cure any of the charges described in paragraph (a), (b), (c), or (k) (I) of subsection (2) of this section. No such hearing shall prevent or delay any injunctive proceedings instituted under the provisions of section 26-6-111.

(4) The provisions of paragraph (c) of subsection (2) of this section shall not apply to foster care homes, unless such use or consumption impairs the licensee's ability to properly care for children.

(5) Only upon the request of a county department, a child placement agency licensed pursuant to this part 1 that places or arranges for placement of a child in foster care may certify the home of a relative of the child placed therein as a foster care home.

Source: L. 67: p. 1043, § 3. C.R.S. 1963: § 119-8-8. L. 73: pp. 529, 1224, §§ 73, 19. L. 74: (3) amended, p. 418, § 63, effective April 11. L. 75: (2)(b) amended, p. 1931, § 46, effective July 1. L. 82: (2)(c) amended, p. 255, § 15, effective May 3. L. 83: (2) and (3) amended, p. 1133, § 2, effective May 31. L. 86: (2)(a) and (2)(k)(II) amended and (2)(l) added, p. 1003, § 4, effective May 28. L. 87: (2)(k)(II) and (3) amended, p. 974, § 91, effective March 13; (2)(l) amended, p. 821, § 40, effective October 1. L. 91: (2)(b) amended, p. 1783, § 12, effective July 1. L. 94: (2)(h) amended, p. 2796, § 548, effective July 1. L. 96: IP(2), (2)(i), and (3) amended, p. 809, § 9, effective May 23; IP(2), (2)(a), (2)(b), (2)(h), and (3) amended and (2)(c.5) and (2.5) added, pp. 261, 263, §§ 9, 10, effective July 1. L. 98: (2)(l) amended, p. 831, § 60, effective August 5. L. 98: (2)(l) amended, p. 831, § 60, effective August 5. L. 99: IP(2) and (2)(l) amended and (2)(m) added, p. 1035, § 3, effective May 29; IP(2), (2)(c), and (2.5) amended and (2)(a.5), (2.7), and (4) added, pp. 1203, 1204, §§ 7, 8, effective June 2. L. 2001: (2.9) added, p. 616, § 9, effective May 30; (2.4), (2.5)(a)(II.5), and (5) added and IP(2.5)(a) amended, pp. 750, 741, §§ 16, 17, 5, effective June 1; (2.5)(a) amended and (2.5)(a)(II.5) added, p. 756, § 7, effective June 1; (2.3) added, p. 508, § 2, effective July 1. L. 2003: (2)(a.5) amended, p. 1017, § 31, effective July 1; (2)(l) and (2)(m) amended and (2)(n) added, p. 855, § 4, effective August 6. L. 2006: (1), IP(2), and IP(2.5)(a)(I) amended and (2.2) added, p. 730, § 8, effective August 7. L. 2010: (2)(b) and (2.5)(a)(I)(C) amended, (SB 10-175), ch. 188, p. 804, § 77, effective April 29; (2)(c.5) amended, (HB 10-1352), ch. 259, p. 1175, § 24, effective August 11. L. 2012: (2)(c) amended, (HB 12-1311), ch. 281, p. 1629, § 78, effective July 1.

Editor's note: Amendments to subsections (2) and (3) by House Bill 96-1006 and House Bill 96-1180 were harmonized. Amendments to the introductory portion to subsection (2) by Senate Bill 99-152 and House Bill 99-1374 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Day care license revocation proceedings are civil in nature, but they occur in an administrative agency context. *McPeck v. Colo. Dept. of Soc. Servs.*, 919 P.2d 942 (Colo. App. 1996).

Applied in *Cavanaugh v. State Dept. of Soc. Servs.*, 644 P.2d 1 (Colo. 1982), appeal dis-

missed for want of substantial federal question, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).

26-6-108.5. Notice of negative licensing action - filing of complaints. (1) (a) When a child care center facility or family child care home facility licensed pursuant to this part 1 has been notified by the department of a negative licensing action or the imposition of a fine pursuant to section 26-6-108 (2) and (2.7), it shall, within ten days after receipt of the notice, provide the department with the names and mailing addresses of the parents or legal guardians of each child cared for at the child care center facility or family child care home facility. The department shall maintain the confidentiality of the names and mailing addresses provided to it pursuant to this subsection (1).

(b) Within twenty days after receipt of the names and addresses of parents and legal guardians pursuant to paragraph (a) of this subsection (1), the department shall send a written notice to each such parent or legal guardian identifying the negative licensing action or the fine imposed and providing a description of the basis for the action as it relates to the impact on the health, safety, and welfare of the children in the care of the facility. Such notice shall be sent to the parents and legal guardians by first-class mail.

(c) The state board shall promulgate rules concerning the assessment of a fine against a licensee that is equal to the direct and indirect costs associated with the mailing of the notice described in paragraph (b) of this subsection (1) against the facility.

(d) Nothing in this subsection (1) shall be construed to preclude the department or a county department of social services from notifying parents of serious violations of any of the standards prescribed and published by the department or any of the provisions of this part 1 that could impact the health, safety, or welfare of a child cared for at the facility or home.

(2) The state board shall promulgate rules requiring child care center facilities and family child care home facilities to provide written notice to the parents and legal guardians of the children cared for in such facilities of the procedures by which to file a complaint against the facility or an employee of the facility with the division of child care in the department. Such rules shall specify what information the notice shall contain, but shall require that the notice include the current mailing address and telephone number of the division of child care in the department.

(3) The department shall track and record complaints made to the department that are brought against family child care homes and shall identify which complaints were brought against licensed family child care homes, as defined in section 26-6-102 (4), unlicensed family child care homes, or legally exempt family child care homes, as defined in 26-6-103 (1) (g).

Source: L. 99: Entire section added, p. 1205, § 10, effective June 2. L. 2000: (3) added, p. 40, § 8, effective May 14.

26-6-109. Advisory committee - sunset review - institutes. (1) (a) There is hereby created an advisory committee on licensing of child care facilities to advise and consult with the department in the administration and enforcement of this part 1. The committee shall consist of fifteen members to be appointed by the governor for terms of three years; except that, of the members first appointed, four shall be appointed for three years, four for two years, and three for one year. Thereafter, members shall be appointed for terms of three years except in the case of a vacancy that shall be filled for the remainder of the unexpired term. A member may be appointed to succeed himself or herself and may continue to serve on the committee beyond the end of his or her term until the governor appoints a successor. Members who have been appointed to fill the remainder of an unexpired term may be appointed to fill the succeeding full term.

(b) The members of the advisory committee shall serve without compensation but shall be entitled to their reasonable traveling expenses incurred in the performance of their duties, which shall be paid as a part of the expenses of administering this part 1.

(c) The committee shall consist of nine members who shall represent the various types of facilities licensed under the provisions of this part 1, four members representing various state and local governmental agencies with an interest in and concern for children, and two members at large who are parents, each having at least one child attending a facility licensed or certified under this part 1 at the time of such members' appointment.

(d) A majority of the members of the committee shall constitute a quorum, the presence of which at any meeting thereof duly called by the department shall have full and complete power to act upon and resolve in the name of the committee any matter or question referred to it by the department. The committee, as soon after appointment as practicable, shall elect from among its members a chairman, a vice-chairman, and a secretary who shall hold office until their successors are elected. The chairman shall preside at all meetings of the committee, and the secretary shall make a record of the proceedings thereof that shall be

preserved in the office of the department. All members of the committee shall be entitled to vote on any matter or question that properly comes before it.

(e) Repealed.

(2) The department is authorized to hold institutes and programs for licensees under this part 1 in order to assist in the improvement of standards and practices of facilities operated and maintained by licensees and in the more efficient and practical administration and enforcement of this part 1. In conducting such institutes and programs, the department may request the assistance of health, education, and fire safety officials.

Source: L. 67: p. 1044, § 3. C.R.S. 1963: § 119-8-9. L. 68: p. 111, § 87. L. 86: (1)(e) added, p. 421, § 46, effective March 29; (1)(a) amended, p. 1003, § 5, effective May 28. L. 88: (1)(e)(I) amended, p. 318, § 14, effective April 14. L. 90: (1)(e) repealed, p. 334, § 24, effective April 3; (1)(c) amended, p. 1399, § 13, effective May 24. L. 94: (1)(c) amended, p. 2706, § 270, effective July 1; (1)(a) and (1)(c) amended, p. 1046, § 8, effective January 1, 1995. L. 96: Entire section amended, p. 810, § 10, effective May 23. L. 2009: (1)(a) amended, (HB 09-1297), ch. 118, p. 496, § 1, effective August 5.

Editor's note: Amendments to subsection (1)(c) by Senate Bill 94-107 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in one of the 1994 acts amending subsection (1)(c), see section 1 of chapter 345, Session Laws of Colorado 1994.

26-6-110. Acceptance of federal grants. The department is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this part 1. The executive director of the department, with the approval of the governor, has the power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

Source: L. 67: p. 1045, § 3. C.R.S. 1963: § 119-8-10. L. 96: Entire section amended, p. 811, § 11, effective May 23.

26-6-111. Injunctive proceedings. The department, in the name of the people of the state of Colorado, through the attorney general of the state, may apply for an injunction in any court of competent jurisdiction to enjoin any person from operating any facility without a license that is required to be licensed under this part 1. An injunction may also be requested by the appropriate county department through the county attorney or retained counsel. If it is established that the defendant has been or is so operating such facility, the court shall enter a decree enjoining said defendant from further operating such facility unless and until he obtains a license therefor. In case of violation of any injunction issued under the provisions of this section, the court may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to and not in lieu of the penalty provided in section 26-6-112.

Source: L. 67: p. 1045, § 3. C.R.S. 1963: § 119-8-11. L. 83: Entire section amended, p. 1135, § 3, effective May 31. L. 96: Entire section amended, p. 811, § 12, effective May 23.

ANNOTATION

Compliance compelled by injunction or criminal action. Compliance with the licensing requirements may be compelled by either the civil remedy of injunction or a criminal action, or by both. *Cavanaugh v. State Dept. of Soc. Servs.*, 644 P.2d 1 (Colo. 1982), appeal dismissed for want of substantial federal question,

459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).

Injunction is separate remedy from criminal sanction of § 26-6-112. A separate civil remedy of injunction is provided by this section, independent of the criminal sanction provided

by § 26-6-112. *Cavanaugh v. State Dept. of Soc. Servs.*, 644 P.2d 1 (Colo. 1982), appeal dismissed for want of substantial federal ques-

tion, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).

26-6-112. Penalty. Any person violating any provision of this part 1 or intentionally making any false statement or report to the department or to any agency delegated by the department to make an investigation or inspection under the provisions of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than five hundred dollars.

Source: L. 67: p. 1045, § 3. C.R.S. 1963: § 119-8-12. L. 83: Entire section amended, p. 1135, § 4, effective May 31. L. 96: Entire section amended, p. 811, § 13, effective May 23.

ANNOTATION

Compliance compelled by criminal action or injunction. Compliance with the licensing requirements may be compelled by either the civil remedy of injunction or a criminal action, or by both. *Cavanaugh v. State Dept. of Soc. Servs.*, 644 P.2d 1 (Colo.), appeal dismissed for want of substantial federal question, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).

Criminal sanction is separate remedy from injunction of § 26-6-111. A separate civil remedy of injunction is provided by § 26-6-111, independent of the criminal sanction provided by this section. *Cavanaugh v. State Dept. of Soc. Servs.*, 644 P.2d 1 (Colo.), appeal dismissed for want of substantial federal question, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed.2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed.2d 369 (1983).

26-6-113. Periodic review of licensing regulations and procedures. (1) The general assembly finds that changes in demographics and economic trends in Colorado have increased the need for high quality and affordable child care. The general assembly also recognizes that the provision of child care in this state and in the nation is a rapidly growing industry subject to many changes. The general assembly further finds that there is a need for continuing comprehensive review of the rules and regulations and the licensing procedures governing child care centers, family child care homes, and foster care homes that includes the adequate and full participation of parents, consumers, child care providers, and interested persons. The general assembly finds that such a review with the goal of identifying problems in the fragmentation and lack of uniformity of standards in the licensing process would benefit the state and result in improvements in the regulation of this industry that is so vital to the health and well-being of the state's children and citizens.

(2) Beginning with fiscal year 1995-1996, an initial comprehensive rule and regulation review shall be conducted in conjunction with the performance audit required by section 26-6-107 (1.5), and, at least every fifth fiscal year thereafter, a comprehensive review of the licensing rules and regulations for child care centers, family child care homes, and foster care homes and the procedures relating to and governing child care centers, family child care homes, and foster care homes shall be conducted by the department, including procedures for the review of backgrounds of employees and owners. In conducting such periodic review, the department shall consult with parents and consumers of child care, child care providers, the department of public health and environment, experts in the child care field, and other interested parties throughout the state. The periodic review shall include an examination of the rules and regulations applicable to child care centers, family child care homes, and foster care homes, the process of licensing such facilities, uniformity of standards or lack thereof in the licensing process, statewide standardization of investigations and enforcement of licensing by the department, duplication and conflicts in regulations, requirements, or procedures between the department and the department of public health and environment, and recommendations for streamlining and unifying the licensing process. Said review shall also include an examination of regulations and procedures regarding the general physical and mental health of employees and owners. At the conclusion of each review, the department shall report its findings and conclusions and

its recommendations for administrative changes and for legislation to the state board, the advisory committee on licensing of child care facilities, and the executive director of the department of public health and environment.

Source: **L. 89:** Entire section added, p. 1222, § 1, effective May 8. **L. 94:** (2) amended, p. 2796, § 549, effective July 1. **L. 96:** Entire section amended, p. 263, § 11, effective July 1; (2) amended, p. 1252, § 134, effective August 7.

Editor's note: Amendments to this section by House Bill 96-1167 and House Bill 96-1006 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

26-6-114. Civil penalties - fines - child care cash fund - created. (1) In addition to any other penalty otherwise provided by law, any person violating any provision of this part 1 or intentionally making any false statement or report to the department or to any agency delegated by the department to make an investigation or inspection under the provisions of this part 1 may be assessed a civil penalty of not more than one hundred dollars a day to a maximum of ten thousand dollars.

(2) The amount of the civil penalties to be assessed pursuant to subsection (1) of this section shall be set in rules and regulations promulgated by the department.

(3) Each day in which a person is in violation of any provision of this part 1 may constitute a separate offense.

(4) The department may assess a civil penalty in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S.; except that all hearings conducted pursuant to this section shall be before an administrative law judge of the department, who shall render his or her recommendation to the executive director of the department who shall render the final decision of the department.

(5) The fines collected pursuant to this section, section 26-6-108 (2) and (2.7), and section 26-6-108.5 (1) (c) shall be transmitted to the state treasurer, who shall credit the same to the child care cash fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. Moneys in the child care cash fund are hereby continuously appropriated to the department to fund activities related to the improvement of the quality of child care in the state of Colorado.

Source: **L. 90:** Entire section added, p. 1391, § 7, effective May 4. **L. 96:** (1) and (3) amended, p. 811, § 14, effective May 23; (4) amended, p. 264, § 12, effective July 1. **L. 99:** (5) added, p. 1204, § 9, effective June 2.

Cross references: For the legislative declaration and report to the general assembly contained in the 1990 act enacting this section, see sections 1 and 9 of chapter 219, Session Laws of Colorado 1990.

26-6-115. Criminal background checks - pilot program. (Repealed)

Source: **L. 99:** Entire section added, p. 1205, § 10, effective June 2. **L. 2000:** (3) amended, p. 1577, § 2, effective June 1. **L. 2001:** Entire section repealed, p. 614, § 6, effective May 30.

26-6-116. Child care resource and referral system - created. (1) The state department shall design and develop a child care resource and referral system, referred to in this section as the "system", to assist in promoting availability, accessibility, and quality of

child care services in Colorado. The executive director, or his or her designee, shall have the authority, within available appropriations, to designate a public or private entity that shall be responsible for the administration of the system, and may enter into a contract with the administering entity for such purpose. The executive director shall designate or redesignate such administering entity on a biennial basis.

(2) The state department shall report to the members of the health and human services committees of the senate and the house of representatives of the general assembly, or any successor committees, concerning the child care resource and referral system by December 1, 2001, and by each December 1 thereafter. The report shall specify, at a minimum, the entity that the state department has currently designated to administer the system and the qualifications of that entity to serve in such capacity, the types of services that are being provided pursuant to the system, the numbers and types of persons receiving such services, and the cost associated with the system.

Source: L. 2000: Entire section added, p. 36, § 2, effective May 14. L. 2007: (2) amended, p. 2044, § 78, effective June 1.

26-6-117. Accreditation standards for county departments and child placement agencies - study. (1) No later than July 1, 2002, the state department shall study:

(a) Standards for assessing the quality and performance of foster care in foster care homes certified by county departments or by child placement agencies based upon national standards for foster care services;

(b) Standards for the accreditation of county departments and child placement agencies for purposes of foster care services based upon accreditation standards of a nationally recognized accrediting body of child welfare and social services organizations.

(2) In conducting such study on accreditation standards, the state department shall compare the merits of writing its own standards with the merits of contracting with a national accrediting body. The study shall include, but is not limited to, analyzing the following:

(a) The fiscal impact on the state, counties, and providers, including the cost of:

(I) Writing standards;

(II) Contracting with a national accrediting body, including all fees and travel expenses;

(III) Training;

(IV) Implementation;

(V) Potential corrective action;

(VI) Staff time of county departments and child placement agencies to meet the accreditation standards;

(VII) Collecting and evaluating data relating to accreditation standards;

(b) The time frame for implementation of accreditation standards;

(c) Sanctions for failing to meet the accreditation standards.

(3) Repealed.

Source: L. 2001: Entire section added, p. 756, § 8, effective June 1. L. 2003: (3) amended, p. 2011, § 100, effective May 22. L. 2004: (3) repealed, p. 471, § 3, effective August 4.

26-6-118. Child placement agencies - information sharing - investigations by state department - recovery of moneys - rule-making. (1) If a county department has substantiated evidence that a child placement agency with which the county has contracted to provide foster care services has violated the provisions of this part 1 or any rule of the state board, it shall communicate such information to the state department. A county department shall also identify whether it is requesting the state department to investigate a complaint against a child placement agency for possible negative licensing action against the child placement agency.

(2) Upon receipt of a request for investigation of a child placement agency from a county department, the state department shall commence an investigation and, upon

conclusion, report its findings to the requesting county department. The state department shall include in its report to the county department the child placement agency's response, if any, to the findings.

(3) The state department shall provide to county departments and affected child placement agencies direct access to information concerning the results of any investigation or negative licensing action taken against the affected child placement agency licensed to provide foster care services in Colorado.

(4) (a) The state department, in collaboration with the federal department of health and human services and other federal agencies and with county departments, shall seek recovery from a child placement agency of any public funds that have been misused by the child placement agency, as the term "misuse" is defined by rules promulgated pursuant to section 26-6-108 (2) (n).

(b) Any county and child placement agency entering into a contract for the provision of foster care services shall include a provision in the contract that recognizes a right of the state department or county department to recover any funds misused by the child placement agency and to withhold subsequent payments. The provision in the contract shall provide for an appeal of the decision to recover or withhold the funds. The state board shall promulgate rules that set forth the procedures for the appeal, which rules shall require, at a minimum, reasonable notice to the child placement agency.

Source: L. 2001: Entire section added, pp. 750, 756, §§ 18, 8, effective June 1. L. 2003: (2) amended, p. 1877, § 5, effective May 22; (4) added, p. 856, § 5, effective August 6.

Editor's note: This section was enacted as § 26-6-117 by Senate Bill 01-012 but has been renumbered on revision and harmonized with Senate Bill 01-014.

26-6-119. Family child care homes - administration of routine medications - parental direction - rules. (1) The delegation of nursing tasks by a registered nurse pursuant to section 12-38-132, C.R.S., shall not be required for the administration of routine medications by a child care provider to children cared for in family child care homes licensed pursuant to this part 1, subject to the following conditions:

(a) The parent of the child cared for in the licensed family child care home has daily physical contact with the child care provider that actually administers the routine medication;

(b) The child care provider has successfully completed a medication administration instructional program that is approved by the state department;

(c) Routine medications are administered in compliance with rules promulgated by the state board pursuant to subsection (2) of this section;

(d) If the routine medication involves the administration of unit dose epinephrine, the administration is accompanied by a written protocol by the prescribing health care professional that identifies the factors for determining the need for the administration of the medication, and is limited to emergency situations; and

(e) If the routine medication involves the administration of a nebulized inhaled medication, the administration is accompanied by a written protocol by the prescribing health care professional that identifies the factors for determining the need for the administration of the medication.

(2) The state board shall promulgate rules concerning the medically acceptable procedures and standards to be followed by child care providers administering routine medications to children cared for in family child care homes.

Source: L. 2002: Entire section added, p. 127, § 1, effective March 26.

26-6-120. Exempt family child care home providers - fingerprint-based criminal history record check - child care assistance program moneys - temporary care - definitions. (1) (a) (I) An exempt family child care home provider who provides care for

a child and an individual who provides care for a child who is related to the individual, referred to collectively in this section as a “qualified provider”, shall be subject to a fingerprint-based criminal history record check, referred to in this section as an “FCC”, as provided in this section and the rules authorized in section 26-6-107 (1) (a) (I) and (1) (a) (I.5), if the child’s care is funded in whole or in part with moneys received on the child’s behalf from the publicly funded Colorado child care assistance program. The provisions of this section shall apply to exempt family child care home providers or individuals who provide care to a related child who receive moneys from the publicly funded Colorado child care assistance program pursuant to contracts or other payment agreements entered into or renewed on or after May 25, 2006.

(II) Each adult eighteen years of age or older who resides with a qualified provider where the care is provided, referred to in this section as a “qualified adult”, shall be subject to the FCC required pursuant to this section.

(III) The FCC required for a qualified provider or qualified adult pursuant to this section shall include a fingerprint-based criminal history records check utilizing the records of the Colorado bureau of investigation and, for qualified providers or qualified adults applying for child care assistance program moneys on or after August 10, 2011, the federal bureau of investigation. As part of the FCC, the state department shall access the records and reports of child abuse or neglect maintained by the state department to determine whether the subject of the FCC has been found to be responsible in a confirmed report of child abuse or neglect. Information shall be made available pursuant to section 19-1-307 (2) (j), C.R.S., and rules promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.

(IV) The FCC required pursuant to this section shall be a prerequisite to the issuance or renewal of a contract for receipt of moneys under the Colorado child care assistance program as provided in part 8 of article 2 of this title. The state department shall not issue or renew a contract for payment of moneys under the Colorado child care assistance program to a qualified provider who fails to submit to the FCC or fails to submit fingerprints for a qualified adult.

(b) A qualified provider shall notify the county with whom he or she has contracted pursuant to the Colorado child care assistance program upon any change of circumstances that results in the presence of a new qualified adult. A new qualified adult is required to undergo an FCC as provided in this section, even if the Colorado child care assistance program contract is not subject to renewal when the qualified adult moves into the residence where the care is provided.

(c) A qualified provider or qualified adult who undergoes an FCC shall, with submittal of his or her fingerprints, pay to the state department a fee established by rule of the state board pursuant to subsection (5) of this section to offset the costs associated with processing the FCC through the Colorado bureau of investigation and the federal bureau of investigation.

(2) A contract to provide moneys under the Colorado child care assistance program pursuant to part 8 of article 2 of this title shall not be issued or renewed by the state department or a county department to a qualified provider if the qualified provider or a qualified adult has been convicted of:

(a) Child abuse, as described in section 18-6-401, C.R.S.;

(b) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(c) Any felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(d) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(e) Any felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of the FCC; or

(f) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in paragraphs (a) to (e) of this subsection (2).

(3) A contract to provide moneys under the Colorado child care assistance program pursuant to part 8 of article 2 of this title shall not be issued or renewed by the state

department or a county department to a qualified provider if the qualified provider or a qualified adult:

(a) Has a pattern of misdemeanor convictions occurring within the ten years preceding submission of the application. A pattern of misdemeanor convictions shall be defined by rule of the state board; or

(b) Has been determined to be insane or mentally incompetent by a court of competent jurisdiction and a court has entered, pursuant to part 3 or 4 of article 14 of title 15, C.R.S., or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the qualified provider cannot safely operate a child care home. The record of such determination and entry of such order shall be conclusive evidence thereof. A qualified provider shall sign an attestation affirming the lack of such a finding prior to entering into or renewing a contract for moneys under the Colorado child care assistance program, pursuant to section 26-2-805.5 (2).

(4) A qualified provider who has submitted to an FCC by the Colorado bureau of investigation and the federal bureau of investigation may, pending the receipt of the results of the FCC, continue to receive moneys from the Colorado child care assistance program.

(5) The state board shall promulgate rules to establish the amount of the fee to collect from a qualified provider or qualified adult who is subject to an FCC pursuant to subsection (1) of this section. The state department is authorized to collect the fee at the time of the FCC.

Source: L. 2006: Entire section added, p. 1081, § 3, effective May 25. L. 2007: (1)(a)(I) and (4) amended, p. 317, § 1, effective April 2. L. 2010: (1), IP(2), IP(3), (3)(b), (4), and (5) amended, (SB 10-118), ch. 102, p. 345, § 1, effective April 15; (3)(b) amended, (SB 10-175), ch. 188, p. 805, § 78, effective April 29. L. 2011: (1)(a)(III) amended, (HB 11-1145), ch. 163, p. 563, § 4, effective August 10.

Editor's note: Amendments to subsection (3)(b) by Senate Bill 10-175 and Senate Bill 10-118 were harmonized.

26-6-121. Preschools - unique student identifying numbers - rules. (1) On or before September 1, 2008, the executive director, in cooperation with the commissioner of education, shall convene a working group, as described in section 22-2-134, C.R.S., to review the issues pertaining to the assignment of a uniquely identifying student number to children who receive state-subsidized or federally subsidized early childhood education services, including but not limited to services provided through the child care development block grant and head start.

(2) The working group shall adopt protocols by which the department of education, the department of human services, school districts, charter schools, the early childhood councils, as described in section 26-6.5-103.3, and the early childhood care and education councils, as defined in section 26-6.5-101.5 (6), shall cooperate in assigning the uniquely identifying student numbers. The working group shall also consider methods by which to encourage and facilitate the assignment of uniquely identifying student numbers to students who are receiving early childhood education services that are not subsidized by state or federal funding.

(3) Following adoption of the protocols, the state board shall promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as necessary for the assignment of uniquely identifying student numbers to students receiving early childhood education services. The state board shall collaborate with the state board of education in promulgating any necessary rules to ensure that they do not conflict with any rules promulgated by the state board of education pursuant to section 22-2-134, C.R.S.

Source: L. 2008: Entire section added, p. 784, § 3, effective August 5.

PART 2

CHILD PLACEMENT AGENCIES

26-6-201 to 26-6-206. (Repealed)

Editor's note: (1) Section 26-6-206 provided for the repeal of this part 2, effective July 1, 1998. (See L. 96, p. 806.)

(2) This part 2 was added in 1996 and was not amended prior to its repeal in 1998. For the text of this part 2 prior to 1998, consult the 1997 Colorado Revised Statutes.

PART 3

EARLY CHILDHOOD AND SCHOOL READINESS COMMISSION

26-6-301 to 26-6-307. (Repealed)

Editor's note: (1) Section 26-6-307 provided for the repeal of this part 3, effective July 1, 2007. (See L. 2004, p. 1771.)

(2) House Bill 07-1062 amended section 26-6-304 (1)(b)(II) effective May 31, 2007. For the law as it was effective from May 31, 2007, to July 1, 2007, see chapter 378, Session Laws of Colorado 2007, p. 1645, § 11.

(3) This part 3 was added in 2000. For amendments to this part 3 prior to its repeal in 2007, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

PART 4

DEDICATED FAMILY HOMES PILOT PROGRAM

26-6-401 to 26-6-406. (Repealed)

Editor's note: (1) Section 26-4-406 (2) provided for the repeal of this part 4, effective July 1, 2008. (See L. 2004, p. 542.)

(2) This part 4 was added in 2004. For amendments to this part 4 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

PART 5

TASK FORCE ON FOSTER CARE AND PERMANENCE

26-6-501 to 26-6-506. (Repealed)

Editor's note: (1) Section 26-4-506 provided for the repeal of this part 5, effective July 1, 2008. (See L. 2007, p. 292.)

(2) This part 5 was added in 2007 and was not amended prior to its repeal in 2008. For the text of this part 5 prior to 2008, consult the 2007 Colorado Revised Statutes.

PART 6

DEPARTMENT OF DEFENSE QUALITY CHILD CARE
STANDARDS PILOT PROGRAM

26-6-601. Short title. This part 6 shall be known and may be cited as the "Department of Defense Quality Child Care Standards Pilot Program".

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 68, § 1, effective March 17.

26-6-602. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) Providing quality child care is vital to the health and well-being of the children of Colorado;

(b) The human capacity to develop and change is greatest from birth to five years of age when the brain is most malleable and able to change in response to education and stimulation;

(c) The investment made in early childhood care benefits children, parents, and the community in the long term. Statistics consistently show that investment in early childhood education and programs prevents some children from entering the criminal justice system, which, in turn, diminishes jail or prison costs. Children who were enrolled in prekindergarten programs are also more likely to have better employment and higher wages over their lifetimes.

(d) As a result, there is a great demand for expensive remedial programs to address learning and behavior problems in later years when change is far more difficult to achieve; and

(e) Implementing strategies so that children become successful early learners helps reduce the need for expensive later remediation programs.

(2) The general assembly further finds and declares that:

(a) The provision of child care enables parents to work, thus generating extra dollars for local and state economies;

(b) Military facilities currently do not have enough spaces to care for all the children who need child care and early learning environments, yet providing early learning programs to children of the military is especially important during times of stress related to deployment of their parents; and

(c) Federal dollars shall be available to military families to subsidize off-base child care, provided the child care facility meets high quality standards.

(3) The general assembly therefore concludes that it is in the best interest of our state's military families and children to create a pilot program that allows military families to use their federal child care stipends to obtain off-base child care in facilities that meet the high quality standards established by the federal department of defense.

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 68, § 1, effective March 17.

26-6-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Program" means the department of defense quality child care standards pilot program created pursuant to section 26-6-604.

(2) "State department" means the department of human services created and existing pursuant to section 24-1-120, C.R.S.

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 69, § 1, effective March 17.

26-6-604. Department of defense quality child care standards pilot program - creation - program scope - reporting requirements - rules. (1) There is hereby created in the state department the department of defense quality child care standards pilot program. The objective of the program is to allow military personnel to use their federal child care benefits and any other stipends to access off-base child care facilities that meet the quality standards established by the federal department of defense. The state department shall administer the program in accordance with the provisions of this part 6.

(2) Pilot sites may apply to the state department to be considered for inclusion in the program. The state department, with input from the local public health agency, local county resource and referral agencies, and early childhood councils of impacted counties, shall designate pilot site facilities to serve military families. Designation of pilot sites shall be dependent upon funding from the federal department of defense as child care stipends to

military families and funding of the pilot site licensing unit through fees collected pursuant to subsection (7) of this section. The designated child care facilities shall provide child care to military families, provided the facility meets the quality child care standards adopted by rule of the state department.

(3) The pilot site facilities shall have, at a minimum, the following program components:

(a) Full compliance with rules promulgated pursuant to this part 6, including department of defense child care standards;

(b) Special needs services;

(c) Staff development and training;

(d) Family support services; and

(e) A state department-approved quality rating and improvement system.

(4) The state department shall identify, develop, and implement an early childhood training plan based upon the needs of each pilot site facility. The training shall include the principal elements of the rules promulgated pursuant to this part 6, the department of defense quality child care standards, and the elements of the quality rating and improvement system.

(5) On or before December 30, 2013, the state department shall develop a quality rating and improvement system that is inclusive, accessible, available to all child care providers, embedded in licensing, and reflective of evidence-based practices for successful outcomes for all children and families, to be used in the program to evaluate the implementation of the department of defense standards.

(6) On or before June 30, 2012, the state department and the local public health agency shall promulgate rules for the implementation of this part 6. The rules shall include, at a minimum:

(a) Pilot site compliance with department of defense quality child care standards;

(b) A requirement for compliance with existing state and federal regulations; and

(c) A procedure to establish a fee for and charge pilot site facilities for any additional inspections and services required to implement the enhanced department of defense quality child care standards.

(7) The state department and the local public health agency are hereby granted the authority to charge pilot site facilities for any additional inspections and services required by the department of defense quality child care standards.

(8) No later than March 1, 2015, the state department shall report on the outcomes of the program, including an evaluation of the higher standards and the quality rating and improvement system for licensure, monitoring, and provider support to the state, veterans, and military affairs committees of the senate and house of representatives and the health and human services committees of the senate and house of representatives, or any successor committees. The state department shall determine if the model for the program represents the best practices to be implemented statewide.

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 69, § 1, effective March 17.

26-6-605. Department of defense quality child care standards pilot program - funding. It is the intent of the general assembly that the pilot program shall be funded by gifts, grants, and donations; federal moneys; and any fees collected pursuant to section 26-6-604 (7). Payment for child care services for a child of a member of the military shall be made by the family and shall include any child care benefit or stipend received by the child care facility from the federal department of defense. The state department and the local public health agency may access other already appropriated state funds to enhance the quality of care and education of children in the implementation of the quality rating and improvement system. Moneys from fees collected pursuant to section 26-6-604 (7) may be

used to administer a pilot site licensing unit. The state department and the local public health agency shall not be obligated to implement the provisions of section 26-6-604 until such time as sufficient funds are available.

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 71, § 1, effective March 17.

26-6-606. Repeal of part. This part 6 is repealed, effective June 30, 2015.

Source: L. 2011: Entire part added, (HB 11-1027), ch. 28, p. 71, § 1, effective March 17.

ARTICLE 6.5

Early Childhood and School Readiness

PART 1

EARLY CHILDHOOD COUNCILS

- 26-6.5-101. Legislative declaration.
- 26-6.5-101.5. Definitions.
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- 26-6.5-103. Early childhood councils - established - rules.
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- 26-6.5-103.5. Early childhood councils - membership.
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- 26-6.5-104. Early childhood councils - waivers - rules - funding - application.
- 26-6.5-104.5. Quality evaluation and improvement of early childhood care and education programs - use of Colorado works moneys.
- 26-6.5-105. Early childhood council advisory team - creation - duties. (Repealed)
- 26-6.5-106. School-readiness quality improvement program.
- 26-6.5-107. Voluntary child care credentialing system - rules.

- 26-6.5-108. Evaluation.
- 26-6.5-109. Early childhood cash fund - creation.
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PART 2

EARLY CHILDHOOD AND SCHOOL READINESS LEGISLATIVE COMMISSION

- 26-6.5-201 to 26-6.5-204. (Repealed)

PART 3

COLORADO QUALITY IN CHILD CARE INCENTIVE GRANT PROGRAM

- 26-6.5-301. Short title.
- 26-6.5-302. Definitions.
- 26-6.5-303. Colorado quality in child care incentive grant program - creation.
- 26-6.5-304. Eligibility for grants - award criteria - rules.
- 26-6.5-305. Reporting requirements.
- 26-6.5-306. Colorado quality in child care incentive grant program fund.
- 26-6.5-307. Repeal of part.

PART 1

EARLY CHILDHOOD COUNCILS

26-6.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that there is a critical need to increase services for young children and their families, including those families with members who are entering the workforce due to Colorado’s reform of the welfare system, making the transition off of welfare, or needing child care assistance to avoid the welfare system. The statewide need includes increasing and sustaining the quality, accessibility, capacity, and affordability of services for children and their parents to help parents raise their children to be successful at school, at work, and in the community.

(2) Research demonstrates that there are positive outcomes for young children and their families who receive quality, integrated child care and related services in their early, preschool years, delivered through a comprehensive early childhood system that includes quality care and education, family support, health, and mental health programs.

(3) Providers of half-day preschool and full-day child care services have to overcome barriers and inflexible requirements of the various sources of funding in order to design and implement programs that are more responsive to the needs of working families.

(4) Consideration of various state and federal funding sources would allow for an integrated delivery system of quality programs for young children and their families in Colorado's communities.

(5) An integrated delivery system would further enhance the ability of the state department to identify the best practices relative to increasing and sustaining quality and to meeting the diverse needs of families seeking child care and other early childhood services.

(6) Distinctly local needs and conditions require that the state design and integrate a system that has the flexibility to adapt to those local needs.

(7) It is therefore in the state's best interest to establish a comprehensive system of early childhood councils to increase and sustain the availability, accessibility, capacity, and quality of early childhood services throughout the state, as provided in this part 1.

Source: L. 97: Entire article added, p. 1123, § 1, effective May 28. L. 2007: Entire section amended, p. 1633, § 1, effective May 31. L. 2009: (7) amended, (HB 09-1343), ch. 355, p. 1855, § 2, effective June 1.

26-6.5-101.5. Definitions. As used in this part 1, unless the context otherwise requires:

(1) Repealed.

(2) "Council" means an early childhood council identified or established locally in communities throughout the state pursuant to section 26-6.5-103 for the purpose of developing and ultimately implementing a comprehensive system of early childhood services to ensure the school readiness of children five years of age or younger in the community. A council may be an early childhood care and education council so long as no more than one council exists in a given service area.

(3) "County department" means the county or district department of social services.

(4) "CSAP" means the Colorado student assessment program implemented pursuant to section 22-7-409, C.R.S.

(5) "Early care and education provider" or "early care and education facility" means a school district, provider, or facility that:

(a) Is licensed pursuant to part 1 of article 6 of this title or that participates in the Colorado preschool program pursuant to article 28 of title 22, C.R.S.; and

(b) Participates in local community councils.

(6) "Early childhood care and education council" means a council that represents public and private stakeholders identified or established locally in communities throughout the state pursuant to section 26-6.5-106. An early childhood care and education council shall provide school-readiness quality improvement funding to early care and education providers pursuant to section 26-6.5-106 (3) to enhance the school readiness of children five years of age or younger.

(7) "Eligible elementary school" means a public elementary school that:

(a) (I) For the school year immediately preceding submission of the council's application for funding pursuant to section 26-6.5-106, is required to implement a priority improvement or turnaround plan as described in section 22-11-405 or 22-11-406, C.R.S., respectively, or is subject to restructuring pursuant to section 22-11-210, C.R.S.; and

(II) (Deleted by amendment, L. 2009, (SB 09-163), ch. 293, p. 1546, § 57, effective May 21, 2009.)

(b) As of the date on which the council applies for funding through the program, is receiving moneys pursuant to Title I of the federal "Elementary and Secondary Education Act of 1965", 20 U.S.C. sec. 6301 et seq.

(8) "Pilot site agency" means a community consolidated child care services pilot site agency as it existed prior to May 31, 2007.

(9) “State board” means the state board of human services authorized to act in accordance with the provisions of section 26-1-107.

(10) “State department” means the state department of human services.

Source: **L. 2007:** Entire section added, p. 1634, § 2, effective May 31. **L. 2009:** IP amended, (HB 09-1343), ch. 355, p. 1855, § 3, effective June 1; (7)(a) amended, (SB 09-163), ch. 293, p. 1546, § 57, effective May 21. **L. 2011:** (1) repealed, (SB 11-247), ch. 239, p. 1038, § 4, effective May 27.

26-6.5-102. Pilot program established. (Repealed)

Source: **L. 97:** Entire article added, p. 1124, § 1, effective May 28. **L. 2007:** Entire section repealed, p. 1635, § 3, effective May 31.

26-6.5-103. Early childhood councils - established - rules. (1) There is hereby established a statewide integrated system of early childhood councils to improve and sustain the availability, accessibility, capacity, and quality of early childhood services for children and families throughout the state. The councils shall have consistent function and structure statewide and shall be governed by the state department of human services with input, cooperation, and support services from the departments of education and public health and environment.

(2) The statewide system of early childhood councils shall consist of the seventeen pilot site agencies and other existing early childhood councils, renamed through this part 1 as “early childhood councils”, and new councils designated and convened pursuant to this part 1, subject to available appropriations from the general fund.

(3) For new councils or for existing councils or partnerships that decide to reconfigure under this part 1, the board or boards of county commissioners shall designate a convening entity, which may include but is not limited to a local resource and referral agency, a county department of human services or social services, a local school district, a department of public health, or a Colorado preschool program council. The convening entity may convene a council either as part of a single county or as part of a multi-county regional network.

(4) The state department shall determine by rule the criteria necessary for establishing a single council for an area.

(5) Nothing in this part 1 shall be construed as requiring an existing council to reconfigure or reconvene.

(6) Nothing in this part 1 shall be construed as requiring a county to establish an early childhood council or to be a part of a multi-county council.

Source: **L. 97:** Entire article added, p. 1124, § 1, effective May 28. **L. 99:** IP(3) amended and (4), (5), and (6) added, p. 1339, § 1, effective July 1. **L. 2000:** (3)(b.7) added, p. 40, § 9, effective May 14; (3) amended and (3.5), (7), and (8) added, p. 817, § 1, effective July 1. **L. 2002:** (3.7) added, p. 1620, § 2, effective July 1. **L. 2005:** (3.5), (3.7), and (8) amended, p. 899, § 3, effective June 2. **L. 2007:** Entire section R&RE, p. 1635, § 4, effective May 31. **L. 2009:** (2), (3), (5), and (6) amended, (HB 09-1343), ch. 355, p. 1855, § 4, effective June 1; (3) amended, (SB 09-292), ch. 369, p. 1976, § 101, effective August 5. **L. 2011:** (1) amended, (SB 11-247), ch. 239, p. 1038, § 5, effective May 27.

Editor’s note: Amendments to subsection (3) by House Bill 09-1343 and Senate Bill 09-292 were harmonized.

26-6.5-103.3. Early childhood councils - applications - rules. (1) A newly established or newly identified council shall submit to the state department an application to become part of the statewide system of early childhood councils. The state department shall develop and distribute the application form and criteria and an explanation of the process for joining the statewide system of early childhood councils. The state department shall provide support for the preparation of applications.

- (2) A new council shall designate on its application the following information:
- (a) The intended service area;
 - (b) The counties to be involved in the council;
 - (c) Participating mandatory stakeholders;
 - (d) The entity that shall serve as the original fiscal agent for the council; and
 - (e) The signatures of the chair or chairs of the board or boards of county commissioners for the counties involved in the council, the legal signatory for the counties, and the president of a school district board of education involved in the council.
- (3) A pilot site agency or other existing early childhood council seeking to be newly identified as a council shall designate on its application a restatement of the following information:
- (a) The designated service area;
 - (b) Current members;
 - (c) Any additional stakeholders required to meet the membership requirements of section 26-6.5-103.5;
 - (d) The designated fiscal agent; and
 - (e) Signatures of the current organization leadership, the fiscal agent, the chair or chairs of the board or boards of county commissioners of the counties involved in the council, and the president of a school district board of education involved in the council.
- (4) Each council shall develop a strategic plan based upon an assessment of the early childhood needs in the designated service area that includes:
- (a) A council infrastructure, including a plan for hiring a council director;
 - (b) A technical assistance plan and an annual budget for developing a local early childhood system and infrastructure to improve and coordinate early childhood services; and
 - (c) A plan for evaluating program performance and council process and effectiveness as it relates to the council's strategic plan.
- (5) The state department shall promulgate rules to define the standards for acceptance of applications made pursuant to this section. Acceptance of an application shall be automatic if the application is complete, the signatures are in order, and it meets the standards set forth by the state department pursuant to this subsection (5).

Source: L. 2007: Entire section added, p. 1636, § 5, effective May 31. **L. 2011:** (1) and (5) amended, (SB 11-247), ch. 239, p. 1039, § 6, effective May 27.

26-6.5-103.5. Early childhood councils - membership. (1) To the extent practicable, each council shall be representative of the various public and private stakeholders in the local community who are committed to supporting the well-being of children five years of age or younger.

(2) For the purposes of this part 1, each council, whether newly established in a community or newly identified to serve as a council, shall work toward consolidating and coordinating funding, including the school-readiness quality improvement funding described in section 26-6.5-106. Together, the councils throughout the state shall serve to create a seamless system of early childhood services representing collaboration among the various public and private stakeholders for the effective delivery of early childhood services to children five years of age or younger in a manner that is responsive to local needs and conditions.

(3) (a) Each new council shall consist of members to be approved initially by the convening entity as designated pursuant to section 26-6.5-103. Each individual council shall determine subsequent appointments and rules for rotation of terms.

(b) Early childhood council membership shall include representatives from the public and private stakeholders from early care and education, family support, health, and mental health programs who reflect local needs and cultural diversity. The membership of each early childhood council shall also represent the geographic diversity within the county or counties involved in the council. Each council shall include a minimum of ten members with representation from each of the following stakeholder groups within the council's service area:

(I) Local government, including but not limited to county commissioners, city council members, local school district board members, and local county departments of human services;

(II) Early care and education, including but not limited to licensed and legally exempt child care providers, head start grantees, and district preschool programs operating pursuant to article 28 of title 22, C.R.S.;

(III) Health care, including but not limited to local public health agencies; health care providers; supplemental food programs for women, infants, and children as provided for in 42 U.S.C. sec. 1786; early periodic screening and diagnosis and treatment programs as required by federal law; and part B and part C of the federal "Individuals With Disabilities Education Improvement Act of 2004", 42 U.S.C. sec. 1400 et seq., as amended;

(IV) Parents of children five years of age or younger;

(V) Mental health care, including but not limited to community mental health centers and local mental health care providers;

(VI) Resource and referral agencies, including but not limited to child care resource and referral agencies;

(VII) Family support and parent education, including but not limited to home visitation programs, family resource centers, and income assistance programs.

(c) In addition, each council may include but is not limited to representation from any combination of the following stakeholder groups within the council's service area:

(I) Child care associations;

(II) Medical and dental professionals;

(III) School district parent organizations;

(IV) Head start policy councils;

(V) A chamber or chambers of commerce;

(VI) Local businesses;

(VII) Faith-based and nonprofit organizations;

(VIII) Higher education institutions; and

(IX) Libraries.

(4) Each member of a council shall sign a memorandum of understanding on behalf of the organization he or she represents to participate in and collaborate on the work of the council.

Source: L. 2007: Entire section added, p. 1636, § 5, effective May 31. **L. 2009:** (2) amended, (HB 09-1343), ch. 355, p. 1856, § 5, effective June 1; (3)(b)(II) amended, (SB 09-292), ch. 369, p. 1976, § 102, effective August 5.

26-6.5-103.7. Early childhood councils - duties. (1) Each early childhood council shall have, at a minimum, the following duties and functions:

(a) To apply for early childhood funding pursuant to section 26-6.5-104;

(b) To increase and sustain the quality, accessibility, capacity, and affordability of early childhood services for children five years of age or younger and their parents. To this end, each council shall develop and execute strategic plans to respond to local needs and conditions.

(c) To establish a local system of accountability to measure local progress based on the needs and goals set for program performance;

(d) To report annually the results of the accountability measurements defined in paragraph (c) of this subsection (1);

(e) To select a fiscal agent to disburse funds and serve as the employer of the council director, once hired. The fiscal agent may or may not be a county.

(f) To develop and implement a strategic plan as described in section 26-6.5-103.3 (4), including a comprehensive evaluation and report; and

(g) To actively attempt to inform and include small or under-represented early childhood service providers in early childhood council activities and functions.

Source: L. 2007: Entire section added, p. 1636, § 5, effective May 31.

26-6.5-104. Early childhood councils - waivers - rules - funding - application.

(1) A local council may request a waiver of any rule that would prevent a council from implementing council projects. The local council shall submit the request to the early childhood leadership commission created in article 44.7 of title 24, C.R.S. The early childhood leadership commission shall consult with the affected state agency in reviewing the request. The state department or other affected state agency shall grant waivers upon recommendation by the commission.

(2) (a) The state department shall promulgate rules to develop and distribute to councils the application form and application process to be used by each council seeking to receive council infrastructure, quality improvement, technical assistance, and evaluation funding from the early childhood cash fund created in section 26-6.5-109 and other funding sources appropriated for early childhood services.

(b) Applications for early childhood funding from the early childhood cash fund established in section 26-6.5-109 and other funding sources appropriated for early childhood services shall be reviewed upon receipt by the state department.

(c) The state department is authorized to enter into a sole-source contract with any council to increase and sustain the quality, accessibility, capacity, and affordability of early childhood services for young children and their parents.

Source: **L. 97:** Entire article added, p. 1125, § 1, effective May 28. **L. 99:** (4) added, p. 1340, § 2, effective July 1. **L. 2000:** (4) amended, p. 819, § 2, effective July 1. **L. 2005:** (3) amended, p. 1006, § 3, effective June 2. **L. 2006:** (1) amended, p. 700, § 47, effective April 28. **L. 2007:** Entire section R&RE, p. 1640, § 6, effective May 31. **L. 2010:** (1) amended, (SB 10-195), ch. 336, p. 1546, § 2, effective August 11; (2)(a) and (2)(b) amended, (HB 10-1422), ch. 419, p. 2116, § 157, effective August 11. **L. 2011:** Entire section amended, (SB 11-247), ch. 239, p. 1039, § 7, effective May 27.

26-6.5-104.5. Quality evaluation and improvement of early childhood care and education programs - use of Colorado works moneys. Counties are urged to partner with for-profit or not-for-profit organizations that evaluate the quality of early childhood care and education programs in the early childhood councils and assign ratings thereto in an effort to assess the success of such programs and to improve the ultimate delivery of early childhood care and education. Counties so partnering are further encouraged to match private investments in such early childhood care and education programs with county block grant moneys for Colorado works pursuant to part 7 of article 2 of this title and federal child care development funds in an effort to improve the overall quality of those programs. Counties so partnering are further encouraged to expend local funds to promote the objectives of this part 1 and improve the delivery of early childhood services, including the continuation of those funding sources developed to support pilot site agency activities.

Source: **L. 2000:** Entire section added, p. 820, § 3, effective July 1. **L. 2007:** Entire section amended, p. 1646, § 12, effective May 31. **L. 2009:** Entire section amended, (HB 09-1343), ch. 355, p. 1856, § 6, effective June 1.

26-6.5-105. Early childhood council advisory team - creation - duties. (Repealed)

Source: **L. 97:** Entire article added, p. 1125, § 1, effective May 28. **L. 99:** (3) added, p. 1340, § 3, effective July 1. **L. 2007:** Entire section R&RE, p. 1640, § 7, effective May 31. **L. 2010:** IP(3), (3)(d), and (3)(e) amended and (3)(f) added, (SB 10-195), ch. 336, p. 1547, § 3, effective August 11. **L. 2011:** Entire section repealed, (SB 11-247), ch. 239, p. 1038, § 1, effective May 27.

26-6.5-106. School-readiness quality improvement program.

(1) (Deleted by amendment, L. 2005, p. 892, § 2, effective June 2, 2005.)

(2) Repealed.

(3) **School-readiness quality improvement program created.** On and after January 1, 2003, and continuing thereafter subject to sufficient and available federal funding, there is hereby created the school-readiness quality improvement program, referred to in this section as the “program”, pursuant to which the state department of human services shall award three years of school-readiness quality improvement funding to eligible early childhood care and education councils identified or established throughout the state pursuant to subsection (3.5) of this section. School-readiness quality improvement funding shall be awarded to improve the school-readiness of children five years of age and younger who are enrolled in early care and education facilities. School-readiness quality improvement funding shall be awarded to eligible early childhood care and education councils based upon allocations made at the discretion of the state department and subject to available federal funding. Nothing in this section or in any rules promulgated pursuant to this section shall be interpreted to create a legal entitlement in any early childhood care and education council to school-readiness quality improvement funding pursuant to the program. Moneys awarded through the program shall be used to improve the school readiness of children, five years of age and younger, cared for at such facilities, who ultimately attend eligible elementary schools.

(3.5) **Early childhood care and education councils.** (a) (I) Communities throughout the state that do not have a pilot site agency may identify an existing entity or establish a new entity to serve as the early childhood care and education council to work toward the development and implementation of a comprehensive early childhood system to ensure the school readiness of young children in the community. A community may identify an existing entity, such as a consolidated child care pilot site agency or an interagency coordinating council or a district preschool program advisory council, to serve as its early childhood care and education council, or it may establish a new council. To the extent it is practical, early childhood care and education councils shall be representative of the various public and private stakeholders in the community, as specified in this subsection (3.5), who are committed to supporting the preparedness of young children for school. Such stakeholders shall include:

- (A) School districts;
- (B) The county department;
- (C) Private for-profit and nonprofit licensed child care providers representing child care centers, family child care homes, and preschools;
- (D) Local resource and referral agency or agencies;
- (E) County, district, or municipal public health agencies; and
- (F) Local mental health community or communities.

(II) In addition, each early childhood care and education council may include, but is not limited to, representation from any combination of the following:

- (A) The board of county commissioners;
- (B) The local head start grantee;
- (C) The Colorado preschool program established in article 28 of title 22, C.R.S.;
- (D) Child care associations;
- (E) Other local governmental entities;
- (F) Parents or other consumers of early childhood care and education services; and
- (G) Faith-based organizations.

(b) For purposes of this section, the early childhood care and education council, whether newly established in a community or newly identified to serve as such, shall work toward consolidating and coordinating funding, including school-readiness quality improvement funding, to create a seamless early childhood system of collaboration among the various public and private stakeholders for the effective delivery of early childhood care and education to young children in the community.

(4) **Application for funding.** (a) (I) An early childhood care and education council seeking school-readiness quality improvement funding from the state department pursuant to this section shall apply directly to the state department in the manner specified by rule of the state board of human services. An early childhood care and education council applying for school-readiness quality improvement funding pursuant to this section shall meet the following minimum criteria:

(A) The community represented by the early childhood care and education council shall include one or more eligible elementary schools;

(B) The early childhood care and education council shall develop and submit a school-readiness plan to improve the school readiness of children in the community as described in subsection (6) of this section; and

(C) The early childhood care and education council shall demonstrate the commitment of the early care and education facilities identified in the school-readiness plan to cooperate with and participate in the school-readiness quality rating system described in subsection (5) of this section.

(II) An early childhood care and education council seeking school-readiness quality improvement funding pursuant to this section shall, in addition to the requirements set forth in subparagraph (I) of this paragraph (a), meet any additional eligibility requirements specified by rule of the state board.

(b) Early childhood care and education councils that receive school-readiness quality improvement funding pursuant to this section shall distribute such moneys to early care and education facilities identified in the school-readiness plan described in subsection (6) of this section.

(5) **School-readiness quality rating system.** The state early childhood and school-readiness commission created pursuant to section 26-6-304 shall adopt a voluntary school-readiness quality rating system. Such rating system shall measure the level of preparedness of and quality of services provided by an early care and education provider to prepare children to enter elementary school. The school-readiness quality rating system shall:

(a) Measure such elements of quality of an early care and education facility as:

(I) The quality of the learning environment;

(II) The quality of adult-child interactions;

(III) Adult-to-child ratios;

(IV) Provider training and education, including recognized credentials through the state department's voluntary credentialing system developed pursuant to section 26-6.5-107; and

(V) Parent-involvement activities at the early care and education facility;

(b) Be variable to inform parents, counties, and other purchasers of early childhood care and education about the level of quality at an early care and education facility in a simple and easy-to-understand manner;

(c) Be supported by statistically valid research as a reliable measure of quality of an early care and education facility;

(d) Include a quality improvement plan that informs quality-rated early care and education providers of their strengths and weaknesses and that provides such providers with strategies to improve the quality of their services; and

(e) Have demonstrated effectiveness at improving the level of quality of early care and education providers in geographically diverse Colorado communities.

(6) **School-readiness plans.** Each early childhood care and education council seeking to apply for school-readiness quality improvement funding pursuant to this section shall prepare and submit to the state department a three-year school-readiness plan that outlines strategies to improve the school readiness of children who reside in neighborhoods with eligible elementary schools. The school-readiness plan, at a minimum, shall include:

(a) The number and location of eligible elementary schools in the community;

(b) The number and location of early care and education providers that will voluntarily participate in the school-readiness quality improvement program;

(c) A commitment that the early care and education providers identified in the school-readiness plan will cooperate with and participate in the school-readiness quality rating system described in subsection (5) of this section; and

(d) Community strategies to target school-readiness quality improvement funding to improve the level of quality at participating early care and education providers.

(7) **Rules.** (a) The state board of human services shall promulgate rules for the implementation of this section, including but not limited to rules that:

(I) Specify the procedure by which an early childhood care and education council may apply for school-readiness quality improvement funding pursuant to the program;

(II) Specify the manner in which school-readiness quality improvement funding is distributed to early childhood care and education councils, ensuring an equitable distribution between rural and urban communities; and

(III) Identify any additional eligibility requirements for early childhood care and education councils seeking school-readiness quality improvement funding, as described in subparagraph (II) of paragraph (a) of subsection (4) of this section.

(b) At a minimum, the rules promulgated pursuant to this subsection (7) shall identify a specific and measurable level of improvement in the school-readiness quality rating that an early care and education provider must achieve over the course of the funding distribution period after receiving an initial funding distribution through the program in order for the provider to continue receiving school-readiness quality improvement funding, as well as the eligibility criteria for continued participation in the program.

(8) **Funding.** (a) The school-readiness quality improvement program shall be funded using federal child care development fund moneys annually appropriated for the program. Such moneys shall be allocated by the state department to the eligible early childhood care and education councils for implementation of the rating system and for distribution to early care and education providers, as provided in this section.

(b) (I) If moneys are required to match the federal child care development funds, such matching moneys may be from, but need not be limited to, general fund moneys appropriated by the general assembly, local moneys, or private matching moneys. Any state department staff that may be necessary to support the school-readiness quality improvement program shall be funded by federal child care development funds appropriated for the program and not from general funds. The FTE authorization for any staff necessary to support the school-readiness quality improvement program shall be eliminated should federal funds no longer be available for the program.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the general assembly shall not be obligated to appropriate general fund moneys if private matching moneys are not available or later become unavailable.

(c) The state department shall be authorized to enter into a sole-source contract with an organization to provide the following:

- (I) Ratings of child care;
- (II) Technical assistance for child care providers;
- (III) Community infrastructure and resource development for improving the quality of child care;
- (IV) Parent and consumer education on the quality of child care providers in the community.

(9) **Evaluation - report.** (a) Each early childhood care and education council shall submit to the state department a summative thirty-month report on or before January 1, 2009, and on or before January 1 every three years thereafter. The report shall address the quality improvement of the participating early care and education facilities and the overall effectiveness of the school-readiness quality improvement program at preparing low-income children, residing in communities with eligible elementary schools, for school. Such reports, at a minimum, shall address:

- (I) The number of early care and education facilities and children who participated in the school-readiness quality improvement program;
- (II) The baseline quality ratings of each participating early care and education provider during each year of participation;
- (III) An analysis and explanation of the quality improvement strategies undertaken at each early care and education facility; and
- (IV) The barriers to quality improvement that were encountered.

(b) On or before April 1, 2009, and on or before April 1 every three years thereafter, the state department, or any private entity with which the state department is hereby authorized to contract for this purpose, shall submit a consolidated statewide report, based upon the reports prepared and submitted by the early childhood care and education councils, addressing the items set forth in paragraph (a) of this subsection (9) to the state early childhood and school-readiness commission and to the members of the education committees of the house of representatives and the senate of the general assembly.

(c) Reporting early childhood care and education councils, as well as the state department or any private entity with which it may contract for reporting purposes, may draw upon the evaluations and studies prepared by a nationally recognized research firm to report on the school-readiness of children in quality-rated early care and education facilities.

(d) Each early childhood care and education council shall work with state and local agencies, such as school districts, to support efforts to track, through high school graduation, the future academic performance of children who receive school-readiness services from early care and education providers who receive funding pursuant to this section.

Source: **L. 2002:** Entire section added, p. 1615, § 1, effective July 1. **L. 2004:** IP(5) and (9)(b) amended, p. 1771, § 9, effective June 4. **L. 2005:** Entire section amended, p. 892, § 2, effective June 2. **L. 2006:** (2)(d)(I)(B) amended, p. 432, § 9, effective April 13; (2)(b)(I), IP(3.5)(a)(I), and (3.5)(a)(II)(C) amended, p. 700, § 48, effective April 28; (2)(a) repealed, p. 1505, § 50, effective June 1. **L. 2007:** (2) repealed and (3) and (5)(a)(IV) amended, pp. 1641, 1643, §§ 8, 9, effective May 31. **L. 2009:** IP(3.5)(a)(I) and (3.5)(a)(II)(C) amended, (SB 09-292), ch. 369, p. 1976, § 103, effective August 5. **L. 2010:** (3.5)(a)(I)(E) amended, (HB 10-1422), ch. 419, p. 2117, § 158, effective August 11.

Cross references: For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 238, Session Laws of Colorado 2005.

26-6.5-107. Voluntary child care credentialing system - rules. The state department shall develop and maintain a statewide voluntary child care credentialing system that recognizes the training and educational achievements of persons providing early childhood care and education. The use of the voluntary child care credentialing system shall include but need not be limited to the early childhood councils. The voluntary child care credentialing system shall be a multi-tiered system of graduated credentials that reflects the increased training, education, knowledge, skills, and competencies of persons working in early childhood care and education services in the various councils. The state board shall promulgate such rules as are necessary for the statewide implementation of the voluntary child care credentialing system.

Source: **L. 2007:** Entire section added, p. 1643, § 10, effective May 31.

26-6.5-108. Evaluation. (1) No later than March 1, 2010, the state department shall, through a request for proposals process, contract with a qualified individual or entity to prepare an independent evaluation of the system of early childhood councils to determine the effectiveness of the system in serving children and families throughout the state. The evaluation shall be completed no later than October 1, 2010, and shall be repeated every three years thereafter.

(2) The evaluation shall include the following:

(a) An aggregate evaluation of local evaluation plan data as integrated and analyzed by the state department, including an evaluation of the overall program performance and council process and effectiveness;

(b) An evaluation of state program performance, including the efficiency and effectiveness of the state department in meeting the needs of the councils;

(c) An evaluation of the feasibility of combining the funding sources available under this part 1;

(d) An evaluation of the barriers to delivery of quality early childhood services; and

(e) An evaluation of the impact of waivers issued pursuant to section 26-6.5-104.

Source: L. 2007: Entire section added, p. 1643, § 10, effective May 31. L. 2009: (2)(c) amended, (HB 09-1343), ch. 355, p. 1856, § 7, effective June 1. L. 2011: (1), (2)(a), and (2)(b) amended, (SB 11-247), ch. 239, p. 1039, § 8, effective May 27.

26-6.5-109. Early childhood cash fund - creation. (1) There is hereby created in the state treasury the early childhood cash fund, referred to in this part 1 as the “fund”, that shall consist of such moneys as may be appropriated to the fund by the general assembly and credited to the fund pursuant to subsection (2) of this section. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this part 1.

(2) The state department is authorized to seek and accept gifts, grants, or donations from private and public sources for the purposes of this part 1. All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department for the direct and indirect costs associated with the implementation of this part 1.

(3) Any moneys in the fund not expended for the purposes of this part 1 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund.

(4) The state department may expend up to, but not exceeding, five percent of the moneys annually appropriated from the fund to offset the costs incurred in implementing this part 1.

(5) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2007: Entire section added, p. 1643, § 10, effective May 31. L. 2009: (1), (2), (3), and (4) amended, (HB 09-1343), ch. 355, p. 1856, § 8, effective June 1.

26-6.5-110. Analysis of child care assistance program policies and procedures - reporting. (1) Beginning in fiscal year 2007-08, the office of the state auditor shall conduct a performance audit of the use of moneys from the child care assistance program created in part 8 of article 2 of this title.

(2) The performance audit by the office of the state auditor conducted pursuant to this section shall include but need not be limited to an assessment of state and county policies and procedures related to child care assistance program moneys, the use of temporary assistance for needy family child care transfers and reserves, provider payments and reimbursement rates, parental co-payments, and eligibility.

(3) Based on the findings and conclusions identified during the performance audit conducted pursuant to this section, the office of the state auditor shall make recommendations to the state department for improving the efficiency and effectiveness of the child care assistance program. On or before December 30, 2008, the office of the state auditor shall submit the findings, conclusions, and recommendations from the performance audit in the form of a written report to the legislative audit committee, which shall hold a public hearing for the purposes of a review of the report. The report shall also be submitted to the health and human services and education committees of the house of representatives and the senate, or any successor committees.

Source: L. 2007: Entire section added, p. 1643, § 10, effective May 31. L. 2011: (3) amended, (SB 11-247), ch. 239, p. 1040, § 9, effective May 27.

PART 2

EARLY CHILDHOOD AND SCHOOL READINESS
LEGISLATIVE COMMISSION**26-6.5-201 to 26-6.5-204. (Repealed)**

Editor's note: (1) This part 2 was added in 2009. For amendments to this part 2 prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 26-6.5-204 provided for the repeal of this part 2, effective July 1, 2012. (See L. 2009, p. 1855.)

PART 3

COLORADO QUALITY IN CHILD CARE
INCENTIVE GRANT PROGRAM

Cross references: For the legislative declaration in the 2010 act adding this part 3, see section 1 of chapter 114, Session Laws of Colorado 2010.

26-6.5-301. Short title. This part 3 shall be known and may be cited as the "Colorado Quality in Child Care Incentive Grant Program".

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 385, § 2, effective August 11.

26-6.5-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Council" means an early childhood council established pursuant to section 26-6.5-103.

(2) "County department" means a county or district department of social services.

(3) "Early care and education provider or facility" means a school district, provider, or facility that is licensed pursuant to part 1 of article 6 of this title or that participates in the Colorado preschool program pursuant to article 28 of title 22, C.R.S.

(4) "Grant program" means the Colorado quality in child care incentive grant program created in section 26-6.5-303.

(5) "State board" means the state board of human services established in section 26-1-107.

(6) "State department" means the department of human services, created in section 26-1-105.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 385, § 2, effective August 11.

26-6.5-303. Colorado quality in child care incentive grant program - creation.

Subject to the receipt of sufficient moneys pursuant to section 26-6.5-306, there is hereby created in the state department the Colorado quality in child care incentive grant program. The objective of the grant program is to provide incentives to county departments to increase the quality of early care and education providers and facilities. The grant program will provide a tiered reimbursement and quality improvement system that will allow county departments and early care and education providers and facilities to retain the flexibility to determine how to invest resources while at the same time rewarding certain functions, including but not limited to pursuing quality ratings or accreditation, known to improve quality of care for all children, especially at-risk children.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 385, § 2, effective August 11.

26-6.5-304. Eligibility for grants - award criteria - rules. (1) A county department may apply to the state department for a grant pursuant to this part 3. To be eligible for a grant, an applicant shall be working in collaboration with a council. The applying county department need not be a member of a council, but for the purposes of applying for and receiving a grant from the grant program, the county department shall present a collaborative model to the state department, including a description of how the county department is working or will work with a local or neighboring council.

(2) On or before December 1, 2010, the state board shall promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., establishing policies and procedures for the administration of the grant program, including but not limited to:

(a) Criteria for the selection of grant recipients, including but not limited to blending Colorado child care assistance program slots with established high-quality programs, employing teachers in early education who hold either a bachelor's or associate degree, having an existing quality rating or accreditation, pursuing a quality rating or accreditation, or investing in the professional development of teachers;

(b) A system of tiered reimbursement for applicants based on the grant criteria established;

(c) Application deadlines, award dates, amounts of grant awards, and acceptable uses of grant awards, including but not limited to assistance for pursuing a quality rating or accreditation; and

(d) Any other rules necessary for the effective implementation of this part 3.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 385, § 2, effective August 11.

26-6.5-305. Reporting requirements. On or before July 30, 2012, and on or before July 30 each year thereafter, the state department shall prepare and submit to the education and health and human services committees of the house of representatives and the senate, or any successor committees, a report that describes the use of the grant moneys, including but not limited to the number of grants made, the amount of grant moneys distributed, a breakdown of counties that received grant moneys, and a summary of the improvement in quality in child care and early childhood education as a result of the grant program.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 386, § 2, effective August 11.

26-6.5-306. Colorado quality in child care incentive grant program fund. (1) It is the intent of the general assembly that any costs associated with implementing this part 3 shall be paid for by the receipt of any available federal moneys or other gifts, grants, or donations and that no additional general fund moneys be appropriated for the implementation of the grant program.

(2) Any state agency is authorized to seek and accept any federal moneys or other gifts, grants, or donations for the purposes of this part 3. If received, any gifts, grants, or donations shall be transmitted to the state treasurer who shall credit them to the Colorado quality in child care incentive grant program fund, which fund is hereby created and referred to in this section as the "fund".

(3) The moneys in the fund shall be continuously appropriated to the state department for the direct and indirect costs associated with implementing this part 3. Any moneys in the fund not expended for the purpose of this part 3 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall

not be credited or transferred to the general fund or another fund. All unexpended and unencumbered moneys remaining in the fund as of July 1, 2020, shall be transferred to the early childhood cash fund, created in section 26-6.5-109.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 386, § 2, effective August 11.

26-6.5-307. Repeal of part. (1) (a) On or before July 1, 2011, the executive director of the state department shall notify the revisor of statutes in writing if federal moneys are not received and allocated to the state department or if gifts, grants, and donations are not received by the state department to provide for the award of grants pursuant to this part 3.

(b) If the revisor of statutes does not receive notice pursuant to paragraph (a) of this subsection (1), on July 1, 2012, or on July 1 of any year thereafter, the executive director of the state department shall notify the revisor of statutes in writing if federal moneys or gifts, grants, or donations are not available to continue to provide for the award of grants pursuant to this part 3.

(2) This part 3 is repealed, effective the July 1 following the receipt of the notice by the revisor of statutes pursuant to paragraph (a) or (b) of subsection (1) of this section, but no later than July 1, 2020.

Source: L. 2010: Entire part added, (HB 10-1026), ch. 114, p. 387, § 2, effective August 11.

ARTICLE 7

Subsidization of Adoption

26-7-101.	Definitions.	26-7-105.	Rules and regulations.
26-7-102.	Payments authorized.	26-7-106.	Federal funds.
26-7-103.	Conditions.	26-7-107.	Appeals.
26-7-104.	Administration.	26-7-108.	Payment of subsidies.

26-7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Board” means the state board of human services, or its designated representative.

(2) “Child with special needs” means a child with a special, unusual, or significant physical or mental disability, or emotional disturbance, or such other condition which acts as a serious barrier to the child’s adoption.

(3) “Department” means the department of human services.

Source: L. 73: p. 1227, § 1. **C.R.S. 1963:** § 119-15-1. **L. 93:** (2) amended, p. 1665, § 75, effective July 1; (1) and (3) amended, p. 1157, § 113, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending subsections (1) and (3), see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

“Other condition” language in definition of “special needs” in subsection (2) allows consideration of the disabilities or conditions enumerated in the federal statute but not explicitly included in the state statute or regulation and, therefore, the statutory and regulatory definitions are not preempted by federal law. *Sapp v. El Paso County Dept. of Human Servs.*, 181 P.3d 1179 (Colo. App. 2008).

A totality of the circumstances test should be applied to determine whether “serious barriers to adoption” exist. Under this test, both subjective and objective factors must be considered on an individualized basis. *Sapp v. El Paso County Dept. of Human Servs.*, 181 P.3d 1179 (Colo. App. 2008).

26-7-102. Payments authorized. The department of human services may make payments to adoptive parents on behalf of a child placed for adoption by a department or licensed nonprofit child placement agency.

Source: L. 73: p. 1227, § 1. C.R.S. 1963: § 119-15-2. L. 89: Entire section amended, p. 1224, § 1, effective June 1. L. 93: Entire section amended, p. 1157, § 114, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-7-103. Conditions. (1) Payments in subsidization of adoption may be made only after it has been determined that all of the following conditions are present at the time the child was placed for adoption:

(a) The child is in the custody of a department or a licensed nonprofit child placement agency and is legally available for adoption.

(b) All reasonable efforts to place the child for adoption have been made without success prior to consideration of a subsidy.

(c) The child is one with special needs as determined by prognosis and diagnosis.

(d) The department or licensed nonprofit child placement agency has determined that the adoptive family has the capability of providing for the nonfinancial needs of the child in all areas.

(e) The department or licensed nonprofit child placement agency is financially responsible for the care of the child.

(f) Children in the custody of a licensed nonprofit child placement agency must meet federal requirements for eligibility under Title IV-E of the federal "Social Security Act", as amended.

Source: L. 73: p. 1227, § 1. C.R.S. 1963: § 119-15-3. L. 89: (1)(a), (1)(d), and (1)(e) amended and (1)(f) added, p. 1224, § 2, effective June 1.

26-7-104. Administration. (1) Payments in subsidization of adoption may include but are not limited to the maintenance costs, medical and surgical expenses, and other costs incidental to the adoption, care, training, and education of the child. The amount of such payments shall be subject to available appropriations and may not exceed the cost of providing comparable assistance in foster care. Payments in subsidization of adoption may be continued although the adoptive parents leave the state of Colorado with the adopted child.

(2) Qualification for payments in subsidization of adoption shall be determined and approved by the department in accordance with rules and regulations of the board prior to the completion of the legal adoption.

(3) Payments in subsidization of adoption shall terminate when the need for such payments no longer exists. Such payments shall not extend beyond the child's twenty-first birthday.

(4) Notwithstanding the provisions of section 19-5-207.5 (4) (a) (III), C.R.S., any fees ordinarily assessed by the department for adoption investigations and home study reports may be waived if such fee poses a barrier to the adoption.

(5) For an adoptive family who receives an approved Title IV-E adoption assistance subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an approved payment in subsidization of adoption pursuant to section 26-7-103, the cost of care, as defined in section 19-1-103 (30), C.R.S., shall not exceed the amount of the adoption assistance payment.

Source: L. 73: p. 1228, § 1. C.R.S. 1963: § 119-15-4. L. 77: (3) amended and (4) added, p. 1361, § 1, effective June 19. L. 87: (4) amended, p. 821, § 41, effective October 1. L. 99: (4) amended, p. 1025, § 9, effective May 29. L. 2002: (2) amended, p. 192, § 1, effective August 7. L. 2007: (5) added, p. 1509, § 6, effective May 31.

Cross references: For the legislative declaration contained in the 2007 act enacting subsection (5), see section 1 of chapter 351, Session Laws of Colorado 2007.

26-7-105. Rules and regulations. The board shall make all necessary rules and regulations for administering the program for payments in subsidization of adoption established by this article.

Source: L. 73: p. 1228, § 1. C.R.S. 1963: § 119-15-5.

26-7-106. Federal funds. The department is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. The executive director of the department, with the approval of the governor, shall have power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

Source: L. 73: p. 1228, § 1. C.R.S. 1963: § 119-15-6.

26-7-107. Appeals. In any case where an application under this article is denied or a grant of subsidization of adoption is reduced or terminated, the applicant or recipient shall have the right to appeal to the department, with a hearing before a department administrative law judge in accordance with the “State Administrative Procedure Act”. A hearing need not be granted when either state or federal law requires or results in a reduction or deletion of services.

Source: L. 73: p. 1228, § 1. C.R.S. 1963: § 119-15-7. L. 77: Entire section amended, p. 1350, § 3, effective May 16. L. 87: Entire section amended, p. 974, § 92, effective March 13.

Cross references: For the “State Administrative Procedure Act”, see article 4 of title 24.

26-7-108. Payment of subsidies. Funds for the payment of the subsidies created under this article shall come from moneys appropriated to the department of human services for foster care.

Source: L. 73: p. 1228, § 1. C.R.S. 1963: § 119-15-8. L. 94: Entire section amended, p. 2706, § 271, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ARTICLE 7.5

Domestic Abuse Programs

Cross references: For provisions relating to protection orders and emergency protection orders in domestic abuse cases, see § 13-6-104 and article 4 of title 14; for crimes involving domestic violence, see part 8 of article 6 of title 18.

26-7.5-101.	Legislative declaration.		state department - rules and regulations.
26-7.5-102.	Definitions.		
26-7.5-103.	Domestic abuse programs - criteria.	26-7.5-105.	Funding of domestic abuse programs.
26-7.5-104.	Community domestic abuse programs - contracts with	26-7.5-106.	Repeal of article. (Repealed)

26-7.5-101. Legislative declaration. The general assembly hereby finds that a significant number of homicides, aggravated assaults, assaults and batteries, and other types of

abuse and coercive control occur within the home; that the reported incidence of domestic abuse represents only a portion of the total number of incidents of domestic abuse; that a large percentage of police officer deaths in the line of duty result from police intervention in domestic abuse situations; and that domestic abuse is a complex problem affecting families from all social and economic backgrounds. It is the purpose of this article to encourage the development of domestic abuse programs by units of local government and nongovernmental agencies.

Source: L. 83: Entire article added, p. 1136, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-068), ch. 264, p. 1209, § 1, effective July 1.

26-7.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Domestic abuse" means any act or threatened act of violence, including any forceful detention of an individual, which results or threatens to result in physical injury and which is committed by a person eighteen years of age or older against another person who is a relative or who is living in the same domicile.

(2) "Domestic abuse program" means a culturally and linguistically appropriate community-based or community-oriented program, which may include residential facilities, and which is operated by a unit of local government or a nongovernmental agency and established pursuant to the criteria set forth in section 26-7.5-103, to assist victims of domestic abuse and their dependents.

(3) "Nongovernmental agency" means any person, private nonprofit agency, corporation, or other nongovernmental agency.

(4) "Unit of local government" means a county, city and county, city, town, or municipality.

Source: L. 83: Entire article added, p. 1136, § 1, effective July 1. L. 99: (2) amended, p. 1177, § 2, effective June 2.

26-7.5-103. Domestic abuse programs - criteria. (1) A domestic abuse program established pursuant to this article shall provide, but not be limited to:

(a) Counseling for persons who are victims of domestic abuse and their dependents and for persons who cause domestic abuse;

(b) Advocacy programs that assist victims in obtaining services and information;

(c) Educational programs designed for both community at large and specialized groups such as medical personnel and law enforcement officials.

(2) Domestic abuse programs shall utilize the resources of the community in meeting the personal and family needs of participants.

(3) As a part of a domestic abuse program, a domestic abuse facility may be established to provide residential accommodations to victims of domestic abuse and their dependents.

Source: L. 83: Entire article added, p. 1137, § 1, effective July 1.

26-7.5-104. Community domestic abuse programs - contracts with state department - rules and regulations. (1) The executive director may enter into contracts or agreements for services with any unit of local government or nongovernmental agency which has established and which operates a community domestic abuse program or with a unit of local government or nongovernmental agency which has subcontracted with a nongovernmental agency for domestic abuse program services.

(2) (a) The state department shall establish, by rule, and enforce standards and regulations for all domestic abuse programs established pursuant to this article and shall require that each such domestic abuse program meets approved minimum standards as established by rule.

(b) The standards and regulations established by the state department shall require, at a minimum, each domestic abuse program to request information from each client served

by the program concerning the relationship of the client to the alleged perpetrator of the domestic abuse. The standards and regulations shall require each domestic abuse program to report such information to the state department.

Source: L. 83: Entire article added, p. 1137, § 1, effective July 1. L. 2009: (2) amended, (SB 09-068), ch. 264, p. 1209, § 2, effective July 1.

26-7.5-105. Funding of domestic abuse programs. (1) (a) Any nongovernmental agency or unit of local government operating a domestic abuse program pursuant to this article shall, subject to available appropriations, be reimbursed by the state department at a rate to be set by the general assembly in the annual appropriation bill. Not less than seventy-five percent of all contract funding under this article shall be allocated to nongovernmental agencies.

(b) Moneys generated from fees collected pursuant to section 14-2-106 (1) (a), C.R.S., or transferred pursuant to section 13-21-101 (5) (a) (X) or (5) (b) (II), C.R.S., shall be used to reimburse domestic abuse programs that provide services as provided in section 26-7.5-103 to married, separated, or divorced persons or their families.

(2) Staffing and administrative expenses of the state department of human services and other agencies for carrying out the provisions of this article shall be appropriated annually from available funds generated by the contribution cash funds.

(3) The Colorado domestic abuse program fund established pursuant to section 39-22-802, C.R.S., may be funded by any general fund moneys that may be appropriated thereto by the general assembly pursuant to the annual general appropriations act. The executive director shall have the authority to expend such funds appropriated to the Colorado domestic abuse program fund for the purposes described in this article.

Source: L. 83: Entire article added, p. 1137, § 1, effective July 1. L. 94: (1) amended, p. 967, § 1, effective April 28; (2) amended, p. 2706, § 272, effective July 1. L. 99: (3) added, p. 1177, § 3, effective June 2. L. 2009: (1) amended, (SB 09-068), ch. 264, p. 1210, § 3, effective July 1. L. 2011: (1)(b) amended, (HB 11-1303), ch. 264, p. 1170, § 73, effective August 10.

Cross references: (1) For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the domestic abuse program voluntary contribution, see part 8 of article 22 of title 39.

26-7.5-106. Repeal of article. (Repealed)

Source: L. 83: Entire article added, p. 1138, § 1, effective July 1. L. 86: Entire section amended, p. 1005, § 1, effective April 3. L. 89: Entire section amended, p. 1513, § 3, effective March 9. L. 94: Entire section repealed, p. 967, § 2, effective April 28.

ARTICLE 7.6

Task Force on Family Issues

26-7.6-101 to 26-7.6-105. (Repealed)

Editor's note: (1) Section 26-7.6-105 provided for the repeal of this article, effective July 1, 1993. (See L. 91, p. 1763.)

(2) This article was added in 1991 and was not amended prior to its repeal in 1993. For the text of this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 7.8

Homeless Prevention
Activities Program

Law reviews: For note, "Hunger and Homelessness in America: A survey of State Legislation", see 66 Den. U. L. Rev. 277 (1989).

26-7.8-101.	Legislative declaration.		with nongovernmental
26-7.8-102.	Definitions.		agency - program standards.
26-7.8-103.	Homeless prevention activi- ties program - criteria.	26-7.8-105.	Funding of homeless preven- tion activities programs.
26-7.8-104.	Homeless prevention activi- ties program - contracts		(Repealed)
		26-7.8-106.	Repeal of article. (Repealed)

26-7.8-101. Legislative declaration. The general assembly hereby finds that there are a growing number of persons in this state who lack the resources and the community ties necessary to provide for their own adequate shelter and who are likely to become homeless without community assistance. The general assembly recognizes that women and children are the fastest growing group of the homeless and that a large percentage of the total homeless population consists of families. The general assembly therefore finds that it is beneficial to the state to fund prevention activities programs to assist families and other persons who are likely to become homeless without some community assistance; that this article is enacted to provide a means by which such programs may be financed through a voluntary contribution designation on state income tax return forms; and that it is desirable to encourage residents of this state to designate the amount of such contribution to help fund such prevention activities programs on their state income tax return forms.

Source: L. 89: Entire article added, p. 1226, § 1, effective July 1.

26-7.8-102. Definitions. As used in this article, unless the context otherwise requires:
(1) "Division" means the division of housing within the department of local affairs created in section 24-32-704, C.R.S.

(1.5) "Executive director" means the executive director of the department of local affairs.

(2) "Homeless prevention activities program" means a community-based or community-oriented program which is operated by the division and established pursuant to the criteria set forth in section 26-7.8-103 to assist in preventing families and other persons from becoming homeless.

(3) Repealed.

(4) "Unit of local government" means a county, city and county, city, town, or municipality.

Source: L. 89: Entire article added, p. 1226, § 1, effective July 1. **L. 91:** Entire section amended, p. 1945, § 1, effective April 17. **L. 93:** (1) amended, p. 1157, § 116, effective July 1, 1994. **L. 2012:** (1) and (2) amended, (1.5) added, and (3) repealed, (SB 12-158), ch. 151, p. 543, § 4, effective May 3.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-7.8-103. Homeless prevention activities program - criteria. (1) A homeless prevention activities program established pursuant to this article shall provide, but need not be limited to:

- (a) Assistance in avoiding eviction and foreclosure from an apartment or home;
- (b) Counseling for families and persons to prevent them from becoming homeless;
- (c) Mediation services to assist persons in avoiding eviction and foreclosure;

(d) Programs that assist persons who are in danger of becoming homeless in obtaining services and information;

(e) Referrals to and assistance in obtaining job-training, job-counseling, or information about job openings.

(1.5) The program established by this article shall be administered by the division with recommendations from an advisory committee which is hereby created. The advisory committee shall be composed of at least three members selected by the executive director. One member shall be a representative of the department of human services, and two members shall be representatives from the public at large. The committee shall serve without compensation and shall not be entitled to reimbursement for their expenses while attending meetings of the committee. The division shall administer the program under the direction of the advisory committee.

(2) At least seventy-five percent of all voluntary contributions made to the homeless prevention activities program fund pursuant to section 39-22-1301, C.R.S., shall be used for direct or financial benefit to individuals in Colorado who are homeless or in danger of becoming homeless; except that no funds shall be expended for direct cash payment to homeless persons or persons who are in danger of becoming homeless.

(2.5) The division is authorized to spend up to five percent of all voluntary contributions made to the homeless prevention activities program fund, created pursuant to the provisions of section 39-22-1301, C.R.S., or fifteen thousand dollars, whichever is greater, for costs incurred in administering the program established by this article.

(3) Repealed.

Source: L. 89: Entire article added, p. 1227, § 1, effective July 1. L. 91: (1.5) added and (2) and (3) amended, p. 1945, § 2, effective April 17. L. 92: (1.5) and (3) amended and (2.5) added, p. 2144, § 1, effective March 25. L. 94: (1.5) amended, p. 2706, § 273, effective July 1. L. 96: (3) repealed, p. 1252, § 133, effective August 7. L. 2012: (1.5) and (2.5) amended, (SB 12-158), ch. 151, p. 544, § 5, effective May 3.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994; for the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

26-7.8-104. Homeless prevention activities program - contracts with nongovernmental agency - program standards. (1) The division shall enter into contracts or agreements for services for homeless prevention activities; except that the division shall not spend more than five percent of all voluntary contributions received on administrative costs.

(2) Repealed.

(3) The advisory committee shall direct the division to establish and enforce standards for all homeless prevention activities programs established pursuant to this article.

(4) The advisory committee shall establish standards governing this program which assure that the funds collected pursuant to section 39-22-1301, C.R.S., are allocated to nongovernmental agencies, either directly or through the coordination and oversight of units of local government, for use for direct client services and assistance.

(5) Repealed.

Source: L. 89: Entire article added, p. 1227, § 1, effective July 1. L. 91: Entire section amended, p. 1946, § 3, effective April 17. L. 92: (1) to (3) amended, p. 2145, § 2, effective March 25. L. 2011: (5) added, (HB 11-1230), ch. 170, p. 588, § 4, effective July 1. L. 2012: (1) and (3) amended and (2) and (5) repealed, (SB 12-158), ch. 151, p. 544, § 6, effective May 3.

26-7.8-105. Funding of homeless prevention activities programs. (Repealed)

Source: L. 89: Entire article added, p. 1228, § 1, effective July 1. L. 91: Entire section repealed, p. 1948, § 8, effective April 17.

26-7.8-106. Repeal of article. (Repealed)

Source: **L. 89:** Entire article added, p. 1228, § 1, effective July 1. **L. 91:** Entire section amended, p. 1947, § 4, effective April 17. **L. 95:** Entire section repealed, p. 116, § 5, effective March 31.

ARTICLE 8**Vocational Rehabilitation**

Editor's note: This article was numbered as article 9 of chapter 119, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

26-8-101.	Rehabilitation programs.		disabilities.
26-8-102.	Personnel - terminology.	26-8-106.	Cooperation with federal government.
26-8-103.	Functions of the department.		
26-8-104.	Administration.	26-8-107.	Work therapy program - creation - cash fund.
26-8-105.	Rehabilitation of persons with		

26-8-101. Rehabilitation programs. In carrying out the provisions of this article, the state department shall be charged with coordinating and strengthening the programs of rehabilitation of disabled and nondisabled persons to the end that they may attain their maximum potential in employment, self-care, and independent living.

Source: **L. 73:** R&RE, p. 1208, § 7. **C.R.S. 1963:** § 119-9-1.

26-8-102. Personnel - terminology. (1) Subject to the availability of duly appropriated funds, the executive director may appoint necessary personnel to administer rehabilitation programs in accordance with the provisions of this article.

(2) Whenever any law of this state refers to the department of rehabilitation, said law shall be construed as referring to the state department. Whenever any law of this state refers to the director of the department of rehabilitation, said law shall be construed as referring to the executive director.

Source: **L. 73:** R&RE, p. 1208, § 7. **C.R.S. 1963:** § 119-9-2.

26-8-103. Functions of the department. (1) The state department shall manage, control, and supervise all rehabilitation programs provided in this article, including but not limited to:

(a) All duties and functions previously assigned to the vocational rehabilitation division of the state board of vocational education;

(b) All duties and functions previously assigned to the division of rehabilitation for the blind;

(c) All duties and functions relating to home teaching of and teachers for the adult blind vested in, exercised by, or imposed upon the state department or its predecessors prior to July 1, 1973, whether by law, rule, or regulation;

(d) Other duties and functions assigned by this article.

Source: **L. 73:** R&RE, p. 1208, § 7. **C.R.S. 1963:** § 119-9-3.

26-8-104. Administration. (1) The state department shall, in accordance with section 26-1-108:

(a) Make rules and regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility,

the investigation and determination of eligibility for vocational rehabilitation services, procedures for fair hearings, the establishment and operation of rehabilitation facilities and workshops, and such other rules and regulations as may be necessary to carry out the purposes of this article;

(b) Make certification for disbursement, in accordance with rules and regulations, of funds available for carrying out the purposes of this article;

(c) Accept and use gifts made unconditionally, by will or otherwise, for carrying out the purposes of this article. Gifts made under such conditions as in the judgment of the executive director are proper and consistent with the provisions of this article may be accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

Source: L. 73: R&RE, p. 1208, § 7. C.R.S. 1963: § 119-9-4. L. 93: IP(1) amended, p. 1157, § 117, effective July 1, 1994. L. 97: Entire section amended, p. 1191, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-8-105. Rehabilitation of persons with disabilities. (1) Except as otherwise provided by law, the state department shall provide rehabilitation services to persons with disabilities determined to be eligible therefor.

(2) For the purposes of this article, "person with a disability" means any one or more of the following:

(a) Any individual who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting the individual's activities or functioning and which constitutes a substantial disability to employment but which is of such nature that vocational rehabilitation services may reasonably be expected to render the individual fit to engage in a remunerative occupation;

(b) An individual of not less than employable age who is under such physical or mental disability as to require institutional care or attendance in his household continuously or for a substantial portion of the time, but who can be reasonably expected, as a result of rehabilitation services, to achieve such ability of independent living that he will no longer require such institutional care or such attendance in his household;

(c) An individual who does not have substantial physical or mental disability who is receiving aid from public funds and who otherwise may be expected to remain a public charge of the county or state; who has a vocational disability because of lack of training, experience, skills, or other factors which, if corrected, would lead to self-support instead of dependency; who is either responsible for the individual's own maintenance or is the responsible head of a household; and who has a potential capacity which would warrant development with a reasonable chance for employment after rehabilitation services.

(3) The state department shall:

(a) Cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this article to persons with disabilities, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of this article, such programs, facilities, and services as may be necessary or desirable;

(b) Enter into reciprocal agreements with other states to provide for the services authorized by this article to residents of the states concerned;

(c) Establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for such purposes;

(d) Operate through contract and supervise the operation of vending stands and other small businesses, established pursuant to this article and in accordance with the requirements of the federal government for the receipt of federal funds, to be conducted by individuals with severe disabilities, particularly the blind;

(e) Provide training and instruction (including the establishment and maintenance of such research fellowships and traineeships with such stipends and allowances as may be deemed necessary) in matters relating to vocational rehabilitation;

(f) Provide home teaching of and teachers for the adult blind;

(g) Provide such medical, diagnostic, physical restoration, training, and other rehabilitation services as may be needed to enable disabled individuals to attain the maximum degree of self-care;

(h) Provide for the return to full or partial self-support of nondisabled recipients of public assistance whose capacity to earn a living is impaired.

(4) (a) Vocational rehabilitation services, as defined by the federal "Vocational Rehabilitation Act", shall be provided directly or through public or private instrumentalities to or for the benefit of any individual with disabilities who is residing in the state at the time of filing an application therefor, and whose rehabilitation the state department determines after full investigation can be satisfactorily achieved, or who is eligible therefor under the terms of an agreement with another state or with the federal government.

(b) Any goods or services other than diagnostic and related services (including transportation) required for the determination of eligibility for service and of the nature and scope of the services to be provided, guidance, training, and placement shall be provided at the public cost only to the extent that the individual with disabilities is found to require financial assistance in accordance with the rules and regulations of the state department.

Source: L. 73: R&RE, p. 1209, § 7. C.R.S. 1963: § 119-9-5. L. 93: (1), IP(2), (2)(a), (2)(c), (3)(a), (3)(d), and (4) amended, p. 1665, § 76, effective July 1.

26-8-106. Cooperation with federal government. The state department shall cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to the purposes of this article, including the licensing of blind persons to operate vending stands on federal property, and is hereby authorized to adopt by rule and regulation such methods of administration as are reasonably required by the federal government for the proper and efficient operation of such agreements and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

Source: L. 73: R&RE, p. 1210, § 7. C.R.S. 1963: § 119-9-6.

26-8-107. Work therapy program - creation - cash fund. (1) There is hereby created in the state department a work therapy program to provide sheltered workshop programs for training and employment of persons receiving services at the mental health institutes and at the regional centers located at Grand Junction, Pueblo, and Wheat Ridge.

(2) (a) The state department shall transmit all moneys collected pursuant to this section to the state treasurer, who shall credit the same to the work therapy cash fund, which fund is hereby created and referred to in this section as the "fund". The fund shall consist of any moneys held for the state department as of May 3, 2012, from work therapy activities and any moneys received by the state department after May 3, 2012, pursuant to this paragraph (a). The moneys in the fund are subject to annual appropriation by the general assembly to the state department for the direct and indirect costs associated with implementing this section.

(b) The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or another fund.

Source: L. 2012: Entire section added, (HB 12-1342), ch. 156, p. 556, § 1, effective May 3.

ARTICLE 8.1**Independent Living Services**

Editor's note: This article was added in 1981. This article was repealed and reenacted in 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following the relocated sections.

26-8.1-101.	Legislative declaration.	26-8.1-105.	Rules.
26-8.1-102.	Definitions.	26-8.1-106.	State plan.
26-8.1-103.	Functions of state department - appropriations.	26-8.1-107.	Approval of independent living centers - evaluation standards.
26-8.1-104.	Written plan - consumer choice.	26-8.1-108.	Acceptance of federal grants.

26-8.1-101. Legislative declaration. The general assembly hereby determines and declares that it recognizes omissions in the delivery of independent living services to significantly disabled individuals and desires to remedy such inadequacies in the delivery system through services at the community level. To advance and support the independence of disabled individuals and to assist such individuals to live outside of institutions, the general assembly hereby enacts this article.

Source: L. 97: Entire article R&RE, p. 1168, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-101 as it existed prior to 1997.

26-8.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Cross-disability" means, with respect to an independent living center, that a center provides independent living services to individuals representing a range of significant disabilities and does not require specific significant disabilities before determining that an individual is eligible for independent living services.

(2) "Independent living center" means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and that:

(a) Is designed and operated within a local community by individuals with disabilities; and

(b) Provides a required core of independent living services and programs and an array of expanded services.

(3) "Independent living core services" means:

(a) Information and referral services;

(b) Independent living skills training;

(c) Peer counseling, including cross-disability peer counseling; and

(d) Individual and systems advocacy.

(4) "Independent living services" means:

(a) Independent living core services; and

(b) Other services and assistance as defined in 34 CFR 364.4.

(5) "Individual with a significant disability" means an individual with a severe physical, mental, cognitive, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

Source: L. 97: Entire article R&RE, p. 1168, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-102 as it existed prior to 1997.

26-8.1-103. Functions of state department - appropriations. (1) (a) Subject to available appropriations, the state department may contract with independent living centers for independent living core services.

(b) The executive director shall review expenditures in accordance with the standards for independent living services set by the state department pursuant to section 26-8.1-105 and the evaluation standards prescribed in section 26-8.1-107. The state department may withhold state funds if the executive director determines that the programs of such independent living centers do not comply with said standards.

(2) For purposes of allocating moneys under this article, each independent living center shall submit a proposed budget to the state department which shall include proposed expenditures, including proposed expenditures for services that the center intends to provide.

Source: L. 97: Entire article R&RE, p. 1169, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-103 as it existed prior to 1997.

26-8.1-104. Written plan - consumer choice. Each independent living center shall maintain an individual consumer service record indicating the consumer's choice of services, including an individualized independent living plan regarding the consumer's choice of services or a written waiver of such plan.

Source: L. 97: Entire article R&RE, p. 1170, § 1, effective May 28.

26-8.1-105. Rules. The state department shall promulgate rules setting forth standards for levels and types of core services which shall be in compliance with federal rules as defined in Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended. The state department shall also adopt rules that set standards for certification of independent living centers and shall require that any center must be designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and must meet all federal requirements for independent living centers.

Source: L. 97: Entire article R&RE, p. 1170, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-104 as it existed prior to 1997.

26-8.1-106. State plan. The statewide independent living council created pursuant to the federal "Rehabilitation Act of 1973", as amended, shall develop and revise the state plan for independent living to reflect the provisions of this article.

Source: L. 97: Entire article R&RE, p. 1170, § 1, effective May 28.

26-8.1-107. Approval of independent living centers - evaluation standards. (1) The following requirements shall be met by each independent living center as a condition of the approval of its program:

(a) The program shall be under the control and direction of a board of directors or trustees of a nonprofit corporation, the members of which shall be persons with a demonstrated interest in programs for persons with disabilities and fifty-one percent or more of the members of the board shall be persons with disabilities;

(b) The independent living center shall be staffed with fifty-one percent or more of persons with disabilities;

(c) The independent living center shall comply with all of the provisions of this article and the rules promulgated thereunder.

(2) In addition to the requirements of subsection (1) of this section, each independent living center, as a condition of approval of its program by the state department, shall agree to comply with the following evaluation standards:

(a) **Philosophy.** The independent living center shall promote and practice the independent living philosophy of:

(I) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center;

(II) Self-help and self-advocacy;

(III) Development of peer relationships and peer role models;

(IV) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(V) Promoting equal access of individuals with all types of significant disabilities to all services, programs, activities, resources, and facilities in the community, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) **Provision of services.** The independent living center shall provide independent living services to individuals with a range of significant disabilities. The independent living center shall provide independent living services on a cross-disability basis. The independent living center shall determine eligibility for independent living services and shall not exclude eligibility on the presence of any one specific significant disability.

(c) **Independent living goals.** The independent living center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance in the development and achievement of independent living goals from the center.

(d) **Community options.** The independent living center shall conduct outreach and activities to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(e) **Independent living core services.** The independent living center shall provide independent living core services and, as appropriate, a combination of any of the other independent living services referred to in section 26-8.1-102 (4) (b).

(f) **Activities to increase community capacity.** The independent living center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) **Resource development activities.** The independent living center shall conduct resource development activities to obtain funding from sources other than federal and state sources.

(3) The independent living center shall submit annually to the state department a performance report that provides evidence that the center has met the evaluation standards set forth in subsection (2) of this section.

Source: L. 97: Entire article R&RE, p. 1170, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-105 as it existed prior to 1997.

26-8.1-108. Acceptance of federal grants. The executive director is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. As indicated in the general appropriations act, the executive director, with the approval of the governor, has the power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

Source: L. 97: Entire article R&RE, p. 1172, § 1, effective May 28.

Editor's note: This section is similar to former § 26-8.1-106 as it existed prior to 1997.

ARTICLE 8.2**Products of the Rehabilitation
Center for the Visually Impaired**

26-8.2-101.	Legislative declaration.	26-8.2-104.	Contracts.
26-8.2-102.	Definitions.	26-8.2-105.	Cooperation of center with
26-8.2-103.	Sale of products.		other agencies.

26-8.2-101. Legislative declaration. (1) It is the purpose of this article to further the policy of this state to encourage and assist blind individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and consistent manner for sale of blind-made products and services, thereby enhancing the dignity and capacity for self-support of blind persons and minimizing their dependence on welfare and costly institutionalization.

(2) To further the purposes of this article and to contribute to the economy of state government, it is the intent of the general assembly that there be close cooperation between the rehabilitation center for the visually impaired and the division of correctional industries or any other state agency from which procurement of products or services is required under the provisions of any law in effect on July 1, 1979.

Source: L. 79: Entire article added, p. 1098, § 1, effective July 1.

26-8.2-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Center" means the rehabilitation center for the visually impaired of the state department of human services.

(2) "Public agency" means any public office, officer, department, commission, institution, or bureau, any agency, division, or unit within a department or office, or any other public authority of this state. "Public agency" shall not include any municipality, county, school district, special district, nor any other political subdivision of this state.

Source: L. 79: Entire article added, p. 1098, § 1, effective July 1. **L. 93:** (1) amended, p. 1158, § 118, effective July 1, 1994.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

26-8.2-103. Sale of products. (1) In order to provide preferential treatment to the products and services of the center offered for sale, public agencies shall purchase such products and services directly from the center in accordance with applicable specifications of the department of personnel. When such products and services are available, the price determined by the center shall be an amount equal to the cost of raw materials, labor, overhead, and delivery.

(2) The center may furnish to any person authorized to make purchases for any public agency and to all political subdivisions of the state a list of available products and services which are suitable for procurement.

(3) Notwithstanding any provision of this article, no purchase shall be made of any product or service that does not conform to the standards and specifications necessary for the purpose for which the goods are required.

Source: L. 79: Entire article added, p. 1098, § 1, effective July 1. **L. 96:** (1) amended, p. 1541, § 131, effective June 1.

26-8.2-104. Contracts. The executive director of the department of personnel shall not approve any contracts made in violation of this article by any public agency over which he has control of purchasing.

Source: **L. 79:** Entire article added, p. 1099, § 1, effective July 1. **L. 81:** Entire section amended, p. 1296, § 36, effective January 1, 1982. **L. 96:** Entire section amended, p. 1542, § 132, effective June 1.

26-8.2-105. Cooperation of center with other agencies. The center and the division of correctional industries and any other public agency from which procurement of products or services is required under any law in effect on July 1, 1979, are authorized to enter into such contractual agreements, cooperative working relationships, or other arrangements as may be beneficial for effective coordination and efficient realization of the objectives of this article and any other law requiring procurement of products or services from any public agency.

Source: **L. 79:** Entire article added, p. 1099, § 1, effective July 1.

ARTICLE 8.3

Blind-made Products - Registration

26-8.3-101.	Legislative declaration.	26-8.3-104.	Identification of blind-made
26-8.3-102.	Definitions.		products.
26-8.3-103.	Registration - investigation.	26-8.3-105.	Violations - penalty.

26-8.3-101. Legislative declaration. It is the purpose of this article to protect blind persons and organizations established to aid blind persons in the sale of blind-made products and to prevent misrepresentation in connection with the sale of blind-made products.

Source: **L. 79:** Entire article added, p. 1100, § 1, effective October 1.

26-8.3-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Blind-made products” means those goods, wares, and merchandise for which blind persons perform at least seventy-five percent of the total hours of direct labor of manufacture.

(2) “Blind person” means a person having not more than 20/200 central visual acuity in the better eye with correcting lenses or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees.

(3) “Direct labor” means all work required for manufacture, but does not include the supervision, administration, shipping, inspection, or packaging of products.

(4) “Manufacture” means the preparation, processing, and assembling of goods, wares, or merchandise, including manufacture by subcontracting of component materials.

Source: **L. 79:** Entire article added, p. 1100, § 1, effective October 1.

26-8.3-103. Registration - investigation. Any persons engaged in the manufacture or distribution of blind-made products may apply to the state department on forms provided by the department for a registration and an authorization to use an official imprint, stamp, symbol, or label, designed or approved by the state department, to identify goods and articles as blind-made products. The state department shall investigate each application to assure that such person is actually engaged in the manufacture or distribution of blind-made products. The state department may approve applications by nonresident persons, without investigation, upon proof that they are recognized and approved by their state of residence, state of doing business, or organization pursuant to a law of such state imposing requirements substantially similar to those prescribed in this article.

Source: **L. 79:** Entire article added, p. 1101, § 1, effective October 1.

26-8.3-104. Identification of blind-made products. No goods or articles made in this or any other state shall be displayed, advertised, offered for sale, or sold in this state upon a representation that the same are blind-made products unless identified as such by the official imprint, stamp, symbol, or label designed or approved by the state department.

Source: L. 79: Entire article added, p. 1101, § 1, effective October 1.

26-8.3-105. Violations - penalty. (1) It is unlawful for any person to use or employ, willfully or knowingly, the official imprint, stamp, symbol, or label designed or approved by the state department, unless such use is authorized by the state department, as provided for in section 26-8.3-103. Each such use is a separate offense.

(2) It is unlawful for any person to willfully or knowingly represent, directly or indirectly, by any means, for the purpose of financial gain to himself, that particular goods, wares, or merchandise are blind-made products if such products are not blind-made products. Every product so misrepresented is a separate offense.

(3) On and after October 1, 1979, any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 79: Entire article added, p. 1101, § 1, effective October 1. L. 2002: (3) amended, p. 1540, § 278, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 8.5

Vending Facilities in State Buildings -
Business Enterprise Program

Cross references: For the federal “Randolph-Sheppard Act”, see 20 U.S.C. sec. 107 et seq.

26-8.5-100.1.	Short title.	26-8.5-104.	Vending machines - income.
26-8.5-101.	Definitions.	26-8.5-105.	Cooperation - locations - rules and regulations.
26-8.5-102.	Priority for blind persons - licensing.	26-8.5-106.	Status of existing contracts.
26-8.5-103.	Satisfactory sites for vending facilities required.	26-8.5-107.	Business enterprise program cash fund - creation.

26-8.5-100.1. Short title. This article shall be known and may be cited as the “Business Enterprise Program Act”.

Source: L. 2003: Entire section added, p. 852, § 1, effective July 1.

26-8.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Blind person” means a person having not more than 20/200 central visual acuity in the better eye with correcting lenses or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees.

(2) “State property” means any building, land, or other real property owned, leased, or occupied by any department or agency of the state of Colorado, but “state property” does not include any property owned, leased, or occupied by any institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the board of commissioners of the Colorado state fair authority.

(3) “Vending facility” means automatic vending machines, a cafe, a cafeteria, a restaurant, a snack bar, a concession stand, or any other facility at which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are regularly sold.

Source: L. 77: Entire article added, p. 1362, § 1, effective July 1. L. 83: (2) amended, p. 1373, § 17, effective June 2. L. 2012: (2) amended, (HB 12-1081), ch. 210, p. 907, § 17, effective August 8.

26-8.5-102. Priority for blind persons - licensing. The state department shall issue licenses to blind persons who are qualified to operate vending facilities, in accordance with the criteria used for the licensing of operators of vending facilities on federal property pursuant to section 26-8-106 and the federal “Randolph-Sheppard Vending Stand Act”, as from time to time amended. In authorizing vending facilities on state property, priority shall be given to blind persons who are licensed by the state department. The purpose of this priority is to enlarge the economic opportunities of blind persons by providing remunerative employment and to stimulate blind persons to greater efforts in striving to make themselves self-supporting.

Source: L. 77: Entire article added, p. 1363, § 1, effective July 1.

26-8.5-103. Satisfactory sites for vending facilities required. (1) Effective July 1, 1977, no department or agency of the state of Colorado shall construct, shall acquire by ownership, rent, lease, or otherwise, or shall undertake to substantially alter or renovate, in whole or in part, any building unless after consultation with the state department it is determined that such building will include a satisfactory site or sites for the location and operation of a vending facility by a blind person.

(2) Each such department or agency shall provide notice to the state department of its plans for the occupation, acquisition, construction, alteration, or renovation of a building adequate to permit the state department to determine whether such building includes a satisfactory site or sites for a vending facility.

(3) The provisions of this section shall not apply when the state department determines that the number of people using the building will be insufficient to support a vending facility.

(4) For the purpose of this section, “satisfactory site” means an area determined by the state department to have sufficient space, electrical and plumbing outlets, and such other facilities as are prescribed by rule of the state department for the location and operation of a vending facility.

(5) No charge shall be made to the state department for the use of state-furnished space, for maintenance or janitorial services, for repair of the building structure in and adjacent to the vending facility area, including any necessary initial and periodical painting and decorating, for utilities required to operate vending facilities and vending machines, or for repairing and replacing floor coverings, cleaning windows, or providing other related building services in accordance with the normal level of building service applicable to the state building on which the vending facility is located.

Source: L. 77: Entire article added, p. 1363, § 1, effective July 1.

26-8.5-104. Vending machines - income. Effective July 1, 1977, one hundred percent of all commission income from vending machines on state property shall accrue to the state department, which shall disburse such income in accordance with the rules and regulations of the state department. The office of state planning and budgeting shall notify the state department of the location of all vending machines on state property, and the state department shall be responsible for the collection and accounting for income from these vending machines.

Source: L. 77: Entire article added, p. 1363, § 1, effective July 1.

26-8.5-105. Cooperation - locations - rules and regulations. (1) It is the duty of the heads of all state departments and agencies to negotiate and to cooperate in good faith to

accomplish the purposes of this article relating to vending facilities, including vending machines and other coin-operated devices in operation on or before July 1, 1977.

(2) If the state department determines that the operation of a vending facility by a blind person in a state building is not feasible, the location may be operated by another person, in the discretion of the office of state planning and budgeting.

(3) When no person is immediately available on the premises for the management of vending machines, the commission income from such machines shall be given to the state department in accordance with section 26-8.5-104.

(4) The state department shall be responsible for the operation of a vending facility program in accordance with its rules and regulations and in accordance with federal guidelines under the federal “Randolph-Sheppard Vending Stand Act”, as from time to time amended.

Source: L. 77: Entire article added, p. 1363, § 1, effective July 1.

26-8.5-106. Status of existing contracts. The provisions of this article shall not extend to existing contracts until the expiration of those contracts.

Source: L. 77: Entire article added, p. 1364, § 1, effective July 1.

26-8.5-107. Business enterprise program cash fund - creation. There is hereby created in the state treasury the business enterprise program cash fund, referred to in this article as the “fund”, that shall consist of moneys accruing to the state department from assessments against the net proceeds of each vending facility operator consistent with the provisions of this article, any income from vending machines on federal or state property that accrues to the state department, and any federal moneys that may become available. Any moneys currently attributed to the business enterprise program and any reserves shall be transferred to this fund for future use consistent with this article. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this article. Any moneys in the fund not expended for the purposes of this article may be invested by the state treasurer as provided in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

Source: L. 2003: Entire section added, p. 852, § 1, effective July 1.

ARTICLE 8.7

Colorado Commission for Individuals Who Are Blind or Visually Impaired

26-8.7-101 to 26-8.7-107. (Repealed)

Editor’s note: (1) This article was added in 2007 and was not amended prior to its repeal in 2012. For the text of this article prior to 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 26-8.7-107 provided for the repeal of this article, effective July 1, 2012. (See L. 2007, p. 1221.)

ARTICLE 9

Veterans Service Office and Officers

26-9-101 to 26-9-105. (Repealed)

Source: L. 2002: Entire article repealed, p. 355, § 4, effective July 1.

Editor's note: This article was numbered as article 10 of chapter 119, C.R.S. 1963. For amendments to this article prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 8 of article 5 of title 28. For the location of specific provisions, see the editor's notes following each section in said part 8.

Cross references: For the current provisions regarding veterans service office and officers, see part 8 of article 5 of title 28, C.R.S.

ARTICLE 10

Veterans Affairs

26-10-101 to 26-10-111. (Repealed)

Source: L. 2002: Entire article repealed, p. 355, §§ 4, 5, effective July 1.

Editor's note: This article was numbered as article 11 of chapter 119, C.R.S. 1963. For amendments to this article prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 7 of article 5 of title 28. For the location of specific provisions, see the editor's notes following each section in said part 7.

Cross references: For the legislative declaration contained in the 2002 act repealing sections 26-10-101 through 26-10-111, see section 1 of chapter 121, Session Laws of Colorado 2002.

26-10-112. Board of veterans affairs - world war II memorial dedication - fund - grants - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 686, § 1, effective May 29.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2002. (See L. 2002, p. 686.)

ARTICLE 11

Older Coloradans' Act

Editor's note: This article was numbered as article 7 of chapter 119, C.R.S. 1963. This article was repealed in 1968 and was subsequently recreated and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1968, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

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PART 1

COLORADO COMMISSION ON THE AGING

26-11-100.1. Short title. This article shall be known and may be cited as the "Older Coloradans' Act".

Source: L. 85: Entire section added, p. 974, § 1, effective May 29.

26-11-100.2. Legislative declaration. (1) The general assembly hereby finds and declares that older Coloradans constitute a fundamental resource of this state. Often, their competence, experience, and wisdom are underutilized, and a means must be found to use their abilities more effectively for the benefit of all Coloradans. The number of persons in this state sixty years of age or older is increasing rapidly, and, of these persons, the number of women, minorities, and persons seventy-five years of age or older is expanding at an even greater rate. Among those persons seventy-five years of age or older, there is a higher incidence of functional disability. The social and health problems of older people are compounded by the lack of access to existing services and by the unavailability of a complete range of services in all areas of the state. The ability of older people to maintain self-sufficiency and personal well-being with the dignity to which their years of labor entitle them and to realize their maximum potential as creative and productive individuals are matters of profound importance and concern for all Coloradans.

(2) The general assembly further declares that it is the policy of this state: To protect older Coloradans from abuse, neglect, or exploitation; to involve older Coloradans in the planning and operation of all programs and services that may affect them; to encourage agencies at all levels of government, as well as in the private sector, to develop alternative services and forms of care that would provide a range of services to be delivered in the community and in the home and that would facilitate access to other services which support independent living and prevent unnecessary institutionalization; to give priority in planning services and programs to those older Coloradans with the greatest economic need or the greatest social need; and to facilitate and encourage joint program planning and policy development among state and local agencies which recognize and strengthen the community and personal support networks to which people belong and on which they depend and which administer programs and deliver services to the older population.

Source: L. 85: Entire section added, p. 974, § 1, effective May 29.

26-11-101. Commission on the aging created. (1) There is hereby created in the state department the Colorado commission on the aging, referred to in this article as the "commission", which shall consist of seventeen members appointed by the governor, with the consent of the senate. Two members shall be appointed from each congressional district of the state, one of whom shall be from each major political party, and, after July 1, 1976, and thereafter when a vacancy occurs, one of such members shall be from west of the continental divide. A vacancy on the commission occurs whenever any member moves out of the congressional district from which he or she was appointed. Any member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy as provided in subsection (2) of this section. Appointments made to take effect on January 1, 1983, shall be made in accordance with section 24-1-135, C.R.S. No more than nine members of the commission shall be members of the same major political party. One member shall be appointed from the state at large, one member shall be appointed from among the membership of the senate, and one member shall be appointed from among the membership of the house of representatives. Appointments to the com-

mission shall comply with the requirements of the rules and regulations of the United States department of health and human services promulgated pursuant to Public Law 93-29, known as the "Older Americans Comprehensive Services Amendments of 1973", as such rules and regulations appear in section 903.50 (c) of title 45 of the code of federal regulations. In making appointments to the commission, the governor is encouraged to include representation by at least one member who is a person with a disability, a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this subsection (1) are met.

(2) All members of the commission shall be appointed for terms of four years each, commencing July 1 in the year of appointment. Appointments to fill vacancies shall be for the unexpired term of the vacated office and shall be made in the same manner as original appointments. Whenever a member of the senate or house of representatives serving as a member of the commission ceases to hold his office in the senate or house of representatives, a vacancy on the commission shall occur, and the governor shall fill the vacancy by the appointment of a similarly qualified person who at the time is holding office, as the case may be, in the senate or house of representatives.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-1. L. 76: (1) amended, p. 669, § 1, effective April 22. L. 77: Entire section amended, p. 1365, § 1, effective July 1. L. 82: (1) amended, p. 357, § 18, effective April 30. L. 2002: (1) amended, p. 946, § 8, effective August 7. L. 2009: (1) amended, (HB 09-1281), ch. 399, p. 2155, § 8, effective August 5.

Editor's note: The rules and regulations promulgated pursuant to Public Law 93-29, known as the "Older Americans Comprehensive Services Amendments of 1973", are now designated as section 1321 of Title 45 of the code of federal regulations.

26-11-102. Organization of commission. The commission shall elect from its membership a chairman, a vice-chairman, and such other officers as it deems necessary. The vice-chairman shall act as chairman in the absence or disability of the chairman. The commission shall meet on call of the chairman but not less than once every three months. A majority of the members of the commission shall constitute a quorum for the transaction of business.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-2.

26-11-103. Compensation - expenses. The members of the commission shall not receive compensation for their services, but they shall be reimbursed for expenses incurred by them in the performance of their official duties.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-3.

26-11-104. Director - staff. Pursuant to section 13 of article XII of the state constitution, the executive director shall appoint the director of the commission and such clerical and professional staff as may be necessary to carry out the purposes of this article. The director of the commission shall be the chief administrative officer for the commission and shall be a person who is professionally qualified to assume the responsibilities of the position.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-4.

26-11-105. Duties of commission. (1) The commission, through its director, shall carry out the following purposes:

(a) Conduct, and encourage other organizations to conduct, studies of the problems of the state's older people;

(b) Assist governmental and private agencies to coordinate their efforts on behalf of the aging and aged in order that such efforts be effective and that duplication and waste of effort be eliminated;

(c) Promote and aid in the establishment of local programs and services for the aging and aged. The commission shall assist governmental and private agencies by designing surveys that may be used locally to determine needs of older people; by recommending the creation of services; by collection and distribution of information on aging; and by assisting public and private organizations in all ways the commission may deem appropriate.

(d) Conduct promotional activities and programs of public education on problems of the aging;

(e) Review existing programs for the aging and make recommendations to the governor and the general assembly for improvements in such programs;

(f) Advise and make recommendations to the state department and the state office on aging, created pursuant to part 2 of this article, on the problems of and programs and services for the aging and aged.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-5. L. 85: (1)(f) added, p. 975, § 2, effective May 29.

26-11-106. Gifts - grants. The state department, acting for and on behalf of the state, may receive and accept title to any grant or gift from any source, including the federal government, and all grants, grants-in-aid, and gifts shall be deposited with the state treasurer and shall be continuously available to the state department to carry out the purposes of this article.

Source: L. 73: RC&RE, p. 1207, § 6. C.R.S. 1963: § 119-7-6.

PART 2

STATE OFFICE ON AGING

26-11-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Advisory council" means a representative body of laypersons and service providers which represents the interests of the older persons within the boundaries of a planning and service area and which is designated by the area agency on aging pursuant to section 26-11-205.

(2) "Area agency on aging" means an identifiable private nonprofit or public agency designated by the state office on aging which works for the interests of older Coloradans within a planning and service area and which engages in community planning, coordination, and program development and provides a broad array of social and nutritional services.

(3) "Area plan" means a comprehensive and coordinated system of programs in a planning and service area.

(3.5) "Child" means a person who is not more than eighteen years of age.

(4) "Comprehensive and coordinated system of programs" means programs of inter-related social and nutritional services designed to meet the needs of older persons.

(4.5) "Family caregiver" means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual who is sixty years of age or older.

(4.7) "Grandparent or older individual who is a relative caregiver" means a grandparent or step-grandparent of a child, or a relative of a child by blood or marriage, who is sixty years of age or older and who:

(a) Lives with the child;

(b) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(c) Has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

(5) "Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the United States bureau of the census.

(6) "Greatest social need" means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural or social isolation, including that caused by racial and ethnic status, which restrict an individual's ability to perform normal daily tasks or which threaten his capacity to live independently.

(7) "Planning and service area" means a geographical area within the state, designated by the state office on aging, in which the area agency on aging shall carry out the area plan.

(8) "State office" means the state office on aging within the state department.

Source: L. 85: Entire part added, p. 975, § 3, effective May 29. L. 2002: (3.5), (4.5), and (4.7) added, p. 802, § 1, effective May 30.

26-11-202. State office on aging. The executive director shall create within the state department a state office on aging, the head of which shall be the director of the state office, who shall be appointed by the executive director. The state office and the director of the state office shall exercise their powers and perform their duties and functions under the state department as if the same were transferred to the state department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

Source: L. 85: Entire part added, p. 976, § 3, effective May 29.

26-11-203. Duties of the state office. (1) In addition to such other duties and functions as the executive director may allocate to the state office, the state office shall have the following duties and functions:

(a) To develop and administer a state plan on aging, which includes input from area agencies on aging;

(b) To establish a process that encourages local, regional, and statewide participation in the development stages of the state plan on aging, which shall be coordinated with the area agencies on aging, the commission established under part 1 of this article, and other persons or entities involved in programs for older persons;

(c) To assist public and nonprofit private agencies in planning and developing programs to facilitate a statewide network of comprehensive, coordinated services and opportunities for older persons, giving priority to those agencies, programs, services, and activities that support independent living;

(d) To study those aspects of the problems of aging necessary to accomplish the purpose of state policy through such activities as conducting research, computing statistics, and holding hearings;

(e) To maintain a clearinghouse of information related to the interests and needs of older persons and act as a referral service for the dissemination of said information;

(f) To assess the need for services to be provided to the older population within the state and determine the extent to which the state's service delivery system serves said population, with particular emphasis on older persons with the greatest economic and social needs;

(g) To encourage and support the involvement of volunteers and seek ways to utilize the private sector to assume greater responsibility in meeting the needs of older persons; and

(h) To designate area agencies on aging to assist the state office in carrying out its functions in specified geographic areas within the state.

Source: L. 85: Entire part added, p. 976, § 3, effective May 29.

26-11-204. Area agency on aging - duties. (1) An area agency on aging shall have the following duties:

(a) To develop and administer an area plan, consistent with the state plan, for a comprehensive and coordinated system of programs in the planning and service area;

- (b) To assist older persons in obtaining their rights, benefits, and entitlements currently available under the law;
- (c) To identify special needs or barriers to maintaining personal independence;
- (d) To involve older persons in the area in the development and planning of services delivered within the area;
- (e) To assess the needs for services within the planning and service area to determine the effectiveness of existing services available within the area;
- (f) To conduct public hearings on the needs and problems of older persons and on the area plan in conjunction with the area's advisory council;
- (g) To designate an interagency committee composed of public or private nonprofit agencies within the planning and service area, including, but not limited to, health systems agencies and health transportation agencies, private service providers, and senior citizen organizations in order to improve the coordination of services;
- (h) To review and provide comment on program plans of other agencies that affect older persons;
- (i) To provide information to the state office on the special needs of older persons within the planning and service area;
- (j) To establish communication with the local news media to inform the public of available services and opportunities to contribute to the planning and implementation of said services;
- (k) To coordinate and assist local public and nonprofit private agencies in the planning and development of programs to establish a comprehensive and coordinated system of programs and opportunities for older persons;
- (l) To act as an advocate for and represent the issues and concerns of older persons; and
- (m) To provide services or to contract with local providers to provide services under the family caregiver support program.

Source: L. 85: Entire part added, p. 977, § 3, effective May 29. L. 2002: (1)(k) amended and (1)(m) added, p. 803, § 2, effective May 30.

26-11-205. Area agency on aging advisory council. (1) Each area agency on aging, designated pursuant to section 26-11-203 (1) (h), shall designate an advisory council consisting of a representative body of laypersons and service providers which represent the interests of older persons within the planning and service area. Said advisory council shall:

- (a) Serve to advise the area agency on aging;
- (b) Actively seek advice from community organizations on aging, senior advocacy organizations, and other persons or entities interested in the needs and problems of older persons;
- (c) Act as an advocate for and represent the issues and concerns of older persons; and
- (d) Take an active role in the development, planning, and implementation of the area plan.

Source: L. 85: Entire part added, p. 978, § 3, effective May 29.

26-11-205.5. Older Coloradans program - distribution formula. (1) There is hereby created in the state department the older Coloradans program, referred to in this section as the "program". The program shall provide moneys to area agencies on aging to provide grants to provide community-based services to persons sixty years of age or older to assist such persons to live in their own homes and communities for as long as possible. Such services shall include but are not limited to congregate nutrition, home-delivered meals, transportation services, in-home services, ombudsman services, legal services, elder abuse prevention, outreach, and information and referral services.

(2) Moneys appropriated for the program shall be distributed to area agencies on aging using the same formula that the state office uses to distribute moneys available under Title III, parts (B), (C), (D), and (F) of the federal "Older Americans Act of 1965", as amended, but such moneys shall be allocated as a whole and not allocated to individual parts of Title

III; except that appropriations from the fund of accumulated interest are not subject to the restriction that requires allocations as a whole. An area agency on aging shall use no more than ten percent of the moneys received from the program for administrative expenses.

(3) The proposed uses of moneys from the program shall be included in each area agency on aging's area plan developed pursuant to section 26-11-204 (1) (a).

(4) (a) On or before August 1, 2002, and each August 1 thereafter, each area agency on aging shall submit a report to the state office detailing the use of moneys from the program for the previous fiscal year, including an itemization of how many more persons received each service because of such moneys.

(b) Repealed.

(5) (a) There is hereby created the older Coloradans cash fund, referred to in this subsection (5) as the "fund". The fund shall consist of moneys allocated and credited to the fund from sales and use taxes pursuant to the provisions of section 39-26-123 (3) (a) (III), C.R.S., and any moneys appropriated to the fund by the general assembly. In addition, the state treasurer may credit to the fund any public or private gifts, grants, or donations received by the state department for implementation of the program. The fund shall be subject to annual appropriation by the general assembly to the state department. Notwithstanding the provisions of section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any amount remaining in the fund at the end of any fiscal year shall remain in the fund and not be transferred or credited to the general fund or any other fund.

(b) There is hereby created within the fund the senior services account, referred to in this paragraph (b) as the "account". The account shall consist of moneys transferred to the account pursuant to section 39-3-207 (6), C.R.S. Moneys in the account are subject to annual appropriation to the state department for distribution to area agencies on aging pursuant to subsection (2) of this section. The state department may designate the senior services for which moneys in the account shall be used.

Source: L. 2000: Entire section added, p. 900, § 1, effective May 24. L. 2001: (2) and (4) amended, p. 1462, § 1, effective June 6. L. 2002: (1) and (5) amended, p. 148, § 1, effective March 27; (1) and (3) to (5) amended, p. 901, §§ 1, 2, effective May 31. L. 2003: (4)(b) amended, p. 2011, § 101, effective May 22. L. 2004: (4)(b) repealed, p. 472, § 4, effective August 4. L. 2006: (5) amended, p. 938, § 1, effective July 1; (5) amended, p. 1603, § 5, effective July 2. L. 2007: (2) amended, p. 989, § 1, effective May 22. L. 2012: (5) amended, (HB 12-1326), ch. 195, p. 777, § 3, effective May 22.

Editor's note: (1) Amendments to subsection (5) by House Bill 02-1209 and House Bill 02-1390 were harmonized.

(2) Subsection (5) was amended in House Bill 06-1018. Those amendments were superseded by the amendment of subsection (5) in House Bill 06-1398.

Cross references: (1) For the "Older Americans Act of 1965", see 42 U.S.C. sec. 3001 et seq.

(2) For the legislative declaration in the 2012 act amending subsection (5), see section 1 of chapter 195, Session Laws of Colorado 2012.

26-11-205.7. Community long-term care study - older Coloradans study cash fund - strategic plan - authority to implement. (1) (a) Subject to the receipt of sufficient moneys pursuant to paragraph (b) of this subsection (1), the state department or, if appropriate, the department of health care policy and financing shall contract for a study of the population eligible for services under the older Coloradans program created pursuant to section 26-11-205.5. The state department and the department of health care policy and financing shall make necessary data available to the contractor. In selecting a contractor to perform the study, the state departments are not required to follow the competitive bidding requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S. The study shall include research and analysis of:

(I) The demographic changes that will impact the demand for long-term care services and supports;

(II) The number of persons sixty years of age or older who would benefit from receiving additional services through the older Coloradans program thereby avoiding more expensive care needs;

(III) The types of services and supports needed by persons over sixty years of age to remain in their own residences and communities for as long as possible and any existing or projected needs for those services and supports;

(IV) The overall amount of savings to the state across the continuum of care associated with providing services to older adults in their own homes and communities;

(V) Other states' experiences with long-term care services and supports, including cost savings or cost avoidance; and

(VI) Recommendations for a long-term strategic implementation plan for providing services through the older Coloradans program.

(b) (I) The state department is authorized to seek and accept gifts, grants, or donations from private and public sources for the purposes of this section; except that the state department may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The state department shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the older Coloradans study cash fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the state department for the direct and indirect costs associated with implementing this section.

(II) Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(2) If the study conducted pursuant to paragraph (a) of subsection (1) of this section concludes that increasing funding for community-based services as provided in the older Coloradans program would result in cost savings, by July 1, 2011, subject to the receipt of sufficient moneys pursuant to paragraph (b) of subsection (1) of this section, the state department shall report to the members of the health and human services committees of the senate and house of representatives, or any successor committees, and to the members of the joint budget committee a long-term strategic implementation plan, developed in cooperation with the area agencies on aging designated pursuant to section 26-11-203 (1) (h), that identifies the expected needs for services and recommends potential funding sources.

(3) If the study conducted pursuant to paragraph (a) of subsection (1) of this section concludes that one or more changes would result in cost savings to the state, without adversely affecting the care provided, and the changes are recommended in the strategic implementation plan developed pursuant to subsection (2) of this section, the state department or the department of health care policy and financing shall request, through the state budget process, that the changes be implemented and, if necessary, shall recommend legislation to implement the changes to the health and human services committees of the senate and house of representatives, or any successor committees, or the joint budget committee.

(4) (a) If the strategic implementation plan developed pursuant to subsection (2) of this section identifies additional studies that should be conducted, subject to the receipt of sufficient moneys pursuant to paragraph (b) of subsection (1) of this section, the state department or the department of health care policy and financing shall contract for one or more studies identified in the strategic implementation plan. The state department and the department of health care policy and financing shall make necessary data available to all the contractors. In selecting a contractor to perform any study conducted pursuant to this subsection (4), the state departments are not required to follow the competitive bidding requirements of the "Procurement Code", articles 101 to 112 of title 24, C.R.S.

(b) If one or more studies conducted pursuant to paragraph (a) of this subsection (4) concludes that implementing the changes recommended by the study would result in cost savings to the state, without adversely affecting the care provided, the state department or the department of health care policy and financing shall request, through the state budget

process, that the changes be implemented and, if necessary, shall recommend legislation to implement the changes to the health and human services committees of the senate and house of representatives, or any successor committees, or to the joint budget committee of the general assembly.

Source: L. 2010: Entire section added, (HB 10-1053), ch. 276, p. 1265, § 3, effective May 26. **L. 2011:** (2) amended, (HB 11-1303), ch. 264, p. 1170, § 74, effective August 10.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 276, Session Laws of Colorado 2010.

26-11-206. Federal requirements - compliance. Nothing in this part 2 shall be construed to prevent the state department from complying with the requirements of the rules and regulations of the United States department of health and human services promulgated pursuant to the federal "Older Americans Act of 1965", as amended.

Source: L. 85: Entire part 2 added, p. 978, § 3, effective May 29.

26-11-207. Family caregiver support program - creation. (1) The general assembly hereby finds, determines, and declares that it would be beneficial to the state to develop a service delivery system to respond to the needs of caregivers who care for frail, elderly persons or to the needs of grandparents and relative caregivers who have taken on the challenge and responsibility of raising children. The general assembly also finds that the federal "Older Americans Act of 2000", Pub.L. 106-501, has authorized a family caregiver support program to be administered by area agencies on aging. The general assembly finds that by implementing the family caregiver support program support can be given to caregivers so that elderly individuals may be able to remain in their homes and support may be provided to grandparents or older individuals who are relative caregivers of children.

(2) There is hereby created in the state department the family caregiver support program, referred to in this section as the "program". The program shall allocate available moneys to area agencies on aging to provide support services to the following caregivers:

- (a) Family caregivers of older individuals; and
- (b) Grandparents or older individuals who are relative caregivers of children.

(3) Subject to available appropriations, services to caregivers shall be provided by an area agency on aging or by an entity with which the area agency on aging has contracted. The services to caregivers under the program shall include:

- (a) Information to caregivers about available services;
- (b) Assistance to caregivers in gaining access to the services;
- (c) Individual counseling, organization of support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their caregiving responsibilities;
- (d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and
- (e) Supplemental services, on a limited basis, to complement the care provided by caregivers.

(4) In the case of a family caregiver of an older individual, respite care, as described in paragraph (d) of subsection (3) of this section, and supplemental services, as described in paragraph (e) of subsection (3) of this section, shall be provided only if the older individual meets the conditions specified in the federal law under the definition of the term "frail" which states that the older individual is functionally impaired because the individual either:

- (a) Is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cuing, or supervision; or
- (b) Due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.

- (5) The area agency on aging shall give priority for services under the program to older individuals with greatest social and economic need, with particular attention to low-income older individuals, and to older individuals providing care and support to persons with mental retardation and related developmental disabilities.
- (6) Each area agency on aging shall coordinate the activities of the agency or any contractors with whom the agency has contracted with the activities of other community agencies and volunteer organizations providing the types of support services described in subsection (3) of this section.
- (7) The state shall not use more than ten percent of the total federal and state share of the moneys available to the state for the program to provide support services to grandparents and older individuals who are relative caregivers of children.

Source: L. 2002: Entire section added, p. 803, § 3, effective May 30.

Cross references: For the “Older Americans Act of 1965”, see 42 U.S.C. sec. 3001.

ARTICLE 11.5

Colorado Long-term Care
Ombudsman Program

Law reviews: For article, “Long-term Care Ombudsman Records: Confidentiality for the Frail and Vulnerable”, see 31 Colo. Law. 73 (November 2002).

26-11.5-101.	Short title.		vices.
26-11.5-102.	Legislative declaration.	26-11.5-108.	Access to facility - residents - records - confidentiality.
26-11.5-103.	Definitions.		
26-11.5-104.	Creation of state long-term care ombudsman program.	26-11.5-109.	Interference with ombudsmen prohibited - civil penalty.
26-11.5-105.	Duties of state long-term care ombudsman.	26-11.5-110.	Immunity from liability.
		26-11.5-111.	Duties of state department.
26-11.5-106.	Local ombudsmen - representatives of office.	26-11.5-112.	Federal requirements - compliance.
26-11.5-107.	Notice of ombudsman ser-		

26-11.5-101. Short title. This article shall be known and may be cited as the “Colorado Long-term Care Ombudsman Act”.

Source: L. 90: Entire article added, p. 1401, § 1, effective April 10.

- 26-11.5-102. Legislative declaration.** (1) The general assembly hereby recognizes that the former state department of social services, currently the state department of human services, pursuant to the federal “Older Americans Act of 1965”, as amended, has established a state long-term care ombudsman program.
- (2) The general assembly finds, determines, and declares that it is the public policy of this state to encourage community contact and involvement with patients, residents, and clients of long-term care facilities.
- (3) The general assembly further finds, determines, and declares that in order to comply with the federal “Older Americans Act of 1965”, as amended, and effectively assist patients, residents, and clients of long-term care facilities in the assertion of their civil, human, and legal rights, the structure of a state long-term care ombudsman program and the powers and duties thereunder shall be specifically defined.

Source: L. 90: Entire article added, p. 1401, § 1, effective April 10. L. 94: (1) amended, p. 2707, § 274, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-11.5-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Elderly resident" means any individual who is sixty years of age or older who is a current or prospective or former patient or client of any long-term care facility.
- (2) "Local ombudsman" means an individual trained and designated as qualified by the state long-term care ombudsman to act as a representative of the office of the state long-term care ombudsman.
- (3) "Long-term care facility" or "facility" means:
 - (a) A nursing care facility as defined in section 25.5-4-103 (14), C.R.S.;
 - (b) An assisted living residence as defined in section 25-27-102 (1.3), C.R.S.;
 - (c) Any swing bed in an extended care facility.
- (4) "Office" means the state long-term care ombudsman office.
- (5) "Older Americans act" means the federal "Older Americans Act of 1965", as amended, 42 U.S.C. sec. 3001.
- (6) "Resident" means any individual who is a current or prospective or former patient or client of any long-term care facility.
- (7) "State long-term care ombudsman" means the person designated to implement the state long-term care ombudsman program and to perform the duties and functions required under this article.

Source: L. 90: Entire article added, p. 1402, § 1, effective April 10. L. 91: (3)(a) amended, p. 1857, § 18, effective April 11. L. 2003: (3)(b) amended, p. 1999, § 54, effective May 22. L. 2006: (3)(a) amended, p. 2019, § 105, effective July 1.

26-11.5-104. Creation of state long-term care ombudsman program. (1) Pursuant to the older Americans act, there is hereby established a state long-term care ombudsman program which shall be comprised of a state long-term care ombudsman office and local ombudsman offices established throughout the state.

(2) The state long-term care ombudsman office shall be established and operated under the state department of human services either directly or by contract with or grant to any public agency or other appropriate private nonprofit organization; except that such office shall not be administered by any agency or organization responsible for licensing or certifying long-term care services in the state. The office shall be administered by a full-time qualified state long-term care ombudsman who shall be designated in accordance with rules and regulations promulgated by the state department.

(3) Local ombudsman programs shall be established statewide. Such programs shall be operated by the state department under contract, grant, or agreement between the state department and a public agency or an appropriate private nonprofit organization. Personnel of local programs shall be trained and designated as qualified representatives of the office in accordance with section 26-11.5-105 (1) (b).

Source: L. 90: Entire article added, p. 1402, § 1, effective April 10. L. 94: (2) amended, p. 2707, § 275, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-11.5-105. Duties of state long-term care ombudsman. (1) In addition to such other duties and functions as the state department may allocate to the office, the state long-term care ombudsman shall have the following duties and functions in implementing a statewide long-term care ombudsman program:

(a) (I) Establish statewide policies and procedures for operating the state long-term care ombudsman program including procedures to identify, investigate, and seek the resolution or referral of complaints made by or on behalf of any elderly resident related to any action, inaction, or decision of any provider of long-term care services or of any public agency, including the state department of human services and county departments of social

services, that may adversely affect the health, safety, welfare, or rights of such elderly resident.

(II) The policies and procedures adopted pursuant to subparagraph (I) of this paragraph (a) may be applied to complaints by or on behalf of any resident of a long-term care facility where the provision of ombudsman services will either benefit elderly residents of the facility involved in the complaint or elderly residents of long-term care facilities in general, or where ombudsman service is the only viable avenue of assistance available to the resident and such service will not significantly diminish the program's effort on behalf of elderly residents.

(b) Provide training and technical assistance to personnel of local ombudsman programs. Upon successful completion of such training the office may designate such personnel as qualified representatives of the office and shall issue to such representatives long-term care ombudsman identification cards.

(c) Establish procedures to analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services. On the basis of such analysis and monitoring, the office shall recommend changes to such laws, regulations, and policies to the appropriate governing body.

(d) Prepare a notice informing residents of ombudsman services for posting at long-term care facilities.

(2) In addition to the duties and functions under subsection (1) of this section, the office and its representatives shall have the authority to pursue administrative, legal, or other appropriate remedies on behalf of residents for the purpose of effectively carrying out the provisions of paragraph (a) of subsection (1) of this section.

Source: L. 90: Entire article added, p. 1402, § 1, effective April 10. L. 94: (1)(a)(I) amended, p. 2707, § 276, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-11.5-106. Local ombudsmen - representatives of office. (1) A local ombudsman, whether an employee or volunteer of a local ombudsman program, shall be considered a representative of the office for the purposes of carrying out policies and procedures adopted by the state long-term care ombudsman in accordance with this article, but only upon the completion of training and designation as a qualified representative by the state long-term care ombudsman. As a representative of the office, a local ombudsman shall follow rules and regulations of the state department and policies and procedures established by the state long-term care ombudsman.

(2) Each local ombudsman shall carry an identification card issued annually and signed by the state long-term care ombudsman and shall, upon the request of a supervisory staff member of a facility, present such card in order to obtain access to residents and records of such facility.

Source: L. 90: Entire article added, p. 1403, § 1, effective April 10.

26-11.5-107. Notice of ombudsman services. (1) Every long-term care facility shall post in a conspicuous place a notice with the name, address, and phone number of the office and the name, address, and phone number of the nearest available local ombudsman program. Such notice shall be provided by the state long-term care ombudsman.

(2) Each long-term care facility shall provide, in writing, to any resident eligible for ombudsman services pursuant to this article who is subject to an involuntary transfer from such facility the name, address, and phone number of the nearest available local ombudsman and the name, address, and phone number of the office. Such information shall be included on the notice required under section 25-1-120 (1) (k), C.R.S.

Source: L. 90: Entire article added, p. 1404, § 1, effective April 10.

26-11.5-108. Access to facility - residents - records - confidentiality. (1) An ombudsman, upon presenting a long-term care ombudsman identification card, shall have immediate access to a long-term care facility and to its residents eligible for ombudsman services pursuant to this article for the purposes of effectively carrying out the provisions of this article.

(2) In performing ombudsman duties and functions in accordance with this article an ombudsman shall have access to review the medical and social records of a resident eligible for ombudsman services pursuant to this article, provided the resident has consented to such review. In the event consent to such review is not available because the resident is incapable of consenting and has no guardian to provide such consent, inspection of such records may be made by the state long-term care ombudsman.

(3) In carrying out the provisions of this section, each ombudsman shall follow procedures of confidentiality in accordance with the older Americans act.

Source: L. 90: Entire article added, p. 1404, § 1, effective April 10.

26-11.5-109. Interference with ombudsmen prohibited - civil penalty. (1) No person shall willfully interfere with an ombudsman in the ombudsman's performance of duties and functions under this article.

(2) No person shall take any discriminatory, disciplinary, or retaliatory action against the following individuals for any communication with an ombudsman or for any information provided in good faith to the office in carrying out its duties and responsibilities under this article:

(a) Any resident eligible for ombudsman services pursuant to this article;

(b) Any officer or employee of a facility or governmental agency providing services to residents of long-term care facilities.

(3) Any person who commits a violation under subsection (1) or (2) of this section shall be subject to the following civil penalties:

(a) For a violation of subsection (1) of this section, a penalty of not more than two thousand five hundred dollars per violation;

(b) For a violation of subsection (2) of this section, a penalty of not more than five thousand dollars per violation.

(4) (a) Any person listed in paragraphs (a) and (b) of subsection (2) of this section, or any person acting on such person's behalf, including the state or a local ombudsman, may file a complaint with the department of human services against any person who violates subsection (1) or (2) of this section. The said department shall investigate such a complaint and, if there is sufficient evidence of a violation, shall be authorized to assess, enforce, and collect the appropriate penalty set forth in subsection (3) of this section.

(b) Prior to the assessment of a penalty, the department of human services shall give written notice to the person against whom a penalty will be assessed, stating the basis for the violation and the amount of the penalty to be assessed. Such person, upon request, shall be given a hearing in accordance with section 24-4-105, C.R.S., which hearing shall constitute final agency action. Such agency action shall be subject to judicial review in accordance with section 24-4-106, C.R.S.

(c) The department of human services shall promulgate rules and regulations necessary for the implementation of this subsection (4).

(d) All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. Penalties provided under this section shall be in addition to and not in lieu of any other remedy provided by law.

Source: L. 90: Entire article added, p. 1404, § 1, effective April 10. **L. 94:** (4)(a), (4)(b), and (4)(c) amended, p. 2707, § 277, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-11.5-110. Immunity from liability. Any ombudsman who, in good faith, acts within the scope of the duties and functions of this article shall be immune from civil or criminal liability. For the purposes of this section, there shall be a rebuttable presumption that, when acting within the scope of the duties and functions of this article, an ombudsman acts in good faith. Nothing in this section shall be construed to abrogate or limit the immunity or exemption from civil liability of any agency, entity, or person under any statute, including the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 90: Entire article added, p. 1405, § 1, effective April 10.

26-11.5-111. Duties of state department. (1) In order to implement the provisions of this article, the state department shall carry out the following duties:

(a) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with specific provision for the submission of such data on a regular basis to the state agency responsible for licensing or certifying long-term care facilities;

(b) Establish procedures to assure that information contained in any files maintained in accordance with the state long-term care ombudsman program shall be disclosed only at the discretion of the state long-term care ombudsman and that the identity of a complainant be disclosed only with the written consent of such complainant or in accordance with a court order;

(c) Ensure that no individual involved in the designation of the state long-term care ombudsman, nor any officer, employee, or volunteer of the statewide program in performing ombudsman functions, is subject to any conflict of interest;

(d) Ensure that adequate legal counsel is available to an ombudsman for advice and counseling concerning the performance of ombudsman duties and functions and for legal representation of an ombudsman against whom legal action is brought in connection with the performance of ombudsman duties and functions provided for under this article;

(e) Promulgate rules and regulations necessary for the efficient administration and operation of the state long-term care ombudsman program.

Source: L. 90: Entire article added, p. 1405, § 1, effective April 10.

26-11.5-112. Federal requirements - compliance. Nothing in this article shall be construed to prevent the state department or the office from complying with the requirements of the rules and regulations of the United States department of health and human services promulgated pursuant to the older Americans act.

Source: L. 90: Entire article added, p. 1406, § 1, effective April 10.

ARTICLE 12

State and Veterans Nursing Homes

Editor's note: This article was numbered as article 12 of chapter 119 in C.R.S. 1963. This article was repealed and reenacted in 1973 and was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following the relocated sections.

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PART 1

MANAGEMENT, CONTROL, AND SUPERVISION

26-12-101. Short title. This article shall be known and may be cited as the “State and Veterans Nursing Homes Act”.

Source: L. 98: Entire article R&RE, p. 183, § 1, effective April 10.

- 26-12-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Executive director” means the executive director of the state department of human services.
 - (2) “Resident” means a person who resides in a state nursing home operated pursuant to the provisions of this article.
 - (3) “State board” means the state board of human services.

(4) "State department" means the state department of human services.

(5) "State nursing home" means any state nursing home or any state veterans nursing home and all programs operated by a state nursing home or state veterans nursing home, including domiciliary services, day care, and other facility programs.

(6) "State veterans nursing home" means a state nursing home that has been designed and constructed so as to qualify for federal funds under the provisions of federal Public Law 88-450, as amended, and that is operated so as to qualify for per diem payments from the United States veterans administration under the provisions of 38 U.S.C. sec. 1741.

Source: L. 98: Entire article R&RE, p. 183, § 1, effective April 10. L. 99: (5) amended, p. 627, § 32, effective August 4. L. 2009: Entire section amended, (SB 09-056), ch. 177, p. 784, § 3, effective April 22.

26-12-103. State board duties - rule-making. The state board shall adopt rules for the management, control, and supervision of the state nursing homes operated pursuant to the provisions of this article.

Source: L. 98: Entire article R&RE, p. 184, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-102 as it existed prior to 1998.

26-12-104. Eligibility for care. (1) A person shall be considered for admission to any state nursing home if he or she meets the eligibility requirements prescribed in state and federal regulations.

(2) After admission, a resident shall be subject to periodic review as to financial status, need for continuing medical institutional care, and other eligibility factors.

(3) A resident may be transferred or discharged for cause in accordance with federal regulations.

Source: L. 98: Entire article R&RE, p. 184, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-103 as it existed prior to 1998.

26-12-105. Application for admission - preference. (1) Any person may apply for admission to any state nursing home in the manner prescribed by rules of the state board.

(2) All applications shall be voluntary, and any person admitted to a state nursing home shall have the right to leave the state nursing home at any time he or she chooses.

(3) A state nursing home shall review all applications for admission with reasonable promptness.

(4) If the number of eligible applicants exceeds the available facilities in a state nursing home, the state nursing home shall give preference in admission to persons whose needs are greatest under standards established in state and federal regulations.

Source: L. 98: Entire article R&RE, p. 184, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-104 as it existed prior to 1998.

26-12-106. Vacancies - additional admissions. In the event that vacancies occur in a state nursing home and there are no applications for admission from persons eligible under section 26-12-104, the state nursing home shall be open for temporary occupancy to any person based on the person's need for medical care and ability to pay for services in accordance with the rules of the state board.

Source: L. 98: Entire article R&RE, p. 184, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-304 as it existed prior to 1998.

26-12-107. Standards - management. (1) Each state nursing home shall be operated and maintained under standards established by the department of public health and environment.

(2) Each state nursing home shall have:

(a) A nursing home administrator; and

(b) Such additional employees, including medical and nursing personnel, as may be required to provide nursing home services for which the state nursing home was licensed.

(3) All state nursing homes shall be managed as a group by the state department, unless the state department contracts for the management of a state nursing home in accordance with section 26-12-119.

Source: L. 98: Entire article R&RE, p. 185, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-105 as it existed prior to 1998.

26-12-108. Payments for care - funds - annual report - collections for charges - central fund for state nursing homes created. (1) (a) The state department shall establish rates for the care of residents, which rates shall be as nearly equal to the cost of operation and maintenance of the state nursing homes as practicable. Payments shall be made to the state department unless otherwise provided pursuant to a contract entered into in accordance with section 26-12-119. The state department shall deposit such payments together with any other moneys received from any source for the operation and maintenance of the state nursing homes with the state treasurer, who shall credit all such moneys to the central fund for state nursing homes, referred to in this article as the "central fund", which fund is hereby created.

(a.5) For the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, the general assembly shall appropriate from the general fund to the central fund an amount not exceeding ten percent of the total gross revenue accrued by the central fund during the preceding fiscal year in coordination with the state department's standard budget request process. The state department shall use these funds to pay operational expenses of, and make capital improvements to, the state nursing homes.

(b) (I) The state department is authorized to expend moneys out of the central fund for the direct and indirect costs incurred by the state department for the operation and administration of the state nursing homes and for capital construction in connection with such state nursing homes. Such expenditures shall not require an appropriation by the general assembly but shall be limited to amounts in the central fund.

(II) All requests for capital construction submitted by the state department shall be considered by the capital development committee pursuant to section 2-3-1304, C.R.S.

(III) All interest derived from the deposit and investment of moneys in the central fund shall be credited to such fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the central fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(c) The state department shall prepare and submit to the general assembly an annual report detailing the financial status of each of the state nursing homes. This report shall also identify which of the state nursing homes administered pursuant to the provisions of this article are owned by the state but operated under contract by another entity.

(2) It is lawful for each state nursing home and the Colorado state veterans center at Homelake to deposit moneys belonging to the benefit fund established prior to July 1, 1985, and all donations or other voluntary contributions that may be received on or after that date in any manner for the benefit of residents of each state nursing home and the Colorado state veterans center at Homelake in an interest-bearing account with a federally insured financial depository pursuant to section 24-75-603, C.R.S. Withdrawals from such accounts shall be made only for the benefit, aid, and assistance of residents of each state nursing home or the occupants of the Colorado state veterans center at Homelake, including recreational equipment and facilities.

(3) The executive director may, in the name of the people of the state of Colorado and through the attorney general, institute and maintain actions at law for the collection of

charges due from residents of state nursing homes and the Colorado state veterans center at Homelake, or said residents' conservators, guardians, executors, or administrators, resulting from the failure, neglect, or refusal of said persons to pay such charges.

Source: L. 98: Entire article R&RE, p. 185, § 1, effective April 10. L. 2007: (1)(a.5) added, p. 1302, § 1, effective July 1. L. 2012: (2) and (3) amended, (HB 12-1063), ch. 149, p. 536, § 2, effective May 3.

Editor's note: This section is similar to former § 26-12-106 as it existed prior to 1998.

26-12-109. County chargeability. For the purposes of this part 1, a resident in any state nursing home shall be a charge for public assistance purposes to the county in which such state nursing home is located.

Source: L. 98: Entire article R&RE, p. 186, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-107 as it existed prior to 1998.

26-12-110. Declaration of policy - enterprise status. (1) Any state nursing home or group of state nursing homes shall constitute an enterprise for purposes of section 20 of article X of the state constitution so long as:

(a) The state department retains authority to issue anticipation warrants on behalf of such state nursing home or group of state nursing homes; and

(b) Such state nursing home or group of state nursing homes receives less than ten percent of its total annual revenues in grants from the state and all Colorado local governments combined.

(2) So long as it constitutes an enterprise, a state nursing home or a group of state nursing homes shall not be subject to any of the provisions of section 20 of article X of the state constitution.

Source: L. 98: Entire article R&RE, p. 186, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-109 as it existed prior to 1998.

26-12-111. Proposed state nursing homes - criteria. (1) The state department, in consultation with the Colorado board of veterans affairs, shall be responsible for recommending any proposed sites for state nursing homes to be constructed, leased, or purchased on or after July 1, 1998, to the capital development committee and the joint budget committee. The general assembly shall be responsible for the selection of any proposed site for such state nursing homes.

(2) When evaluating a potential site for a proposed state nursing home, the following criteria shall be considered:

(a) The proximity of the proposed facility to veterans affairs medical services;

(b) The impact the proposed home would have upon the financial viability of state nursing homes already in existence;

(c) Whether there is an established bed need for the proposed state nursing home based upon the location of Colorado veterans, their families, and support systems.

(3) Any state nursing home constructed, leased, or purchased on or after July 1, 1998, shall have a bed capacity of at least one hundred twenty beds.

(4) No state veterans nursing home shall be constructed on or after July 1, 1998, unless other state veterans nursing homes have maintained an average occupancy rate of at least eighty percent over the six-month period immediately prior to the commencement of the construction of the new state veterans nursing home.

Source: L. 98: Entire article R&RE, p. 186, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-109.5 as it existed prior to 1998.

26-12-112. Powers and duties of state department. (1) The state department may, in addition to the powers granted in this article, whenever authorized and locations have been designated by the general assembly:

(a) Establish, construct, operate, maintain, and improve, within the state of Colorado, buildings and facilities, and the means necessary thereto, for the full exercise of the powers granted by this article;

(b) Identify the records that the nursing home administrator of each state nursing home shall submit to the state department;

(c) Set aside a special sinking fund account in the central fund for the payment of anticipation warrants authorized by and issued under the provisions of section 26-12-113 and for the payment of interest due on such warrants; except that the state department shall not pledge the general income of the state of Colorado or appropriations made by the general assembly for any state nursing home, nor shall it create a mortgage upon the property belonging to any such state nursing home, for the payment of the principal of the warrants and interest thereon. The state department shall deposit into the sinking fund account fees and revenues received from residents at state nursing homes sufficient to cover necessary reserve accounts and principal and interest payments, which fees and revenues shall first be applied upon the payment of principal and such anticipation warrants and interest thereon. Any moneys in said sinking fund account not necessary for the reserve nor for the payment of said principal and interest may be made available for the maintenance and operation of such state nursing homes.

(d) Accept any grants from, or payments made by, the United States or any agency or instrumentality thereof and receive gifts, legacies, devises, and conveyances of property, real or personal, that may be made, given, transferred pursuant to a purchase and sale, or granted to the state department for state nursing homes. The state department, with the approval of the governor, shall make disposition of such property in the best interest of the state nursing homes under the control and supervision of the state department.

(2) All titles to real property and all improvements thereon shall be vested in the state, and the title deeds thereto and all insurance policies, certificates of water rights, and other evidences of ownership to the real property or improvements of said nursing home shall be deposited with the state department.

(3) No payment shall be made out of the state treasury or otherwise for any real property described in this section until the title has been examined and approved by the attorney general. Every such deed of conveyance shall be immediately recorded in the office of the proper county clerk and recorder and thereafter deposited with the state department.

(4) The state department, by October 31, 2002, and on or before October 31 each year thereafter, shall provide sufficient information to enable the Colorado board of veterans affairs to complete the report required by section 28-5-703 (3), C.R.S.

(5) Repealed.

Source: L. 98: Entire article R&RE, p. 187, § 1, effective April 10. L. 2002: (4) added, p. 360, § 19, effective July 1. L. 2009: (5) added, (SB 09-056), ch. 177, p. 784, § 4, effective April 22. L. 2011: (5) repealed, (HB 11-1303), ch. 264, p. 1170, § 75, effective August 10.

Editor's note: This section is similar to former § 26-12-110 as it existed prior to 1998.

26-12-113. Anticipation warrants - legislative declaration. (1) (a) For the purpose of defraying the cost of construction of new facilities, reconstruction or improvement of existing facilities, and maintenance and operation of such facilities, the state department may, with the approval of the governor, issue anticipation warrants that shall be payable solely from the sinking fund account described in section 26-12-112, and the payments and interest on such anticipation warrants shall be a first charge on and shall be payable from said account.

(b) The general assembly hereby finds and declares that the authority to issue anticipation warrants as set forth in this section shall constitute authority to issue revenue bonds for the purposes of section 20 of article X of the state constitution.

(2) Any other provision of this article notwithstanding, the state department may not issue any anticipation warrants or otherwise borrow funds for the construction of additional state nursing homes, unless such construction of additional state nursing homes is specifically authorized by law.

Source: L. 98: Entire article R&RE, p. 188, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-111 as it existed prior to 1998.

26-12-114. Interest - term. All anticipation warrants issued under the provisions of sections 26-12-110 to 26-12-118 shall bear interest at a rate determined by the state department and shall be executed in such a manner, shall be paid serially in such annual installments, beginning not later than two years and extending not more than twenty-five years from the date thereof, and shall be executed and paid at such place or places as the executive director shall determine.

Source: L. 98: Entire article R&RE, p. 188, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-112 as it existed prior to 1998.

26-12-115. Signatures validated. If any of the officers whose signatures or countersignatures appear on the anticipation warrants issued under the provisions of this article or coupons attached thereto cease to be such officers before delivery of such warrants, such signatures and countersignatures shall nevertheless be valid and sufficient for all purposes with the same force and effect as if they had remained in office until such delivery.

Source: L. 98: Entire article R&RE, p. 189, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-113 as it existed prior to 1998.

26-12-116. Obligations limited. (1) Nothing in sections 26-12-110 to 26-12-118 shall be construed as to authorize the state department to incur any obligation of any kind or nature except such as shall be payable solely from moneys accruing to the special sinking fund account created pursuant to section 26-12-112.

(2) It shall be plainly stated on the face of each anticipation warrant that it has been issued under the provisions of sections 26-12-110 to 26-12-118 and that it does not constitute an indebtedness of the general fund of the state within the meaning of any constitutional provision or limitation.

Source: L. 98: Entire article R&RE, p. 189, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-114 as it existed prior to 1998.

26-12-117. Anticipation warrants legal investments. It is lawful for the state of Colorado, any of its departments, institutions, or agencies, or any political subdivision of the state to purchase anticipation warrants issued pursuant to the provisions of sections 26-12-110 to 26-12-118 if such warrants satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.; except that the state, its departments, institutions, or agencies, or any of its political subdivisions shall not invest more than twenty percent of the total of any specific fund of such entities in such warrants.

Source: L. 98: Entire article R&RE, p. 189, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-115 as it existed prior to 1998.

26-12-118. Order of payment of warrants. The anticipation warrants issued under this part 1 shall be serially numbered and shall be paid off and retired in the order in which they were issued.

Source: L. 98: Entire article R&RE, p. 189, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-116 as it existed prior to 1998.

26-12-119. Contractual agreements. (1) The state department is authorized to contract with any public or private entity for all or part of the operation or management of any state nursing home in accordance with the "Procurement Code", articles 101 to 112 of title 24, C.R.S., and with part 5 of article 50 of title 24, C.R.S.

(2) Any contract authorized pursuant to subsection (1) of this section shall specify the entity's reporting relationship to the state and delineate responsibility for rate calculation, financial performance, liability, and compliance with section 20 of article X of the state constitution.

Source: L. 98: Entire article R&RE, p. 189, § 1, effective April 10.

26-12-120. Intestate estate - escheat. (1) If a resident dies without legal heirs and without a will disposing of his or her estate, all of the property, real and personal, shall pass to the state of Colorado for the sole use and benefit of the state nursing home in which the resident lived at the time of his or her death, subject to the provisions of section 25.5-4-302, C.R.S., and subsection (2) of this section.

(2) (a) The personal property and effects of deceased residents shall be taken into possession by the state nursing home administrator of the state nursing home in which the resident lived at the time of his or her death and held in accordance with the rules of the state board.

(b) Such rules shall provide for a sufficient period of time not to exceed one year in which the heirs of a deceased resident may make claim to the deceased resident's property and effects. If no claim is made to the property, the property may be sold, and the proceeds of the sale shall be placed in the benefit fund created by section 26-12-108 (2) for the personal use and benefit of other residents of the state nursing home in which the resident lived at the time of his or her death, subject to claims as a result of appropriate judicial proceedings.

Source: L. 98: Entire article R&RE, p. 190, § 1, effective April 10. L. 2006: (1) amended, p. 2019, § 106, effective July 1.

Editor's note: This section is similar to former § 26-12-308 as it existed prior to 1998.

ANNOTATION

Annotator's note. Since § 26-12-120 is similar to former C.L. §§ 707 and 708, a relevant case construing those provisions has been included in the annotations to this section.

Section to be read in light of estate administration provisions. This section should be read in connection with the statutes relating to administration of estates, so that they may be harmonized, if practicable. In cases where inmates of the home have died intestate, leaving no debts, and leaving articles of personal property of a value not sufficient to cover the cost of administration, the officers of the home doubtless were at a loss to know what to do with such

property. Lacking authority to pass title, they could not sell it. This section was intended to apply in such a situation. It was not intended to apply where the property left was sufficient to justify administration, particularly where there are creditors. It is unreasonable to suppose that the general assembly intended, where an inmate leaves property of substantial value, that the property may be sold by the officers of the home and the proceeds, in default of heirs, placed to the credit of the general fund of the home, regardless of the claims of creditors. In re Estate of McManis, 94 Colo. 546, 31 P.2d 912 (1934).

26-12-121. State and veterans nursing homes - local advisory boards - rules - repeal. (1) The state board, with input from the division within the state department that is responsible for state nursing homes, shall promulgate rules to establish the requirements and procedures governing the creation and operation of local advisory boards at each of the existing state nursing homes within the state department, located in Homelake, Florence, Rifle, Aurora, and Walsenburg, Colorado.

(2) Each local advisory board shall consist of at least five members. At least one of the members shall be a resident of the state nursing home or veterans nursing home or a person who, at the time of his or her appointment, is a family member of a resident of the nursing home.

(3) (a) This section is repealed, effective July 1, 2017.

(b) Prior to repeal, the local advisory boards appointed pursuant to this section shall be reviewed as provided in section 2-3-1203, C.R.S.

Source: L. 2007: Entire section added, p. 280, § 1, effective July 1. **L. 2009:** (1) amended, (SB 09-056), ch. 177, p. 785, § 6, effective April 22. **L. 2011:** (1) amended, (HB 11-1303), ch. 264, p. 1171, § 76, effective August 10.

PART 2

SPECIFIC STATE NURSING HOMES AUTHORIZED

26-12-201. State nursing homes authorized.

(1) Repealed.

(2) (a) Subject to available appropriations, there is hereby authorized the establishment and construction of state nursing homes for veterans of service in the armed forces of the United States and their spouses, surviving spouses, or dependent parents. Each such state nursing home shall be known as the Colorado state veterans nursing home, collectively referred to in this article as “state veterans nursing homes”.

(b) State veterans nursing homes shall be located at or near the city of Florence, at or near the city of Walsenburg, at or near the city of Rifle, and in Homelake.

(3) The state department shall evaluate any proposed sites for a state veterans nursing home to be constructed, leased, or purchased on or after July 1, 1998, in accordance with section 26-12-111.

(4) The state veterans nursing homes shall be designed and constructed so as to qualify for federal funding under the provisions of federal Public Law 88-450, as amended. The state veterans nursing homes shall be under the control and supervision of the state department, and they shall be operated so as to qualify for per diem payments from the United States veterans administration under the provisions of 38 U.S.C. sec. 1741.

Source: L. 98: Entire article R&RE, p. 190, § 1, effective April 10. **L. 99:** (4) amended, p. 627, § 33, effective August 4. **L. 2009:** (1) amended, (SB 09-056), ch. 177, p. 785, § 7, effective April 22. **L. 2011:** (1) repealed, (HB 11-1303), ch. 264, p. 1171, § 77, effective August 10.

Editor’s note: This section is similar to former §§ 26-12-201 and 26-12-401 as they existed prior to 1998.

26-12-201.5. Nursing home at former Fitzsimons authorized - Fitzsimons state veterans nursing home advisory board. (1) Subject to available appropriations, there is hereby authorized the establishment and construction of a state veterans nursing home on the site of the former Fitzsimons Army medical center.

(2) Preference for admission to the state veterans nursing home authorized pursuant to subsection (1) of this section shall be given to any veteran who is not currently a resident in another state veterans nursing home.

(3) and (4) (Deleted by amendment, L. 2000, p. 1552, § 30, effective August 2, 2000.)

(5) Construction of the facility authorized pursuant to subsection (1) of this section shall begin no later than October 1, 2001, or upon receipt of the federal funding for such construction.

(6) Beginning in fiscal year 2004-05, and for each fiscal year thereafter, the state department is authorized to use general funds appropriated to cover any operational shortfall incurred by the facility after its construction and before it begins to generate revenues sufficient to cover its operational expenses.

(7) Repealed.

Source: L. 98: Entire section added, p. 1163, § 1, effective June 1. **L. 2000:** (1), (3), (4), and (5) amended, p. 1552, § 30, effective August 2. **L. 2005:** (6) amended, p. 35, § 1, effective March 18; (7) added, p. 599, § 2, effective July 1. **L. 2007:** (7)(b)(IV) added, p. 188, § 25, effective March 22.

Editor's note: (1) Amendments to this article by Senate Bill 98-186 and House Bill 98-1204 were harmonized.

(2) Subsection (7)(i) provided for the repeal of subsection (7), effective July 1, 2007. (See L. 2005, p. 599.)

26-12-202. Walsenburg - contractual arrangement. (1) For as long as the contract is in effect with the Huerfano county hospital district for the operation of the Walsenburg state veterans nursing home, the contract shall state that the home is a separate entity for financial reporting purposes. The contract shall also state that the district is responsible for financial reporting, rate calculation, financial performance, compliance with all state and federal regulations, and compliance with section 20 of article X of the state constitution.

(2) The Walsenburg state veterans nursing home shall remain a state-owned entity for purposes of qualifying for federal veterans assistance payments and other federal veterans programs.

(3) Nothing in this section shall be construed as affecting the state's ability to take over operations or to contract with any other entity should the contract with the district terminate.

Source: L. 98: Entire article R&RE, p. 191, § 1, effective April 10.

26-12-203. The Colorado state veterans center - jurisdiction. (1) (a) The Colorado state veterans center at Homelake, consisting of a state nursing home, a domiciliary care unit, and the Homelake military veterans cemetery, referred to in this part 2 as the "center", as transferred to the state department by the "Administrative Organization Act of 1968", is hereby declared to be a state home for veterans of service in the armed forces of the United States and their spouses, surviving spouses, and dependent parents.

(b) The legal effect of any statute enacted prior to July 1, 1973, designating such institution as the soldiers' and sailors' home or the Monte Vista golden age center, or by any other name, or property rights acquired and obligations incurred prior to said date under any other name, shall not be impaired hereby.

(2) The center shall be under the control and supervision of the state department.

(3) For purposes of this section, "domiciliary care" means the provision of shelter, food, and necessary medical care on an ambulatory self-care basis:

(a) To assist any individual who is eligible for occupancy in the center pursuant to sections 26-12-104 and 26-12-106 and who is suffering from an incapacitating disability, disease, or defect that prevents such veteran from earning a living, but that does not require hospitalization or nursing care services to attain physical, mental, and social well-being; and

(b) To restore, through special rehabilitative programs, such individual to his or her highest level of functioning.

Source: L. 98: Entire article R&RE, p. 191, § 1, effective April 10. **L. 2012:** (1)(a) and (3)(a) amended, (HB 12-1063), ch.149, p. 536, § 3, effective May 3.

Editor's note: This section is similar to former § 26-12-301 as it existed prior to 1998.

Cross references: For the "Administrative Organization Act of 1968", see article 1 of title 24.

26-12-204. Sale of property. (1) The executive director, with the approval of the state board, shall sell any real property at the center declared to be surplus by the state board to the highest bidder on such terms and conditions as are deemed appropriate by the executive director for not less than the appraised value thereof, as determined by an appraiser who is a member of the members appraisal institute (MAI), and to execute deeds of conveyance of such real property.

(2) Upon the sale of real property pursuant to subsection (1) of this section, the proceeds shall be deposited in the central fund and applied toward the retirement of any outstanding anticipation warrants.

Source: L. 98: Entire article R&RE, p. 192, § 1, effective April 10. L. 2012: (1) amended, (HB 12-1063), ch. 149, p. 537, § 4, effective May 3.

Editor's note: This section is similar to former § 26-12-312 (2.5) as it existed prior to 1998.

26-12-205. Homelake military veterans cemetery - definitions - fund - rules - notice of funding through gifts, grants, and donations - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Cemetery" means the Homelake military veterans cemetery established and maintained at the center pursuant to subsection (2) of this section, including the triangular area of land to the direct north of the existing cemetery as of May 3, 2012.

(b) "Fund" means the Homelake military veterans cemetery fund created pursuant to subsection (4) of this section.

(2) (a) The general assembly hereby authorizes the establishment and maintenance of the cemetery at the center. The state department shall maintain the cemetery.

(b) The state department may enter into contracts or agreements with any person or public or private entity to prepare, develop, construct, operate, and maintain the cemetery.

(3) (a) Any veteran who served honorably in any branch of the armed forces of the United States and who, at the time of his or her death, was a resident of this state shall be eligible for burial and interment at the cemetery.

(b) Burial and interment may be provided at the cemetery for any spouse, surviving spouse, or dependent parent of an honorably discharged veteran of any branch of the armed forces of the United States.

(c) All necessary expenses incident to the burial and interment at the cemetery of any person who may be buried and interred at the cemetery pursuant to the provisions of this section shall be paid from the estate of the decedent.

(d) The state department shall adopt procedures whereby persons who are eligible for burial and interment in the cemetery, in exchange for monetary consideration in an amount to be determined by the state department but not to exceed the amount of the burial and memorial benefit provided to an eligible veteran by the federal department of veterans affairs, may reserve plots there for the burial and interment of themselves and their spouses. In adopting such procedures, the state department shall ensure that a person who possesses such a reservation on May 3, 2012, shall retain his or her reservation.

(4) (a) There is hereby established in the state treasury the Homelake military veterans cemetery fund. The fund shall consist of moneys transferred to the fund pursuant to paragraph (b) of this subsection (4), any revenue generated from activities associated with the cemetery and its operations, and any moneys appropriated to the fund by the general assembly. The moneys in the fund are subject to annual appropriation by the general assembly to the state department for the direct and indirect costs associated with capital improvements to, and the operation and maintenance of, the cemetery and for the implementation of this section. Any moneys in the fund not expended for the purpose of the section may be invested by the state treasurer as provided in section 24-36-113, C.R.S. Any interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(b) The state department is authorized to accept gifts, grants, and donations for the purposes of this section; except that the state department shall not accept a gift, grant, or donation that is subject to conditions that are inconsistent with the provisions of this section or any other law of the state. The state department shall transfer all private and public moneys received through gifts, grants, and donations to the state treasurer, who shall credit the same to the fund.

(c) The state department shall not expend more than five percent of the moneys annually expended from the fund to pay for the administrative costs of implementing this section.

(d) (I) The state department shall notify the legislative council staff when it has received adequate funding through gifts, grants, or donations for the purposes of this section and shall include in the notification the information specified in section 24-75-1303 (3), C.R.S.

(II) This paragraph (d) is repealed, effective July 1, 2015.

(5) The general assembly hereby finds, determines, and declares that any use of the cemetery property is for a public purpose expressly authorized by the general assembly and therefore permissible under any grant of right-of-way applicable to such property executed by the state board of land commissioners.

(6) Subject to available appropriations, the state department may contract for professional services necessary for the implementation of this section.

(7) It is the intent of the general assembly that the state department will implement the provisions of this section by assigning to the cemetery one-half of a full-time employee from within the existing personnel resources of the state department.

Source: L. 98: Entire article R&RE, p. 192, § 1, effective April 10. L. 2012: Entire section R&RE, (HB 12-1063), ch. 149, p. 534, § 1, effective May 3.

Editor's note: This section is similar to former § 26-12-309 as it existed prior to 1998.

26-12-206. Statement of intent. The general assembly of the state of Colorado hereby expresses its intent to appropriate the necessary funds from time to time to plan and construct the state nursing homes and to operate said homes in accordance with Title 38, U.S. Code.

Source: L. 98: Entire article R&RE, p. 192, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-403 as it existed prior to 1998.

26-12-207. Federal funds. Whenever a law or rule pertaining to the veterans administration or any other federal law permits the state to receive federal funds for the use and benefit of the state nursing homes, the executive director shall apply for and use such federal funds for the benefit of the state nursing homes.

Source: L. 98: Entire article R&RE, p. 192, § 1, effective April 10.

Editor's note: This section is similar to former § 26-12-405 as it existed prior to 1998.

PART 3

EVALUATION OF QUALITY OF CARE IN
STATE AND VETERANS NURSING HOMES**26-12-301 to 26-12-306. (Repealed)**

Editor's note: (1) Section 26-12-306 provided for the repeal of this part 3, effective July 1, 2007. (See L. 2005, p. 597.)

(2) This part 3 was added in 2005 and was not amended prior to its repeal in 2007. For the text of this part 3 prior to 2007, consult the 2006 Colorado Revised Statutes.

PART 4

BOARD OF COMMISSIONERS OF
STATE AND VETERANS NURSING HOMES

26-12-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Board of commissioners" means the board of commissioners of state and veterans nursing homes created in section 26-12-402.

(2) "Division" means the division of state and veterans nursing homes, or its successor agency, in the state department.

Source: L. 2007: Entire part added, p. 438, § 1, effective July 1.

26-12-402. Board of commissioners of state and veterans nursing homes - creation - powers and duties. (1) There is hereby created the board of commissioners of state and veterans nursing homes within the state department. The board of commissioners shall exercise its powers, duties, and functions under the state department as if it were transferred to the state department by a **type 2** transfer under the provisions of the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) The functions of the board of commissioners are to:

(a) Advise the division and the veterans nursing homes located in Homelake, Florence, Rifle, Aurora, and Walsenburg, Colorado;

(b) Provide continuity, predictability, and stability in the operation of the state and veterans nursing homes; and

(c) Provide guidance to future administrators at the state and veterans nursing homes based on the collective institutional memory of the board of commissioners.

(3) (a) The board of commissioners shall consist of seven members, no more than four of whom are members of the same political party, and all of whom shall be subject to confirmation by the senate.

(b) The governor shall appoint the seven members of the board of commissioners as follows:

(I) Three veterans, one of whom shall be either a member of the state board of veterans affairs or that board's designee;

(II) Three persons with expertise in nursing home operations, including:

(A) A person who is a nursing home administrator at the time of appointment and who is experienced in the financial operations of nursing homes;

(B) A person who has practicing clinical experience in nursing homes; and

(C) A person who has experience in multi-facility management of nursing homes; and

(III) The state long-term care ombudsman, as defined in section 26-11.5-103 (7), or a local ombudsman, as defined in section 26-11.5-103 (2), that is recommended to the governor by the state long-term care ombudsman.

(c) The appointed members of the board of commissioners shall serve terms of four years; except that, of the members first appointed, the governor shall select three members who shall serve terms of two years.

(4) An appointed member may be removed for cause at any time during the member's term by the governor. Vacancies on the board of commissioners shall be filled by appointment by the governor with the consent of the senate for the unexpired terms in the manner described in subsection (3) of this section.

(5) Members of the board of commissioners shall serve without pay but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.

(6) All members of the board of commissioners shall be voting members. The members of the board of commissioners shall elect a chair, a vice-chair, and a secretary from among the membership of the board. Board action shall require the affirmative vote of a majority of a quorum of the board of commissioners.

(7) The board of commissioners shall:

(a) Endeavor to ensure that the highest quality of care is being provided at the state and veterans nursing homes and that the financial status of the homes is maintained on a sound basis;

(b) Obtain information concerning the following:

(I) The status of the central fund, as described in section 26-12-108, and the progress of capital construction projects that are proposed or underway; and

(II) Issues of resident care arising from sources, including but not limited to department of public health and environment surveys, veterans administration surveys, consultant contractor reports, plans of correction to both surveys and consultant reports, vacant position reports, and reports from the division;

(c) Have direct access to any consulting contractor working with the state and veterans nursing homes and obtain written and oral reports;

(d) Have direct access to the executive director of the state department and the state board for the purposes of alerting state department policymakers of potential problems in state and veterans nursing homes and establishing effective working relationships and lines of communication with the state department and state board at all levels;

(e) Have the authority to visit and review the operation of the state and veterans nursing homes;

(f) Participate in any request for proposal panel that selects division-wide consulting firms for the state and veterans nursing homes;

(g) Have authority to review and comment on rules promulgated by the state department and the state board concerning the state and veterans nursing homes before the rules are submitted for public comment;

(h) Meet as often as necessary but not less than three times per year; and

(i) (I) On or before January 1, 2008, and on or before each January 1 thereafter, make an annual report of issues and recommendations developed by the board of commissioners to the executive director of the state department and the governor; and

(II) Transmit electronic versions of each annual report to:

(A) The members of the general assembly who sit on the health and human services committees and the state, veterans, and military affairs committees of the senate and the house of representatives, or any successor committees; and

(B) The members of the state board of veterans affairs.

(8) Nothing in this part 4 shall be construed to abridge, amend, or supersede any provision of a contractual agreement that the state department has entered into with any of the state and veterans nursing homes.

Source: L. 2007: Entire part added, p. 438, § 1, effective July 1. **L. 2009:** (2)(a) amended, (SB 09-056), ch. 177, p. 785, § 8, effective April 22. **L. 2011:** (2)(a) amended, (HB 11-1303), ch. 264, p. 1171, § 78, effective August 10.

26-12-403. Repeal of part. (1) This part 4 is repealed, effective July 1, 2017.

(2) Prior to repeal, the board of commissioners appointed pursuant to this part 4 shall be reviewed as provided in section 2-3-1203, C.R.S.

Source: L. 2007: Entire part added, p. 441, § 1, effective July 1.

ARTICLE 13

Child Support Enforcement Act

Cross references: For administrative procedure for child support and enforcement, see article 13.5 of this title; for support proceedings under the “Colorado Children’s Code”, see article 6 of title 19; for reciprocal support, see article 5 of title 14; for nonsupport, see article 6 of title 14; for support proceedings under the “Colorado Child Support Enforcement Procedures Act”, see article 14 of title 14.

Law reviews: For article, “Child Support Enforcement Remedies Available Through Child Support Enforcement Agencies”, see 33 Colo. Law. 57 (January 2004).

26-13-101.	Short title.	26-13-115.5.	Family support registry fund created.
26-13-102.	Legislative declaration.	26-13-116.	Debt information made available to consumer reporting agencies - notice to noncustodial parent - fees - rules and regulations.
26-13-102.5.	Definitions.	26-13-117.	Study of centralized system for processing child support payments. (Repealed)
26-13-102.7.	Privacy - legislative declaration.	26-13-118.	Lottery winnings offset.
26-13-102.8.	Nondisclosure of information in exceptional circumstances.	26-13-118.5.	Unclaimed property offset.
26-13-103.	Support enforcement program.	26-13-118.7.	Gambling winnings - interception - rules.
26-13-104.	State plan.	26-13-119.	Distribution of amounts collected.
26-13-105.	Child support enforcement services - review.	26-13-120.	Administrative review of child support orders. (Repealed)
26-13-106.	Eligibility for services.	26-13-121.	Review and modification of child support orders.
26-13-107.	State parent locator service.	26-13-121.5.	Enforcement of obligation to maintain health insurance.
26-13-108.	Recovery of public assistance paid for child support and maintenance - interest collected on support obligations - designation in annual general appropriations act.	26-13-122.	Administrative lien and attachment.
26-13-109.	Enforcement of support UIFSA.	26-13-122.5.	Administrative lien and attachment of inmate bank accounts.
26-13-110.	Federal requirements.	26-13-123.	Drivers’ licenses - suspension for nonpayment of child support - definitions.
26-13-111.	State income tax refund offset.	26-13-124.	Privatization of child support enforcement programs.
26-13-111.5.	State vendor payment offset.	26-13-125.	State directory of new hires - definitions.
26-13-112.	Child support incentive payments. (Repealed)	26-13-126.	Authority to deny, suspend, or revoke professional, occupational, and recreational licenses.
26-13-112.5.	Child support incentive payments.	26-13-127.	State case registry.
26-13-113.	Placement in foster care automatic assignment of right.	26-13-128.	Agreements with financial institutions - data match system - limited liability - definitions.
26-13-114.	Family support registry - collection and disbursement of child support and maintenance - rules - legislative declaration.	26-13-129.	Exemption from federal law.
26-13-115.	Child support enforcement agency fund created - application of interest, fees, and recovered costs. (Repealed)		

26-13-101. Short title. This article shall be known and may be cited as the “Colorado Child Support Enforcement Act”.

26-13-102. Legislative declaration. The purposes of this article are to provide for enforcing the support obligations owed by obligors, to locate obligors, to establish parentage, to establish and modify child support obligations, and to obtain support in cooperation with the federal government pursuant to Title IV-D of the federal "Social Security Act", as amended, and other applicable federal regulations.

Source: L. 79: Entire article added, p. 640, § 5, effective June 7. L. 82: Entire section amended, p. 282, § 7, effective April 2. L. 87: Entire section amended, p. 599, § 35, effective July 10. L. 2007: Entire section amended, p. 1653, § 11, effective May 31.

26-13-102.5. Definitions. As used in this article, unless the context otherwise requires:

(1) "Delegate child support enforcement unit" means the unit of a county department of social services or its contractual agent which is responsible for carrying out the provisions of this article. The term contractual agent shall include a private child support collection agency, operating as an independent contractor with a county department of social services, that contracts to provide any services that the delegate child support enforcement unit is required by law to provide.

(2) (a) "IV-D case" or "IV-D support order" means a case or a support order with respect to a child in which support enforcement services are provided, in accordance with Title IV-D of the federal "Social Security Act", as amended, and pursuant to this article, by the delegate child support enforcement unit to a custodian of a child who is or was a recipient:

(I) Of aid to families with dependent children, as that program was in effect as of July 16, 1996;

(II) Under the Colorado works program pursuant to part 7 of article 2 of this title;

(III) Of medical assistance only under articles 4, 5, and 6 of title 25.5, C.R.S.;

(IV) Of Title IV-E foster care; or

(V) Of foster care services under article 5 of this title.

(b) The terms "IV-D case" or "IV-D support order" also include any case or order in which the custodian of a child applies to the delegate child support enforcement unit for support enforcement services and pays a fee for such services under section 26-13-106 (2).

Source: L. 90: Entire section added, p. 1407, § 1, effective June 8. L. 2003: (1) amended, p. 1270, § 62, effective July 1. L. 2006: (2) amended, p. 2019, § 107, effective July 1. L. 2010: (2) amended, (HB 10-1043), ch. 92, p. 317, § 14, effective April 15.

26-13-102.7. Privacy - legislative declaration. (1) The general assembly hereby finds that while it is beneficial to the children of the state of Colorado to have procedures by which to enhance the establishment and enforcement of child support, some of which may include the collection and transmission of certain informational data by electronic and other means, the general assembly also determines that it is equally important to prevent abuses of personal information and to safeguard the fundamental right of individuals to privacy. To ensure the privacy of individuals against whom child support is to be established or enforced or on whose behalf it is to be collected, the general assembly hereby determines that it is appropriate that certain safeguards be established.

(2) In addition to any other confidentiality provisions set forth in this article and section 14-14-113, C.R.S., the child support enforcement agency and the delegate child support enforcement units, when exercising authority pursuant to this article and section 14-14-113, C.R.S., to establish, modify, or enforce support obligations, shall make every effort to preserve the integrity and confidentiality of the informational data obtained from other sources about the support obligor and obligee and the informational data provided to any other source about such individuals. The child support enforcement agency and the delegate child support enforcement units shall share only the minimum amount of information required by law and by means that are most capable of preserving the integrity and confidentiality of the information or data about the individual. Specifically, the informational data maintained or transmitted pursuant to this article shall be:

- (a) Processed fairly and lawfully;
- (b) Collected for specified, explicit, and legitimate purposes as provided by statute or rule and not further processed in a way incompatible with those purposes;
- (c) Adequate, relevant, and not excessive in relation to the purposes for which such information is collected or processed;
- (d) Accurate and, where necessary, kept up to date to the maximum extent feasible; and
- (e) Kept in a form that permits identification of the subject of such information for no longer than is necessary for the purposes for which the information was collected or for which it was processed.

(3) In addition, an individual about whom information is gathered or transmitted pursuant to this article or section 14-14-113, C.R.S., shall have the right to access such information relating to him or her in order to verify the accuracy of the information and the lawfulness of the processing of such information.

(4) Any individual about whom information is gathered or transmitted pursuant to this article or section 14-14-113, C.R.S., shall be entitled to civil damages in a court of law against any person or entity who knowingly violates the provisions of this section.

Source: L. 97: Entire section added, p. 1288, § 33, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-102.8. Nondisclosure of information in exceptional circumstances. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information shall be sealed and may not be disclosed to the other party or the public. A party seeking disclosure of all or part of such identifying information may request a hearing before the court. After a hearing in which the court takes into consideration the health, safety, or liberty of the party or child, the court shall make findings based upon the considerations specified in this section and may order disclosure of all or part of the information if the court determines the disclosure to be in the interest of justice.

Source: L. 2004: Entire section added, p. 387, § 5, effective July 1.

26-13-103. Support enforcement program. The state department, pursuant to rules and regulations, shall establish a program to provide necessary support enforcement services. The state department shall establish a single and separate agency within the department to administer or supervise the administration of such program in accordance with Title IV-D of the federal "Social Security Act", as amended, and this article.

Source: L. 79: Entire article added, p. 641, § 5, effective June 7. **L. 82:** Entire section amended, p. 282, § 8, effective April 2.

26-13-104. State plan. The state department shall prepare and submit to the United States secretary of health and human services a state plan and any amendments to such state plan that become necessary which meet the requirements of Title IV-D of the federal "Social Security Act", as amended.

Source: L. 79: Entire article added, p. 641, § 5, effective June 7. **L. 82:** Entire section amended, p. 282, § 9, effective April 2.

26-13-105. Child support enforcement services - review. (1) Subject to the provisions of section 26-13-104, the child support enforcement program shall include the following, as required by federal law:

(a) The establishment and modification of an obligor parent's legal obligation to support his or her dependent children, including determination of parentage when necessary;

(b) The location of an obligor parent or putative parent;

(c) The monitoring and processing of an obligor parent's child support and maintenance payment;

(d) The enforcement of an obligor parent's support obligation as set forth in section 26-13-106 (1);

(e) Any necessary investigative and administrative activities which may be necessary to accomplish the services required by this section;

(f) (I) Annual reviews of the child support enforcement program, to be conducted by the state department, including all information as may be necessary to measure the state's compliance with federal requirements.

(II) The state department shall review the cost associated with conducting the annual reviews required in this paragraph (f) and the number of full-time equivalent employees (FTE) of the state department required to complete the reviews. The state department shall examine and evaluate the feasibility and cost-effectiveness of privatizing this function.

(1.5) Upon the request of another state, the state department or its agent is authorized to provide the identification, through data matches with any entity where assets may be found, of assets owned by a person who owes child support in another state and to seize such assets through levy or other appropriate processes.

(2) In any action brought pursuant to this article, or any action brought by a governmental agency, to establish, modify, or enforce a child support obligation or to enforce a maintenance obligation as set forth in section 26-13-106, the prosecuting attorney represents the people of the state of Colorado. Nothing in this section shall be construed to modify statutory mandate, authority, or confidentiality required of any governmental agency, nor should representation by a prosecuting attorney be construed to create an attorney-client relationship between the attorney and any party, other than the people of the state of Colorado, or witness to the action; except that any district attorney or county attorney as contractual agent for a county department shall collect a fee pursuant to section 26-13-106 (2).

(3) (a) In addition to the annual review required by paragraph (f) of subsection (1) of this section, or as a part of such review, the state department shall evaluate the cost and effectiveness of each of the provisions implemented by House Bill 97-1205. Such evaluation shall include a review of the following:

(I) The amount of increase in support collection, if any, associated with the implementation of each new provision contained in House Bill 97-1205;

(II) The cost, in federal, state, and county dollars, associated with the implementation of each new provision set forth in House Bill 97-1205;

(III) The number of full-time equivalent employees (FTE) necessitated by the implementation of each new provision contained in House Bill 97-1205 at both the state and county levels; and

(IV) Such additional data as may be necessary.

(b) (Deleted by amendment, L. 2001, p. 1172, § 10, effective August 8, 2001.)

Source: L. 79: Entire article added, p. 641, § 5, effective June 7. L. 81: (2) added, p. 902, § 3, effective May 27. L. 82: (1)(c), (1)(d), and (2) amended, p. 282, § 10, effective April 2. L. 87: (2) amended, p. 599, § 36, effective July 10. L. 88: (2) amended, p. 635, § 13, effective July 1. L. 91: (1) amended, p. 255, § 17, effective July 1. L. 94: (1)(a) amended, p. 1543, § 19, effective May 31. L. 97: (1)(f) and (3) added, p. 1289, §§ 34, 35, effective July 1. L. 2001: (1)(f)(II), (3)(a)(IV), and (3)(b) amended, p. 1172, § 10, effective August 8. L. 2012: (1.5) added, (SB 12-042), ch. 30, p. 121, § 1, effective March 19.

Editor's note: Subsection (3) was originally numbered as subsection (2) in House Bill 97-1205 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For article, "Family Support Act: Mandating State Child Support Enforcement Services", see 21 Colo. Law. 255 (1992).

No express agency relationship or apparent authority existed between the child support enforcement unit and the mother during the period of time in which the mother had assigned her rights to the unit for collection of child support and prior to the time that the AFDC assistance had been fully reimbursed, since mother had expressly acknowledged that the child support enforcement unit did not represent

her and mother could not control the actions of the unit. In re Robbins, 8 P.3d 625 (Colo. App. 2000).

This section authorizes child support enforcement services to any person who properly applies and does not prohibit the child support enforcement unit from providing services to persons residing outside the United States. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

Applied in People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982).

26-13-106. Eligibility for services. (1) Support enforcement services shall be provided to those recipients of medicaid-only and Title IV-E foster care as required by federal law and to participants in the Colorado works program implemented pursuant to part 7 of article 2 of this title who, as a condition of eligibility pursuant to federal law, must assign their rights to support to, and cooperate with, the state department in the establishment, modification, and enforcement of support obligations owed by obligors to their children and the enforcement of maintenance owed by obligors to their spouses or former spouses.

(2) Child support establishment, modification, and enforcement services under state law and under the "Uniform Interstate Family Support Act", article 5 of title 14, C.R.S., shall be provided to any person who completes a written application and pays the required fee; except that the county may elect to pay the fee out of county child support enforcement funds. The state department shall establish, by rule, a fee to be charged for services provided under this section. Such fee shall be applied toward reimbursing expenditures incurred by the child support enforcement program. County departments and their contractual agents for legal services, including district and county attorneys, may pursue such fee, notwithstanding any other provision of law. Nonpayment of any fee charged by the state department for services provided under this section shall not be the basis for any criminal prosecution or order of contempt of the court.

(3) The county department may recover any costs incurred in excess of fees from the obligor in a case in which an individual is receiving child support enforcement services under subsection (2) of this section.

(4) After more than five hundred dollars has been collected from an obligor during a year, the county department shall recover a fee of twenty-five dollars from the obligee if the obligee has never received public assistance. The county department shall withhold the fee from the first amount collected that exceeds the five-hundred-dollar threshold.

Source: **L. 79:** Entire article added, p. 641, § 5, effective June 7. **L. 82:** Entire section amended, p. 283, § 11, effective April 2. **L. 87:** Entire section amended, p. 599, § 37, effective July 10. **L. 90:** Entire section amended, p. 893, § 17, effective July 1. **L. 96:** Entire section amended, p. 614, § 20, effective July 1. **L. 97:** (3) amended, p. 563, § 12, effective July 1. **L. 98:** (1) amended, p. 757, § 8, effective July 1. **L. 2007:** (1) amended and (4) added, p. 1653, § 12, effective October 1.

26-13-107. State parent locator service. (1) There shall be established in the state department a state parent locator service to assist delegate child support enforcement units or their authorized agents, other states, and agencies of the federal government in the location of parents who have or appear to have abandoned children who qualify under section 26-13-106.

(2) To effectuate the purposes of subsection (1) of this section, the executive director may request and shall receive from departments, boards, bureaus, or other agencies of the

state, including but not limited to law enforcement agencies, or any of its political subdivisions, and the same are authorized to provide, such assistance and data as will enable the state department and delegate child support enforcement units or their authorized agents properly to carry out their powers and duties to locate such parents for the purpose of establishing parentage or establishing, modifying, or enforcing child support obligations. In addition, any federal agency or such agency's authorized agents properly carrying out their powers and duties to locate a parent for the purpose of establishing parentage or establishing, modifying, or enforcing child support obligations may request and shall have access to any motor vehicle or law enforcement system used by the state to locate an individual. Any records established pursuant to the provisions of this section shall be available only to the following:

(a) Any state or local agency or official seeking to collect child support under the state plan or the agency's or official's authorized agents;

(b) The attorney general, district attorneys, and county attorneys;

(c) Courts having jurisdiction in support or abandonment proceedings or actions to establish child support against a parent or to issue an order against a parent for the allocation of parental responsibilities or parenting time rights or any agent of such court;

(d) The obligee parent, legal guardian, attorney, or agent of a child who is not receiving aid under Title IV-A of the federal "Social Security Act", as amended, when a court order is provided; and

(e) United States agents or attorneys for use with the federal parent locator service in connection with a parental kidnapping or child custody case, as authorized by federal law.

(3) (a) (I) All departments and agencies of the state and local governments, including but not limited to law enforcement agencies, shall cooperate in the location of parents who have abandoned or deserted children who qualify under section 26-13-106; and, on request of a delegate child support enforcement unit or its authorized agent, the state department, or the district attorney of any judicial district in this state, they shall supply any information on hand, notwithstanding any other provisions of law making such information confidential, concerning:

(A) The location of any individual, including the individual's social security number, most recent address, and the name, address, and employer identification number of the individual's employer, or facilitating the discovery of such individual's location, who is under an obligation to pay child support, against whom such an obligation is sought, or to whom such an obligation is owed;

(B) The individual's wages or other income from employment and any benefits of employment, including any right to or enrollment in group health care coverage; and

(C) The type, status, location, and amount of any assets of, or debts owed by or to, any such individual.

(II) The department of revenue shall furnish, at no cost to inquiring departments and agencies, such information as may be necessary to effectuate the purposes of this article. Any information so provided may be transmitted to those persons or entities specified in paragraph (a.5) of this subsection (3). The procedures whereby this information will be requested and provided shall be established pursuant to rules and regulations of the state department. The state department and delegate child support enforcement units shall use such information only for the purposes of administering child support enforcement under this title, and the district attorney shall use it only for the purpose of establishing parentage or establishing, modifying, or enforcing child support obligations. The state department and delegate child support enforcement units shall not use the information, or disclose it, for any other purpose. Any violation or misuse of this information will be subject to any civil or criminal penalties provided by law.

(a.5) The state parent locator service shall only accept applications from and transmit Colorado and federal parent locator information to:

(I) Any state or local agency or official seeking to collect child support under the state plan or the agency's or official's authorized agents;

(II) The attorney general, district attorneys, and county attorneys;

(III) Courts having jurisdiction in support and abandonment proceedings or actions to establish child support against a parent or to issue an order against a parent for the allocation of parental responsibilities or parenting time rights or any agent of such court;

(IV) The obligee parent, legal guardian, attorney, or agent of a child who is not receiving aid under Title IV-A of the federal "Social Security Act", as amended, when a court order is provided;

(V) United States agents or attorneys for use with the federal parent locator service in connection with a parental kidnapping or child custody case, as authorized by federal law; and

(VI) The court when a court order is provided from a parent seeking to enforce a child custody, parental responsibilities, or parenting time order.

(b) Nothing in this subsection (3) shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if such information is required to be kept confidential by the federal law or regulations relating to such program, or to compel the disclosure of any information disclosed in any document, report, or return made confidential by section 39-21-113, C.R.S.

(c) The state parent locator service or the equivalent of a state child support enforcement agency or delegate child support enforcement unit of any other state may initiate a request requiring any employer, trustee, payor of funds, or other employer located within this state or doing business in this state to provide any information on the employment, compensation, and benefits of any individual for whom information is known. Compliance with such a request shall not subject the employer, trustee, or payor of funds to liability to the obligor for disclosing such information without a subpoena pursuant to this paragraph (c). The state department shall not use the provisions of this paragraph (c) for the information-gathering purposes of the financial institution data match system required by section 26-13-128.

(d) The state parent locator service or a delegate child support enforcement unit may obtain information from credit bureaus on the whereabouts, income, and assets of individuals pursuant to the provisions of the federal "Fair Credit Reporting Act" in order to provide the services set forth in section 26-13-105.

(e) The state parent locator service or a delegate child support enforcement unit may initiate a request requiring any person located within this state or doing business in this state who is in possession or control of personal property or information concerning the location, benefits, income, and assets of parents with a child support obligation to provide such information to the requesting agency. Compliance with such request shall not subject the holder to liability to the obligor for disclosing such information without a subpoena pursuant to this paragraph (e).

(e.5) The state parent locator service may initiate an administrative subpoena requiring any public employee retirement benefit plan or financial institution located within this state or doing business in this state that is in possession or control of personal property or information concerning the location, benefits, income, and assets of a person who owes or is owed an obligation for child support debt, retroactive child support, or child support arrearages or against whom an obligation is sought to provide such information to the requesting agency. Compliance with such subpoena shall not subject the public employee retirement benefit plan or the financial institution to liability to the parent for disclosing such information.

(f) (I) (A) The state parent locator service or the equivalent of a state child support enforcement agency or delegate child support enforcement unit of any other state is authorized to issue an administrative subpoena to gather financial or other information to establish, modify, or enforce a support order. An administrative subpoena is authorized to be issued to a public utility for records pertaining to individuals who owe or are owed child support or against or with respect to whom a support obligation is sought. Such subpoena shall require the public utility to furnish documentation providing the names and addresses of these individuals and the names and addresses of the employers of such individuals as appearing in the customer records of the public utility. A public utility responding to an

administrative subpoena request shall be entitled to collect a reasonable fee for the processing of each such subpoena.

(B) In seeking information from a public utility, as defined in subparagraph (III) of this paragraph (f), the state parent locator service shall be subject to the confidentiality requirements and restrictions set forth in section 631 of the federal "Cable Communications Policy Act of 1984", 47 U.S.C. sec. 551.

(II) The provisions of this section shall in no way alter the method of regulation or deregulation of telecommunications service as set forth in article 15 of title 40, C.R.S.

(III) For purposes of this section, "public utility" means any gas corporation, electrical corporation, telegraph corporation, water corporation, rural electric association, municipal electric systems, person, or municipality that operates for the purpose of supplying gas, electricity, telegraph services, or water to the public for domestic, mechanical, or public uses and that is subject to regulation by the public utilities commission under articles 1 to 7 of title 40, C.R.S., and any telephone corporation, municipal telephone entity, or other corporation that offers telecommunications services to the public that is subject to the provisions of article 15 of title 40, C.R.S., and any corporation that provides cable television services to the public.

(g) The child support enforcement agency shall make every reasonable effort to accommodate those entities to which the child support enforcement agency directs an administrative subpoena, if the requirements of this section would pose a hardship on those entities.

(4) The state parent locator service may establish fees to be charged for the provision of services in paragraphs (d) and (e) of subsection (2) of this section and in subparagraphs (IV) and (V) of paragraph (a.5) of subsection (3) of this section.

(5) This section shall apply to all child support obligations ordered as a part of any proceeding, regardless of when the order was entered.

Source: **L. 79:** Entire article added, p. 641, § 5, effective June 7. **L. 82:** (1) amended, p. 283, § 12, effective April 2. **L. 86:** (3)(c) added, p. 729, § 15, effective July 1. **L. 91:** (3)(c) amended, p. 256, § 18, effective July 1. **L. 94:** (3)(d) added, p. 1543, § 20, effective May 31. **L. 96:** (2) and (3) amended and (4) added, p. 615, § 21, effective July 1. **L. 97:** (1), IP(2), (2)(c), (3)(a), (3)(a.5), (3)(c), and (3)(e) amended and (3)(e.5), (3)(f), and (3)(g) added, p. 1290, § 36, effective July 1; (5) added, p. 563, § 13, effective July 1. **L. 98:** (2)(c), (3)(a)(I), (3)(c), and (3)(f)(I)(A) amended, p. 757, § 9, effective July 1; (2)(c), (2)(d), (3)(a.5)(III), (3)(a.5)(IV), and (3)(a.5)(VI) amended, p. 1413, § 80, effective February 1, 1999.

Editor's note: Amendments to subsection (2)(c) by Senate Bill 98-139 and House Bill 98-1183 were harmonized, effective February 1, 1999.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (1), the introductory portion to subsection (2), and subsections (2)(c), (3)(a), (3)(a.5), (3)(c), and (3)(e) and enacting subsection (3)(e.5), (3)(f), and (3)(g), see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-108. Recovery of public assistance paid for child support and maintenance - interest collected on support obligations - designation in annual general appropriations act. (1) Whenever the state department, a county department or its authorized agent, or a district attorney recovers any amounts of support for public assistance recipients, such amounts shall be deposited in the county social services fund, and, if such support is used to reimburse public assistance paid in accordance with federal law, the federal government shall be entitled to a share in accordance with applicable federal law, the county shall be entitled to a share in accordance with state law, and the state shall be entitled to the remaining share. The state may redirect all or a portion of the state's share to the county pursuant to section 26-13-112.5. The general assembly shall designate in a footnote in the annual general appropriations act the portion of the state's share that is redirected to the counties. Costs and expenses reasonably and necessarily incurred by the office of district or

county attorney, as contractual agent for a county department, in carrying out the provisions of this article shall be billed to county departments of social services or a county department of social services within the judicial district for the actual cost of services provided. Each county shall make an annual accounting to the state department on all amounts recovered.

(2) (Deleted by amendment, L. 97, p. 1294, § 37, effective July 1, 1997.)

(3) Effective July 1, 2000, a county may pay families that are eligible for temporary assistance for needy families, pursuant to part 7 of article 2 of this title, an amount that is equal to the state and county share of child support collections as described in subsection (1) of this section. Such payments shall not be considered income for the purpose of grant calculation. However, such income shall be considered income for purposes of determining eligibility. If a county chooses to pay child support collections directly to a family that is eligible for temporary assistance for needy families, pursuant to part 7 of article 2 of this title, the county shall report such payments to the state department for the month in which the payments are made and shall indicate the choice of this option in its performance contract for Colorado works.

(4) Any interest collected on support obligations pursuant to the "Colorado Child Support Enforcement Procedures Act", article 14 of title 14, C.R.S., which support obligations were due to recipients receiving assistance under the Colorado works program, as described in part 7 of article 2 of this title, shall be deposited in the county social services fund and shall be distributed in accordance with the provisions of this section.

Source: L. 79: Entire article added, p. 642, § 5, effective June 7. L. 82: Entire section amended, p. 283, § 13, effective April 2. L. 90: Entire section amended, p. 1411, § 4, effective June 8. L. 92: (2) amended, p. 211, § 15, effective August 1. L. 97: Entire section amended, p. 1294, § 37, effective July 1. L. 2000: (3) amended, p. 1711, § 8, effective July 1. L. 2003: (4) added, p. 1271, § 63, effective July 1. L. 2008: (1) amended, p. 1349, § 6, effective July 1. L. 2012: (1) amended, (SB 12-113), ch. 33, p. 128, § 1, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-109. Enforcement of support UIFSA. (1) The state department shall be the state information agency for the "Uniform Interstate Family Support Act", article 5 of title 14, C.R.S., in this state and reciprocal laws of other states; and, in this capacity, the state department shall:

(a) Assist county departments and other agencies to carry out their responsibilities, powers, and duties to establish and enforce the liability of parents for the support of their minor children;

(b) Aid in the location of deserting parents through the operation of the state parent locator service established in section 26-13-107, obtain and transmit pertinent information and data from public officials and agencies, and assist in the training of local personnel employed to locate such parents;

(c) Stimulate and encourage cooperation, through the holding of meetings and the exchange of information, between and among public officials, law enforcement agencies, and courts having powers and duties relating to the enforcement of the liability of parents for the support of their minor children, including cooperation with public officials, agencies, and courts of other states and the federal government, and, upon request or when required to do so by other provisions of law, advise such officials, agencies, and courts in the exercise of such powers or in the performance of such duties;

(d) Develop, or assist in the development of, appropriate forms, guides, manuals, handbooks, and other materials which may be necessary or useful effectively to accomplish the objectives of this section;

(e) Adopt any rules and regulations which may be necessary to carry out the purposes of this article.

Source: **L. 79:** Entire article added, p. 643, § 5, effective June 7. **L. 82:** (1)(a) amended, p. 284, § 14, effective April 2. **L. 93:** IP(1) amended, p. 1606, § 10, effective January 1, 1995.

Editor's note: The substantive provisions of this section prior to 1979 were contained in § 26-1-113.

26-13-110. Federal requirements. Nothing in this article shall be construed to prevent the state department from complying with federal requirements for the child support enforcement program expressly provided by Title IV-D of the "Social Security Act", as amended, in order for the state to qualify for federal funds under such act and to maintain said program within the limits of available appropriations.

Source: **L. 79:** Entire article added, p. 643, § 5, effective June 7.

26-13-111. State income tax refund offset. (1) (a) At any time prescribed by the department of revenue, but not less frequently than annually, the state department shall certify to the department of revenue information regarding persons who owe a child support debt to the state pursuant to section 14-14-104, C.R.S., or who owe child support arrearages as requested as a part of an enforcement action pursuant to article 5 of title 14, C.R.S., or who owe child support arrearages which are the subject of enforcement services provided pursuant to section 26-13-106.

(b) Such information shall include the name and the social security number of the person owing the child support debt or arrearages, the amount of same, and any other identifying information required by the department of revenue.

(2) Prior to final certification of the information specified in subsection (1) of this section to the department of revenue, the state department shall notify the obligated parent, in writing, that the state intends to refer the parent's name to the department of revenue in an attempt to offset the parent's child support debt or arrearages against the parent's state income tax refund. Such notification shall include information on the parent's right to object to the offset.

(3) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 39-21-108 (3), C.R.S., and after deduction of the fees authorized in subsection (4) of this section to be collected from applicants receiving support enforcement services pursuant to section 26-13-106 (2), the state department shall disburse such amounts to the appropriate county department for processing or for distribution to the individual receiving support enforcement services pursuant to section 26-13-106, as appropriate.

(4) The state department shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section and may promulgate rules and regulations establishing reasonable fees to be collected from an applicant who is receiving support enforcement services provided pursuant to section 26-13-106 (2). Such fees shall not exceed the amount necessary to cover the cost of collecting overdue child support using the state tax refund offset procedure.

(5) The home addresses and social security numbers of persons subject to the income tax refund offset, provided to the state department by the department of revenue, shall be sent to the respective delegate child support enforcement unit as defined in section 14-14-102, C.R.S.

Source: **L. 85:** Entire section added, p. 597, § 21, effective July 1. **L. 86:** (1)(a) amended, p. 729, § 16, effective July 1. **L. 89:** (1)(a), (3), and (4) amended, p. 798, § 32, effective July 1. **L. 93:** (1)(a) amended, p. 1606, § 11, effective January 1, 1995.

Editor's note: Prior to its repeal in 1985, provisions concerning child support debt offsets were found in § 14-14-108.

26-13-111.5. State vendor payment offset. (1) At any time prescribed by the controller, but not less frequently than annually, the state department shall certify to the controller information regarding persons who owe child support debt pursuant to section 14-14-104, C.R.S., or who owe child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or who owe child support arrearages that are the subject of enforcement services provided under section 26-13-106.

(2) Upon notification by the controller of amounts deposited with the state treasurer pursuant to section 24-30-202.4, C.R.S., the state department shall disburse such amounts to the appropriate county for processing and distribution to the federal, state, or local agency to whom the person is obligated.

(3) The state department shall promulgate rules establishing procedures to implement this section pursuant to article 4 of title 24, C.R.S.

(4) The last-known addresses and social security numbers of persons subject to the vendor payment offset, provided to the state department by the controller, shall be sent to the respective county departments or the food stamp district administered by the state department.

Source: L. 97: Entire section added, p. 941, § 3, effective July 1.

26-13-112. Child support incentive payments. (Repealed)

Source: L. 85: Entire section added, p. 598, § 21, effective July 1. L. 90: (2)(c) amended, p. 1412, § 5, effective June 8. L. 98: (2)(c) amended, p. 825, § 39, effective August 5. L. 99: (6) added, p. 1087, § 7, effective July 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective January 1, 2000. (See L. 99, p. 1087.)

26-13-112.5. Child support incentive payments. (1) In federal fiscal year 2000 and each federal fiscal year thereafter, one hundred percent of the federal incentives received by the state shall be passed through to the county departments. The state board shall promulgate rules specifying performance measures pursuant to which incentives shall be distributed to the county departments.

(2) A county to which a payment is made pursuant to this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the county department for any of the following purposes:

(a) To carry out the approved state plan; or

(b) For any activity, including cost-effective contracts, approved by the state division of child support enforcement, whether or not the expenditures for the activity are eligible for federal reimbursement, that may contribute to improving the effectiveness or efficiency of the child support program.

(3) If federal incentives paid to any county department are greater than its share of child support administrative costs, then that county department shall demonstrate how the federal incentive money is expended and contributes to the program as defined in paragraph (b) of subsection (2) of this section.

(4) All federal and state incentives paid to counties pursuant to section 26-13-108 shall be divided and distributed to the county departments according to the distribution formula as promulgated in state rule by the state board, to be promulgated no later than January 1, 2000.

(5) The state department shall pay incentives to county departments on a quarterly basis.

(6) This section shall take effect January 1, 2000.

Source: L. 99: Entire section added, p. 1087, § 8, effective January 1, 2000.

26-13-113. Placement in foster care automatic assignment of right. When a child is placed in foster care pursuant to article 5 of this title or Title IV-E of the federal “Social Security Act”, as amended, all rights to current and accrued child support for the benefit of the child are assigned by operation of law to the state department. When placement has terminated, the assignment of rights to accrued child support shall remain in effect until foster care cost of care or maintenance costs have been reimbursed in full. Amounts collected pursuant to this section shall be distributed to the federal government, the state, and the county proportionately according to each entity’s contribution.

Source: L. 85: Entire section added, p. 600, § 21, effective July 1. L. 2004: Entire section amended, p. 387, § 6, effective July 1. L. 2011: Entire section amended, (SB 11-123), ch. 46, p. 120, § 7, effective August 10.

26-13-114. Family support registry - collection and disbursement of child support and maintenance - rules - legislative declaration. (1) The general assembly hereby finds, determines, and declares that it has been demonstrated that the establishment and operation of one automated central payment registry for the processing of child support, child support when combined with maintenance, and maintenance payments is beneficial to the state in the collection and enforcement of family support obligations. It is the intent of the general assembly by enacting this section to authorize the implementation of one central family support registry for the collection, receipt, and disbursement of payments with respect to:

(a) Child support obligations for children whose custodians are receiving child support enforcement services from delegate child support enforcement units (IV-D cases);

(b) Child support obligations for children whose custodians are not receiving child support enforcement services from delegate child support enforcement units (non-IV-D cases), if the court orders such obligations to be paid through the family support registry pursuant to this title, section 14-10-117, C.R.S., or title 19, C.R.S., or if the court order is subject to income-withholding pursuant to section 14-14-111.5, C.R.S., and if the executive director of the state department has notified the state court administrator pursuant to subsection (5) of this section that the judicial district in which the court issuing the order is situated is ready to participate in the family support registry; and

(c) Maintenance obligations, if the court orders payments for such obligations to be paid through the family support registry pursuant to this title or section 14-10-117, C.R.S., or if the order is subject to income-withholding pursuant to section 14-14-111.5, C.R.S., and if the executive director of the state department has notified the state court administrator that the judicial district in which the court issuing the order is situated is ready to participate in the family support registry and the family support registry is ready to accept such maintenance payments.

(2) “Family support registry” means a central registry maintained and operated by the state department acting as the child support enforcement agency that receives, processes, disburses, and maintains a record of the payment of child support, child support when combined with maintenance, maintenance, child support arrears, or child support debt made pursuant to court order or administrative order.

(3) The child support enforcement agency is authorized to establish and maintain or contract for the establishment and maintenance of a family support registry to receive, process, and disburse support payments. Development and operation of the family support registry shall be subject to available appropriations.

(4) In operating the family support registry, the child support enforcement agency is authorized to:

(a) Receive, process, and disburse payments for child support, child support when combined with maintenance, maintenance, child support arrears, or child support debt;

(b) Maintain records of any payments collected, processed, and disbursed through the family support registry;

(c) (Deleted by amendment, L. 98, p. 759, § 10, effective July 1, 1998.)

(d) Answer inquiries from authorized parties concerning payments processed through the family support registry;

(e) Collect a fee for the processing of insufficient funds checks. The child support enforcement agency shall issue a notice to the originator of the second insufficient funds check received within any six-month period that no further checks will be accepted from the person and that future payments for a period of six months following the issuance of the notice shall be required to be paid by cash or certified funds. In the event that a disbursement to the obligee becomes unfunded due to insufficient funds, stop payment, or other reason, the unfunded disbursement may be recovered from the next payment. The department of human services shall ensure that provisions are available for obligors to make cash payments through their county child support enforcement units.

(5) On and after July 1, 1998, the child support enforcement agency and the office of the state court administrator shall jointly begin implementing the family support registry in particular counties and judicial districts with respect to non-IV-D cases and orders in which payments are directed to be paid through the family support registry, as mutually agreed by the executive director and the state court administrator. The executive director of the state department shall inform the state court administrator when a particular county or judicial district is ready to implement and participate in the family support registry for non-IV-D cases. The family support registry shall be available for support orders for use by all counties and judicial districts consistent with federal law.

(6) Upon implementation of the family support registry in a particular county or judicial district, the following procedures shall be followed:

(a) All court orders entered or modified and all administrative orders issued pursuant to this title or title 14 or 19, C.R.S., that require payments for child support, child support when combined with maintenance, maintenance, child support arrears, or child support debt to be paid through a registry shall be made through the family support registry except as provided by section 14-14-111.5 (3) (a) (II), C.R.S.

(b) For non-IV-D cases or orders that require payments to be made to the clerk of the court, the district court for each county and the Denver juvenile court shall send or cause to be sent a notice to redirect payments to the family support registry once the executive director of the state department has notified the state court administrator that the judicial district in which the court is situated, pursuant to subsection (5) of this section, is ready to participate in the family support registry. The notice shall be sent by first-class mail and shall state that all payments shall be made to the family support registry. The notice shall be sent to the following persons:

(I) In non-IV-D cases in which there is an order to make the payments through a registry, any obligor who is obligated to pay child support, child support when combined with maintenance, or maintenance where the order does not already specify paying through the family support registry;

(II) Any employer or trustee who has been withholding wages under a wage assignment pursuant to section 14-14-107, C.R.S., as it existed prior to July 1, 1996;

(III) Any employer or other payor of funds who has been withholding income pursuant to an income assignment pursuant to section 14-14-111, C.R.S., as it existed prior to July 1, 1996, or section 14-14-111.5, C.R.S.;

(IV) Any obligor or employer who receives a notice to redirect payments as specified in subparagraph (I) of this paragraph (b) who fails to make the payments to the family support registry and who continues to make payments to the court or to the delegate child support enforcement unit shall be sent a second notice to redirect payments. The second notice shall be sent certified mail, return receipt requested. Such notice shall contain all of the information required to be included in the first notice to redirect payments and shall further state that the obligor or employer has failed to make the payments to the correct agency and that the obligor or employer shall redirect the payments to the family support registry at the address indicated in the notice. Failure to make payments to the family support registry after a second notice shall be grounds for filing a motion for contempt.

(c) Any payment required to be made to the family support registry that is received by the court or by a delegate child support enforcement unit shall be forwarded to the family support registry within five working days after receipt. Any such payments forwarded shall be identified with the information specified by the family support registry, including but not limited to, the court case number, the county where the court case originated, and the name

of the obligor. A copy of the notice to redirect payments described in subparagraph (I), (II), (III), or (IV) of paragraph (b) of this subsection (6) shall be mailed to the obligee and to the court in cases of a IV-D case or order, by first-class mail.

(d) (Deleted by amendment, L. 98, p. 759, § 10, effective July 1, 1998.)

(7) All support orders shall contain:

- (a) The amount of the payment;
- (b) The specific day or dates on which the payment is due;
- (c) The name, date of birth, residential address, and sex of the obligor, and the name and address of the employer of the obligor;

(d) The name, date of birth, residential address, and sex of the obligee;

(e) The name, date of birth, and sex of all dependents covered under the support order;

(f) A statement that the parties are required to notify the family support registry, if the support order requires payments to be made through the family support registry, of any change in residential and mailing address of the obligor or obligee or of any change in address of the employer or payor of funds or any other changes that may affect the administration of the support order, including changes in employment of the obligor.

(8) The clerk of the court shall notify the family support registry within five working days after any entry of judgment is filed in relation to any child support, child support when combined with maintenance, or maintenance case where payments are required to be paid through the family support registry, whether by order of court or verified entry of judgment, including the inclusive dates of the judgment and the judgment amount.

(9) (a) The judicial department and the state department shall cooperate in the transfer of the functions relating to the collection of child support and maintenance from the judicial department to the state department.

(b) The court shall provide the following information to the family support registry, if available, in those cases in which the court orders payment to be made through the family support registry:

(I) The date of the order;

(II) The court case number;

(III) The name and address of the obligor;

(IV) The name and address of the obligee; and

(V) The name and address of the obligor's employer.

(10) A copy of the record of payment maintained by the family support registry shall be admissible into evidence as proof of the payments made through the family support registry.

(11) The state board shall promulgate such rules and regulations, pursuant to section 24-4-103, C.R.S., as are necessary to implement this section.

(12) (Deleted by amendment, L. 96, p. 623, § 38, effective July 1, 1996.)

(13) (a) A party to a case identified by the court as one in which the party is directed to make maintenance payments through the family support registry shall pay a minimal per transaction processing fee, in an amount to be determined annually by rule of the executive director of the state department to cover the direct and indirect costs associated with processing the maintenance payment, which fee shall be paid by such person each time the maintenance payment is made through the family support registry.

(b) The fees collected pursuant to paragraph (a) of this subsection (13) shall be transmitted to the state treasurer, who shall credit the same to the family support registry fund, created pursuant to section 26-13-115.5.

Source: L. 85: Entire section added, p. 600, § 21, effective July 1. L. 87: (1) amended, p. 591, § 11, effective July 10. L. 88: (1), (4), and (5) amended, p. 636, § 17, effective July 1. L. 90: Entire section R&RE, p. 1407, § 2, effective June 8. L. 94: (1), (2), (4)(e), (5), and (9) amended, p. 2708, § 279, effective July 1. L. 96: (6)(b)(II), (6)(b)(III), (6)(d), and (12) amended, p. 623, § 38, effective July 1; (1) amended, p. 1262, § 170, effective August 7. L. 98: (1) to (6), IP(7), (7)(f), and (9) amended, p. 759, § 10, effective July 1. L. 99: (1), (2), (4)(a), (5), (6)(a), (6)(b)(I), (8) and (9)(a) amended and (13) added, p. 1088, § 9,

effective July 1. **L. 2007:** (4)(e) amended, p. 1667, § 27, effective May 31. **L. 2008:** (7)(c), (7)(d), and (7)(e) amended, p. 1350, § 7, effective July 1. **L. 2011:** (1)(b) and (1)(c) amended, (SB 11-123), ch. 46, p. 120, § 8, effective August 10.

Editor's note: The term "custody", and related terms, has been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibilities" as described in section 14-10-124.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994; for the legislative declaration contained in the 1996 act amending subsection (1), see section 1 of chapter 237, Session Laws of Colorado 1996.

26-13-115. Child support enforcement agency fund created - application of interest, fees, and recovered costs. (Repealed)

Source: **L. 85:** Entire section added, p. 601, § 21, effective July 1. **L. 90:** Entire section repealed, p. 1416, § 17, effective June 8.

26-13-115.5. Family support registry fund created. (1) There is hereby created in the state treasury a fund to be known as the family support registry fund, which shall consist of any moneys credited thereto from the investment earnings on moneys deposited with the state treasurer, moneys accruing from collections for child support received by the family support registry, any undeliverable child support payments, and any fees collected pursuant to section 26-13-114 (13). Moneys in the family support registry fund shall be continuously appropriated to the state department to reimburse the family support registry for unfunded payments by obligors or for other incidental expenditures associated with the operation of the family support registry. At the end of any fiscal year, all unexpended and unencumbered moneys in the family support registry fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund of the state; except that any non-IV-D child support payments that are undeliverable after two years shall be considered unclaimed property for purposes of the "Unclaimed Property Act" and shall be reported to the administrator of the "Unclaimed Property Act" for purposes of locating the payee. Consistent with the requirements for confidentiality of information regarding child support, the state department shall specify the amount of money that is unclaimed and provide sufficient identifying information, if available, to allow the administrator to locate the payee.

(2) Repealed.

Source: **L. 90:** Entire section added, p. 1410, § 3, effective June 8. **L. 98:** Entire section amended, p. 763, § 11, effective July 1. **L. 2001:** Entire section amended, p. 723, § 8, effective May 31. **L. 2002:** Entire section amended, p. 157, § 16, effective March 27; (2) repealed, p. 673, § 6, effective May 28; entire section amended, p. 25, § 4, effective July 1.

Editor's note: The term "custody", and related terms, has been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibilities" as described in section 14-10-124.

Cross references: For the "Unclaimed Property Act", see article 13 of title 38.

26-13-116. Debt information made available to consumer reporting agencies - notice to noncustodial parent - fees - rules and regulations. (1) For purposes of this section "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(2) (Deleted by amendment, L. 97, p. 1295, § 38, effective July 1, 1997.)

(2.5) (a) The child support enforcement agency may provide information to consumer reporting agencies regarding child support obligations pursuant to federal law.

(b) (Deleted by amendment, L. 97, p. 1295, § 38, effective July 1, 1997.)

(3) Prior to furnishing any information pursuant to subsection (2.5) of this section, the child support enforcement agency shall provide advance notice to the obligor parent regarding the proposed release of the information to the consumer reporting agency. Such notice shall contain an explanation of the obligor parent's right to contest the accuracy of the information to be released.

(4) (Deleted by amendment, L. 96, p. 617, § 22, effective July 1, 1996.)

(5) The state board shall promulgate rules and regulations, pursuant to section 24-4-103, C.R.S., to implement this section, including but not limited to procedures for contesting the accuracy of the information listed on the notice. Such rules shall be in addition to any rights that a person may have to contest a consumer reporting agency report under sections 12-14.3-106 to 12-14.3-108, C.R.S.

Source: L. 85: Entire section added, p. 602, § 21, effective July 1. L. 91: (2), (3), and (5)(b) amended, p. 256, § 19, effective July 1. L. 94: (2.5) added, p. 2045, § 4, effective June 3. L. 96: (3) to (5) amended, p. 617, § 22, effective July 1. L. 97: (2), (2.5), (3), and (5) amended, p. 1295, § 38, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-117. Study of centralized system for processing child support payments. (Repealed)

Source: L. 88: Entire section added, p. 637, § 18, effective July 1. L. 96: Entire section repealed, p. 1262, § 169, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

26-13-118. Lottery winnings offset. (1) (a) The state department shall periodically certify to the department of revenue information regarding persons who owe a child support debt or child support costs to the state pursuant to section 14-14-104, C.R.S., or who owe child support arrearages as requested as a part of an enforcement action pursuant to article 5 of title 14, C.R.S., or who owe child support arrearages or child support costs which are the subject of enforcement services provided pursuant to section 26-13-106.

(b) Such information shall include the social security number of the person owing the child support debt, arrearages, or child support costs, the amount of same, and any other identifying information required by the department of revenue.

(2) Upon receiving notification from the department of revenue that a lottery winner appears among those certified by the state department pursuant to section 24-35-212, C.R.S., the state department shall notify the obligated parent, in writing, that the state intends to offset the parent's current monthly child support obligation, child support debt, child support arrearages, and child support costs against the parent's winnings from the state lottery. Such notification shall include information on the parent's right to object to the offset and to request an administrative review pursuant to the rules and regulations of the state board of human services.

(3) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 24-35-212, C.R.S., and after deduction of the fees authorized in subsection (4) of this section to be collected from applicants receiving support enforcement services pursuant to section 26-13-106 (2), the state department shall disburse such amounts to the appropriate county department for processing or for distribution to the individual receiving support enforcement services pursuant to section 26-13-106, as appropriate.

(4) The state department shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section and may promulgate rules and regulations establishing reasonable fees to be collected from an applicant who is receiving support enforcement services as provided pursuant to section 26-13-106 (2). Such fees shall not exceed the amount necessary to cover the cost of collecting overdue child support using the state lottery winnings offset procedure.

(5) The home addresses and social security numbers of persons subject to the state lottery winnings offset provided to the state department by the department of revenue shall be sent to the respective delegate child support enforcement unit as defined in section 14-14-102, C.R.S.

Source: **L. 89:** Entire section added, p. 797, § 31, effective July 1. **L. 91:** (1) and (2) amended, p. 256, § 20, effective July 1. **L. 93:** (2) amended, p. 1565, § 18, effective September 1; (1)(a) amended, p. 1607, § 12, effective January 1, 1995. **L. 94:** (2) amended, p. 2709, § 280, effective July 1. **L. 2003:** (1) and (2) amended, p. 1272, § 66, effective April 22.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

26-13-118.5. Unclaimed property offset. (1) The state department may enter into a memorandum of understanding with the state treasurer, acting as the administrator of unclaimed property under the "Unclaimed Property Act", article 13 of title 38, C.R.S., for the purpose of offsetting against a claim for unclaimed property the amount of current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance owed by the person claiming the unclaimed property.

(2) The state department shall notify an obligated person in writing that the state intends to offset the person's current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance against the person's claim for unclaimed property. The notification shall include information on the person's right to object to the offset and to request an administrative review.

(3) For purposes of this section, "claim for unclaimed property" means a cash claim submitted in accordance with section 38-13-117, C.R.S.

Source: **L. 2005:** Entire section added, p. 698, § 3, effective August 8.

26-13-118.7. Gambling winnings - interception - rules. (1) Pursuant to section 24-35-604 (2), C.R.S., the state department shall periodically certify to the registry operator information regarding persons who owe a child support debt or child support costs to the state pursuant to section 14-14-104, C.R.S., or who owe child support arrearages requested as part of an enforcement action pursuant to article 5 of title 14, C.R.S., or who owe child support arrearages or child support costs that are the subject of enforcement services provided pursuant to section 26-13-106. The information shall include the social security number of the person owing the child support debt, arrearages, or child support costs, the amount owed, and the other information required by the registry operator pursuant to section 24-35-604 (4), C.R.S.

(2) Upon receipt from the registry operator of a payment and accompanying information pursuant to section 24-35-605 (2) (b), C.R.S., the state department shall notify the obligated parent in writing that the state intends to offset the parent's child support debt, child support arrearages, or child support costs against the parent's winnings from limited gaming or from pari-mutuel wagering on horse or greyhound racing. The notice shall include information on the parent's right to object to the offset and to request an administrative review pursuant to the rules of the state board.

(3) Upon receipt of a payment from the registry operator pursuant to section 24-35-605 (2) (b), C.R.S., the state department shall deposit the payment with the family support registry created pursuant to section 26-13-114. After the final disposition of any administrative review requested pursuant to subsection (2) of this section, the state department shall disburse the payment for processing or for distribution to the individual receiving support enforcement services pursuant to section 26-13-106, as appropriate.

(4) The state department shall promulgate rules pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section.

(5) The state department shall send the name, address, and social security number of any person subject to the interception of gambling winnings provided by the registry operator to the respective delegate child support enforcement unit as defined in section 14-14-102 (2), C.R.S.

(6) (Deleted by amendment, L. 2009, (HB 09-1137), ch. 308, p. 1662, § 13, effective September 1, 2009.)

Source: L. 2007: Entire section added, p. 1666, § 26, effective January 1, 2008. L. 2009: (3) and (6) amended, (HB 09-1137), ch. 308, p. 1662, § 13, effective September 1.

26-13-119. Distribution of amounts collected. (1) This section shall only apply to Title IV-D cases under the federal "Social Security Act" where the delegate child support enforcement unit is providing support enforcement services pursuant to section 26-13-106 and has responsibility to collect the required support obligation for the month.

(2) Notwithstanding any provision in the Colorado rules of civil procedure to the contrary, any amounts collected by the delegate child support enforcement agency, except for federal income tax refund offsets, shall be allocated and distributed first to satisfy the required support obligation for the month in which the collection was received, except when the payment is distributed to pay the fee required by section 26-13-106 (4). In cases where some portion of an amount collected pursuant to execution on a judgment is diverted to satisfy the required support obligation for the month in which the collection was received, the delegate child support enforcement agency shall file a partial satisfaction of judgment with the court that reflects the portion of the amount collected that is actually allocated and distributed to satisfy the judgment.

Source: L. 89: Entire section added, p. 798, § 33, effective July 1. L. 98: (2) amended, p. 763, § 12, effective July 1. L. 2007: (2) amended, p. 1654, § 13, effective October 1.

26-13-120. Administrative review of child support orders. (Repealed)

Source: L. 90: Entire section added, p. 893, § 18, effective July 1. L. 93: (2) amended, p. 1565, § 19, effective September 1. L. 97: Entire section repealed, p. 1295, § 39, effective July 1.

26-13-121. Review and modification of child support orders. (1) (a) The general assembly finds that review of child support orders is required in order for this state to comply with the federal "Family Support Act of 1988", the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", and the federal "Deficit Reduction Act of 2005".

(b) The delegate child support enforcement unit shall provide the obligor and obligee not less than once every thirty-six months notice of their right to request a review of a child support order. The notice may be included in the support order.

(c) Either party to a case in which services are being provided pursuant to section 26-13-106 may submit a written request for review of the current child support order. The request shall include the financial information from the requesting party necessary to conduct a calculation pursuant to the Colorado child support guidelines set forth in section

14-10-115, C.R.S. The requesting party shall provide his or her financial information on the form required by the division of child support enforcement.

(d) The delegate child support enforcement unit may initiate a review of a current child support order upon its own request.

(2) The delegate child support enforcement unit shall review each request received from a party and:

(a) If it has been thirty-six months or more since the last review of the current child support order, the delegate child support enforcement unit shall grant the request for review; or

(b) If it has been fewer than thirty-six months since the last review of the current child support order, the delegate child support enforcement unit shall grant the request for review if the requesting party provides a reason for review that could result in a change to the monthly support obligation based upon the application of the Colorado child support guidelines set forth in section 14-10-115, C.R.S. If the reason for review arises from the circumstances of the requesting party, supporting documentation or a demonstration that there has been a substantial and continuing change in circumstances warranting a review of the child support amount shall be included with the request. The delegate child support enforcement unit shall assess and consider the information provided to determine whether a review is warranted and should be conducted. If a request is denied pursuant to this paragraph (b), the delegate child support enforcement unit shall notify the requesting party in writing that the denial does not limit the party's right to seek modification of a child support order pursuant to section 14-10-122, C.R.S.

(2.5) If there is an active assignment of rights, the delegate child support enforcement unit shall review the child support order once every thirty-six months to determine if an adjustment of the child support order is appropriate.

(3) (a) If the delegate child support enforcement unit grants the request for review, it shall issue a notice of review to the parties. In the case of an automatic review in which there is an active assignment of rights, both parties shall be considered nonrequesters. The notice of review shall advise the parties that a review is to be conducted and allow the nonrequesters twenty days from the date of the notice to provide the financial information necessary to calculate the child support obligation pursuant to section 14-10-115, C.R.S. If the child support order is an administrative order established pursuant to article 13.5 of this title, the review shall be conducted pursuant to section 26-13.5-112.

(b) The review of the child support order shall be conducted on or before the thirtieth day after notice of review is sent to the parties. The review may be conducted in person at the delegate child support enforcement office or via United States mail or via an electronic communication method. The delegate child support enforcement unit may grant a continuance of the review for good cause. The continuance shall be for a reasonable period of time to be determined by the delegate child support enforcement unit, not to exceed thirty days. During the review, the determination of the monthly support obligation shall be based on the child support guidelines set forth in section 14-10-115, C.R.S. To obtain information necessary to conduct the review, the delegate child support enforcement unit is authorized to serve, by first-class mail or by electronic means if mutually agreed upon, an administrative subpoena to any person, corporation, partnership, or other entity, public employee retirement benefit plan, financial institution, or labor union for an appearance or for the production of records and financial documents.

(c) An adjustment to the order shall be appropriate only if the standard set forth in section 14-10-122 (1) (b), C.R.S., is met.

(d) (Deleted by amendment, L. 2002, p. 25, § 5, effective January 1, 2003.)

(4) (a) After the review is completed, the child support enforcement unit shall provide a post-review notice advising the obligor and obligee of the review results. The review results shall include a child support guideline worksheet. If the review indicates that an adjustment to the current monthly support obligation should be made, a proposed order shall also be included. The delegate child support enforcement unit shall provide all supporting financial documentation used to calculate the monthly support obligation to both parties. The review results shall also contain an advisement to the parties of the right to challenge

the proposed order, the time frame in which to assert the challenge, and the method for doing so.

(b) The obligor and obligee shall be given fifteen days from the date of the post-review notice to challenge the review results. The grounds for the challenge shall be limited to the issue of mathematical or factual error in the calculation of the monthly support obligation. The delegate child support enforcement unit may grant an extension of up to fifteen days to challenge the review results based upon a showing of good cause.

(b.5) The delegate child support enforcement unit shall have fifteen days from the date of receipt of the challenge to respond to a challenge based upon a mathematical or factual error. If a challenge results in a change to the monthly support obligation, the delegate child support enforcement unit shall provide an amended notice of review to the obligor and obligee. The obligor and obligee shall be given fifteen days from the date of the amended notice of review to challenge the results of any subsequent review. The grounds for the challenge shall be limited to the issue of mathematical or factual error in calculation of the monthly support obligation.

(c) (Deleted by amendment, L. 2007, p. 1654, § 15, effective July 1, 2008.)

(5) (a) (I) If the review indicates that a change to the monthly support obligation is appropriate and the review is not challenged or all challenges have been addressed, the delegate child support enforcement unit shall file a motion to modify with the court. A copy of the motion shall be provided by the delegate child support enforcement unit to the obligor and obligee and shall contain an advisement that the obligor and obligee may file a written response with the court setting forth any objections to the motion to modify.

(II) If a motion to modify is filed with the court, the court may enter an order granting the motion, issue a revised order, or set a hearing. Regardless of whether the order has been approved by the obligor and obligee, the court may grant the motion to modify.

(b) If a hearing is necessary, the court shall hold a hearing within forty-five days after service of the motion to modify, and the court shall decide only the issues of child support and medical support. Any documentary evidence provided by the obligee or the obligor or by the delegate child support enforcement unit may be admitted into evidence by the court without the necessity of laying a foundation for its admissibility, and the court may determine the relative weight or credibility to give any such documentation.

(5.3) If income information is not available for the obligor, the delegate child support enforcement unit may file a motion to modify child support with the court. The court may enter an order increasing the child support obligation by an increment not to exceed ten percent per year for each year after the support order was entered or last modified.

(5.7) Nothing in this section shall be construed to limit a delegate child support enforcement unit's right to file a motion to modify with the court pursuant to section 14-10-122, C.R.S.

(6) The state board shall adopt rules and regulations establishing standardized forms and procedures as necessary to implement the provisions of this article.

(7) This article shall apply to all orders for support of a child for whom child support enforcement services are being provided.

(8) Nothing in this section shall be construed to limit any party's right to seek modification of a child support order pursuant to article 5 of title 14, section 14-10-122, section 19-4-119, or section 19-6-104 (4), C.R.S.

Source: L. 90: Entire section added, p. 893, § 18, effective July 1. L. 91: (5)(b) amended, p. 257, § 21, effective July 1. L. 92: (1), (3), and (9) amended, p. 212, § 16, effective August 1. L. 93: (8) amended, p. 1607, § 13, effective January 1, 1995. L. 97: Entire section R&RE, p. 1295, § 40, effective July 1. L. 2002: (2), (3)(a), (3)(c), (3)(d), and (4)(b) amended, p. 25, § 5, effective January 1, 2003. L. 2007: (2.5) added, p. 1654, § 14, effective October 1; (1), (2), (3)(a), (3)(b), (4), and (5)(a) amended and (5.3) and (5.7) added, p. 1654, § 15, effective July 1, 2008.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-121.5. Enforcement of obligation to maintain health insurance. (1) If a parent has been ordered to provide health insurance, as defined in section 14-14-102 (4.7), C.R.S., and such insurance is available at a reasonable cost consistent with the provisions of section 14-10-115 (10) (g), C.R.S., the delegate child support enforcement unit shall use the federally mandated national medical support notice to provide notice of the insurance provision to that parent's employer unless the child or children are already enrolled in a health insurance plan in accordance with the order.

(2) The national medical support notice shall be sent to the employer by means of first-class mail. The notice shall be continuing and shall remain in effect and be binding upon any current or successor employer upon whom it is served until further notice by the court or by the delegate child support enforcement unit. Receipt of the national medical support notice by the employer shall confer jurisdiction of the court over the employer. A notice describing the rights and conditions in paragraphs (a) to (c) of subsection (3) of this section shall be sent to the obligor by first-class mail.

(3) (a) The obligor shall be provided with a copy of the national medical support notice upon submitting a written request to the delegate child support enforcement unit. The obligor shall have ten days from the date the notice describing the rights and conditions in paragraphs (a) to (c) of this subsection (3) is mailed to the obligor in which to file a written objection with the delegate child support enforcement unit based only upon one of the following mistakes of fact:

- (I) There is a mistake in identity and the employee is not the obligor; or
- (II) There is no court order to provide health insurance.

(b) The delegate child support enforcement unit shall have ten days from the date the objection is mailed by the obligor to resolve the mistake of fact. The delegate child support enforcement unit shall immediately notify the obligor in writing, by first class mail, of its decision. If the delegate child support enforcement unit agrees with the obligor, it shall immediately send a notice, by first-class mail, to the employer to terminate the national medical support notice.

(c) If the obligor does not agree with the decision of the delegate child support enforcement unit, he or she may file a written objection with the court. Upon any determination by the court which results in a finding in favor of the obligor, the delegate child support enforcement unit shall immediately mail a notice of termination of the national medical support notice to the employer and to the obligor, by first-class mail. The termination of the health insurance shall only be prospective and the employee shall not be entitled to any reimbursement for any premiums withheld or deducted from his or her wage prior to the plan administrator's prompt termination of the deduction for health insurance.

(4) (a) The employer shall complete the employer response, if applicable, attached to part A of the national medical support notice, which part A includes information for and responsibilities of the employer, and shall return the employer response to the delegate child support enforcement unit within twenty business days after the date of the notice.

(b) If the employer does not maintain or contribute to family health insurance coverage or if the obligor is not eligible for family health insurance coverage through his or her employer or if the obligor is no longer employed with that employer, then the employer shall specify such relevant circumstances or conditions in the employer response and shall return part A of the national medical support notice to the delegate child support enforcement unit.

(c) If none of the circumstances or conditions described in paragraph (b) of this subsection (4) apply, then the employer shall complete the applicable sections of the employer response and transfer part B of the national medical support notice to the appropriate plan administrator within twenty business days after the date of such notice. If the employer offers a number of different types of benefits through separate health insurance plans, the employer shall send copies of part B to each appropriate plan administrator.

(d) Any employer who fails to comply with the time frames stated in this subsection (4) may be found by the court to be in contempt of court.

(5) (a) The plan administrator shall complete and return part B of the national medical support notice to the delegate child support enforcement unit within forty business days after the date of such notice.

(b) If the plan administrator determines that the national medical support notice is not a qualified medical child support order, the plan administrator shall specify on part B the basis for such determination.

(c) If the plan administrator determines that the national medical support notice is a qualified medical child support order, the plan administrator shall complete the appropriate parts of the plan administrator response. Upon enrollment of the child or children, the plan administrator shall provide the following information to the delegate child support enforcement unit: The names of the persons covered by the health insurance plan; the complete name, address, and telephone number of the insurance carrier; and the applicable policy and group number of the health insurance plan. The plan administrator shall furnish the obligee with a description of the health insurance coverage available, any required forms, information describing the steps needed to effectuate such coverage, and the effective date of the coverage.

(d) If the plan administrator reports on part B of the national medical support notice that the obligor is not enrolled in a plan, as defined in section 14-14-102 (6.5), C.R.S., and more than one option is available under the plan, the plan administrator shall provide to the delegate child support enforcement unit a summary plan description of each option including the additional participant contribution required by each option and whether there is a limited service area with any option. The delegate child support enforcement unit shall forward the information to the obligee. The obligee shall select one of the available options. Within twenty business days after the date the plan administrator's response was sent to the delegate child support enforcement unit, the delegate child support enforcement unit shall notify the plan administrator of the selection. If the delegate child support enforcement unit does not reply to the plan administrator, the plan administrator shall enroll the child or children in the least costly plan otherwise available to the obligor for the benefit of the child or children.

(e) Promptly after enrollment, the plan administrator shall notify the obligor that coverage of the child or children is or will become available and the date the coverage takes effect. The obligor may file a written objection with the court after the date of the notice of such enrollment by the plan administrator if the premium amount does not meet the definition of reasonable cost as provided in section 14-10-115 (10) (g), C.R.S. Upon any determination by the court which results in a finding in favor of the obligor, the delegate child support enforcement unit shall immediately mail a notice of termination of the national medical support notice to the obligor and to the employer by first-class mail. The termination of the health insurance shall only be prospective and the obligor shall not be entitled to any reimbursement for any premiums withheld or deducted from his or her wage prior to the plan administrator's prompt termination of the deduction for health insurance.

(f) If the plan administrator indicates that the child or children are enrolled in an option under the plan for which the employer has determined that the obligor's contribution exceeds the maximum amount allowed to be withheld under state and federal withholding limitations or prioritization, then the employer shall indicate the same and return part A of the national medical support notice to the delegate child support enforcement unit. Upon notification from the plan administrator that the child or children are enrolled, the employer shall withhold from the obligor's income any employee contribution and transfer the contribution to the appropriate plan or, if appropriate, notify the delegate child support enforcement unit that enrollment cannot be completed because of limitations or prioritization on withholding.

(g) Any employer who fails to comply with the time frames stated in this subsection (5) may be found by the court to be in contempt of court.

(6) The employer shall initiate withholding until and unless the employer receives notice from the delegate child support enforcement unit that the obligor is not responsible for the child's or children's health insurance coverage.

(7) The employer shall notify the plan administrator when an obligor has completed a waiting period or has otherwise met eligibility requirements for coverage.

(8) The national medical support notice shall not be terminated or modified except for the reasons set forth in section 14-14-112 (2) (h), C.R.S.

(9) If the national medical support notice is terminated or modified, then the employer shall comply with the provisions of section 14-14-112 (2) (k), C.R.S., regarding termination of coverage.

(10) An employer who is served with a national medical support notice shall follow the provisions of section 14-14-112 (2) (g) and (6), C.R.S., regarding notification of the termination of employment by the named obligor.

(11) Any employer who wrongfully fails to comply with this section may be subject to the sanctions set forth in section 14-14-112 (5), C.R.S.

(12) An employer shall neither refuse to hire a person nor discharge or take disciplinary action against an employee because of service of the national medical support notice pursuant to this section. Any person who violates this subsection (12) may be found by the court to be in contempt of court. If an employer discharges an employee in violation of the provisions of this section, the employee may, within ninety days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

(13) An employer who complies with a national medical support notice to deduct for health insurance benefits pursuant to this section shall not be liable to the obligor for wrongful withholding.

(14) The delegate child support enforcement unit shall comply with the provisions of section 14-14-112 (9), C.R.S., when the order for medical support is modified or terminated.

(15) Deductions for health insurance shall also be ordered by a delegate child support enforcement unit under the provisions of the "Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support", created in article 13.5 of this title.

Source: L. 2002: Entire section added, p. 26, § 6, effective July 1. **L. 2007:** (1) and (5)(e) amended, p. 108, § 6, effective March 16; (2) and IP(3)(a) amended, p. 1657, § 16, effective May 31.

26-13-122. Administrative lien and attachment. (1) The state child support enforcement agency may issue a notice of administrative lien and attachment to any person, insurance company, or agency providing workers' compensation insurance benefits for any employer to attach workers' compensation benefits of an obligor who is responsible for the support of a child on whose behalf the obligee is receiving support enforcement services from the state's child support enforcement agency pursuant to this article. The notice shall include the following statements and information:

(a) The name and address of the person, insurance company, or agency providing workers' compensation insurance benefits;

(b) The name, last known address, and social security number of the obligor;

(c) The total amount owed for child support obligations, arrearages for child support, and child support debt;

(d) The percentage of benefits or the actual amount to be withheld from each payment;

(e) A statement that the notice of administrative lien and attachment is to take effect no later than the first payment after receipt of the notice;

(f) A statement that the person, insurance company, or agency providing workers' compensation insurance benefits may not withhold more than the limitations set forth in section 13-54-104 (3), C.R.S.;

(g) A statement that if more than one notice of administrative lien and attachment is received for the same obligor, the priorities set forth in subsection (2) of this section shall apply;

(h) Instruction on the disbursement of the withheld amounts, including the requirements that each disbursement:

(I) Shall be forwarded to the address indicated on the notice;

(II) Shall be forwarded within ten days after the date of each deduction and withholding;

(III) Shall be identified by the case number, the family support registry account number, and the name and social security number of each obligor and shall identify the date the deduction was made and the amount of the payment;

(IV) May be combined with other disbursements in a single payment to a single court or to the family support registry, if required to be sent to the registry, if the individual account of each disbursement is identified, as required by subparagraph (III) of this paragraph (h);

(i) A statement that compliance with the notice of administrative lien and attachment shall not subject the person, insurance company, or agency providing workers' compensation insurance benefits to liability to the obligor for wrongful withholding;

(j) A statement that noncompliance with the notice of administrative lien and attachment may subject the person or insurance company providing workers' compensation insurance benefits to liability and sanctions. If any person or insurance company providing workers' compensation insurance benefits wrongfully fails to deduct and withhold benefits in accordance with the provisions of this section, it may be held liable for an amount up to the accumulated amount such person or insurance company should have withheld from the obligor's benefits.

(k) A statement that, as long as the obligor is receiving workers' compensation benefits, the notice of administrative lien and attachment shall not be terminated or modified, except upon written notice by the state child support enforcement agency.

(2) An administrative lien and attachment for the collection from workers' compensation benefits for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance shall be continuing and shall have priority over any garnishment, lien, or wage assignment other than a notice previously served pursuant to this subsection (2) or a wage assignment activated pursuant to section 14-14-107 or 14-14-111, C.R.S., as those sections existed prior to July 1, 1996, or section 14-14-111.5, C.R.S. Such administrative lien and attachment shall require the person, insurance company, or agency providing workers' compensation insurance benefits to withhold, pursuant to section 13-54-104 (3), C.R.S., the portion of earnings subject to attachment at each succeeding disbursement interval until such amount is satisfied or the attachment is released in writing by the state child support enforcement agency.

(3) In order to attach and collect workers' compensation income for current child support, child support debt, retroactive child support, medical support, child support arrearages, or child support when combined with maintenance, the state child support enforcement agency is authorized to serve, by first-class mail or by electronic means if mutually agreed upon, a notice of administrative lien and attachment on any person, insurance company, or agency holding workers' compensation benefits that are owed to an obligor. A copy of the administrative lien and attachment shall be provided to the obligor and shall include information on the obligor's right to object to the administrative lien and attachment and to request an administrative review pursuant to the rules of the state board.

(4) At the time a claim for workers' compensation benefits is filed, the employee shall be notified that if a child support obligation is owed, benefits may be attached and payment of the child support obligation may be withheld and forwarded to the obligee.

(5) For purposes of this section, "insurance company" includes Pinnacol Assurance.

(6) Subsections (2) and (3) of this section shall apply to all child support obligations ordered as part of any proceeding, regardless of when the order was entered, and all such child support obligors shall be subject to notice of administrative lien and attachment as described in subsections (2) and (3) of this section.

Source: L. 94: Entire section added, p. 2046, § 5, effective June 3. L. 96: (2) and (3) amended, p. 617, § 23, effective July 1. L. 97: (6) added, p. 563, § 14, effective April 29; (2) and (3) amended, p. 1295, § 41, effective July 1. L. 98: IP(1) amended, p. 1414, § 81, effective February 1, 1999. L. 2002: (5) amended, p. 1896, § 68, effective July 1. L. 2004: (1)(d) amended, p. 388, § 7, effective July 1. L. 2007: (3) amended, p. 1657, § 17, effective May 31.

Cross references: For the legislative declaration contained in the 1997 act amending subsections (2) and (3), see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-122.5. Administrative lien and attachment of inmate bank accounts.

(1) The state child support enforcement agency or the delegate child support enforcement unit may issue a notice of administrative lien and attachment, only when such notice is prescribed and approved by the state child support enforcement agency, to the department of corrections or its agent having custody or control of inmate bank accounts in order to withhold funds from the bank account of a state inmate, as defined in section 17-1-102 (8), C.R.S., who is an obligor responsible for the support of a child or children on whose behalf the obligee is receiving support enforcement services from the state child support enforcement agency or a delegate child support enforcement unit pursuant to this article or who is an obligor responsible for the payment of maintenance or maintenance when combined with child support and the obligee is receiving support enforcement services from the state child support enforcement agency or a delegate child support enforcement unit pursuant to this article.

(2) A copy of the administrative lien and attachment shall be provided to the obligor by the department of corrections or its agent and shall include information on the obligor's right to object to the administrative lien and attachment and to request an administrative review pursuant to the rules of the state board.

(3) The notice of administrative lien and attachment shall contain:

(a) The name and address of the correctional facility or entity that withholds funds from inmate bank accounts;

(b) The name and social security number of the inmate and the name of the correctional facility in which the inmate is incarcerated;

(c) The total amount owed for current monthly child support, current maintenance when combined with child support, current maintenance, past due child support, past due maintenance when combined with child support, past due maintenance, child support debt, retroactive child support, or medical support;

(d) The amount or percentage of funds to be withheld monthly from inmate bank accounts, which amount or percentage shall not be less than fifty percent of the total amount withheld pursuant to section 16-18.5-106 (2), C.R.S.;

(e) A statement that the notice of administrative lien and attachment is to take effect no later than forty-five days after receipt of the notice by the department of corrections;

(f) A statement that if more than one notice of administrative lien and attachment is received for the same obligor, the priorities set forth in subsection (4) of this section shall apply;

(g) Instruction on the disbursement of the withheld amounts, including the requirements that each disbursement:

(I) Shall be forwarded to the family support registry;

(II) Shall be forwarded within ten calendar days after the date of each deduction and withholding;

(III) Shall be identified by the case number, the family support registry account number, and the name and social security number of the obligor and shall identify the date the deduction was made and the amount of the payment;

(h) A statement that compliance with the notice of administrative lien and attachment shall not subject the department of corrections or its agent to liability to the obligor for wrongful withholding of funds;

(i) A statement that, as long as the obligor is incarcerated and has an obligation pursuant to paragraph (c) of this subsection (3), the notice of administrative lien and attachment shall not be terminated or modified, except upon written notice by the state child support enforcement agency or the delegate child support enforcement unit, unless the inmate is indigent according to department of corrections guidelines.

(4) An administrative lien and attachment for the collection from inmate bank accounts of current monthly child support, current maintenance when combined with child support, current maintenance, past due child support, past due maintenance when combined with child support, past due maintenance, child support debt, retroactive child support, or

medical support shall be continuing and shall have priority over any garnishment, lien, or wage assignment other than a notice previously served pursuant to subsection (1) of this section or a wage assignment activated pursuant to section 14-14-107 or 14-14-111, C.R.S., as those sections existed prior to July 1, 1996, or section 14-14-111.5, C.R.S. In order to attach inmate bank accounts for current child support, child support debt, retroactive child support, medical support, child support arrearages, or child support when combined with maintenance, the state child support enforcement agency or the delegate child support enforcement unit is authorized to serve, by first-class mail or by electronic service, a notice of administrative lien and attachment on the department of corrections or its agent to withhold funds of an obligor.

(5) Subsections (1), (2), and (3) of this section shall apply to all child support obligations, maintenance when combined with child support, maintenance obligations, retroactive child support obligations, and medical support obligations ordered as a part of any proceeding, regardless of when the order was entered, and all such obligors shall be subject to notice of administrative lien and attachment as described in subsections (1), (2), and (3) of this section.

Source: L. 2000: Entire section added, p. 1711, § 9, effective September 1. **L. 2004:** (3)(d) and (4) amended, p. 388, § 8, effective July 1.

26-13-123. Drivers' licenses - suspension for nonpayment of child support - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Child support order" means any administrative or court order requiring the payment of child support, child support arrears, child support debt, retroactive support, or medical support, whether or not such order is combined with an order for maintenance.

(b) "Driver's license" means a license issued by the department of revenue pursuant to article 2 of title 42, C.R.S.

(c) "Notice of compliance" means the notice issued pursuant to subsection (5) of this section that an obligor is in compliance with a child support order.

(d) "Notice of failure to comply" means the notice issued pursuant to subsection (4) of this section.

(e) "Notice of noncompliance" means the notice issued pursuant to subsection (3) of this section that an obligor is not in compliance with a child support order.

(f) "Obligor" has the same meaning as in section 26-13.5-102 (12).

(2) (a) The state child support enforcement agency shall, at least on an annual basis, identify as obligors subject to the provisions of this section any person who owes the following and has failed to execute and comply with the terms of an agreement to pay:

(I) Child support debt to the state pursuant to section 14-14-104, C.R.S.;

(II) Arrearages or medical support, as requested as part of an enforcement action pursuant to article 5 of title 14, C.R.S.;

(III) Child support arrearages, retroactive child support, or medical support that is the subject of enforcement services provided pursuant to section 26-13-106.

(b) An obligor is subject to the provisions of this section to the extent that any child support debt, arrearage balance, retroactive support, or medical support is owed and remains outstanding.

(3) (a) At least on an annual basis, the state child support enforcement agency shall issue a written notice of noncompliance to any obligor identified in subsection (2) of this section. The notice of noncompliance shall include the name and last-known address of the obligor and shall be sent to the obligor's last-known address.

(b) The notice of noncompliance shall include the following information:

(I) That the state child support enforcement agency's records indicate the obligor owes a duty of support under a child support order;

(II) That the state child support enforcement agency's records indicate the obligor has not complied with a child support order; or has a child support debt, child support arrearage balance, or owes retroactive child support; or has failed to provide the child medical support pursuant to a court or administrative order;

(III) That the obligor has failed to execute an agreement to repay the child support debt or child support arrearage balance or to remain current on the required child support payments or has failed to abide by the terms of the agreement if an agreement has been executed by the obligor;

(IV) That the obligor may, in writing and no later than thirty days after the date of the notice, request an administrative review to object to the notice of noncompliance and that failure to request such a review within the time specified shall result in the issuance of a notice of failure to comply pursuant to subsection (4) of this section;

(V) That the sole grounds for an administrative review shall be a mistake in the identity of the obligor; a disagreement regarding the amount of the child support debt, arrearage balance, retroactive support, or medical support; or a showing that all child support payments were made when due;

(VI) That the delegate child support enforcement unit must conduct an administrative review within thirty days after receipt of the obligor's written request; and

(VII) That the obligor may request in writing an administrative review from the state child support enforcement agency within thirty days after the date of the delegate child support enforcement unit's decision.

(c) (I) No later than thirty days after the date of the notice of noncompliance, the obligor may request in writing that the delegate child support enforcement unit conduct an administrative review pursuant to rules and regulations developed by the state board of human services to implement the provisions of this article.

(II) No later than thirty days after the date of the delegate child support enforcement unit's decision, the obligor may request in writing an administrative review from the state child support enforcement agency.

(III) The sole grounds to be determined at the administrative review shall be a mistake in the identity of the obligor; a disagreement with the amount of the child support debt, arrearage balance, retroactive support, or medical support; or a showing that all child support payments were made when due.

(IV) The decision of the state child support enforcement agency shall be final agency action and may be reviewed as provided in section 24-4-106, C.R.S.

(V) A notice of failure to comply pursuant to subsection (4) of this section shall not be sent to the department of revenue unless the obligor has failed to request a review within the time specified or until a hearing has been concluded and all rights of review have been exhausted.

(4) After the rights of review pursuant to paragraph (c) of subsection (3) of this section have been exhausted or the time within which such review may be requested has elapsed, the state child support enforcement agency shall:

(a) Issue the notice of failure to comply to the department of revenue; and

(b) Send a copy of such notice to the obligor to the obligor's last-known address.

(5) (a) Upon receipt of the notice of failure to comply from the state child support enforcement agency, the department of revenue shall suspend the obligor's driver's license pursuant to section 42-2-127.5, C.R.S. Such suspension shall not be grounds for a hearing or any other administrative review by the department of revenue. The department of revenue shall refer all requests for a hearing regarding the obligor's child support order to the state child support enforcement agency for referral to the delegate child support enforcement unit.

(b) The department of revenue may issue a probationary driver's license pursuant to section 42-2-127.5, C.R.S.

(c) The department of revenue shall only reinstate a driver's license upon receipt of a notice of compliance from the delegate child support enforcement unit that indicates the obligor has complied with the court or administrative order or has agreed upon a payment plan approved by the delegate child support enforcement unit. The delegate child support enforcement unit is not required to issue a notice of compliance based upon approval of a payment plan for an obligor who has received a second notice of failure to comply until such obligor has complied with such payment plan for at least three months.

(d) Nothing in this section shall limit the ability of the department of revenue to revoke or suspend a license, or to take any other disciplinary action against a driver, on any other grounds.

(e) The department of revenue, or any person acting on the department's behalf, shall not be liable for any actions taken to suspend the obligor's driver's license pursuant to this section.

(6) (a) The state board of human services shall promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this section.

(b) The department of revenue is authorized to promulgate rules and regulations, pursuant to article 4 of title 24, C.R.S., as may be necessary to implement this section.

(7) (Deleted by amendment, L. 97, p. 1298, § 42, effective July 1, 1997.)

Source: L. 95: Entire section added, p. 584, § 1, effective July 1. L. 97: (1)(b), (3)(a), and (7) amended, p. 1298, § 42, effective July 1. L. 2006: (3)(a) amended, p. 517, § 5, effective August 7.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-124. Privatization of child support enforcement programs. The state department shall consult with the counties to determine what services of the child support enforcement program may be advantageous to privatize. The state department is authorized to procure such services on behalf of participating counties if the participating counties and the state department agree to such procurement.

Source: L. 2008: Entire section amended, p. 1911, § 116, effective August 5.

26-13-125. State directory of new hires - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Employee" means a natural person who is employed by an employer in this state for compensation, which employer withholds federal or state tax liabilities from the employee's compensation. "Employee" does not include an employee hired to perform intelligence or counterintelligence functions for an agency of the United States government, as those terms are defined in the federal "Intelligence Organization Act of 1992", 50 U.S.C. sec. 401a, when the head of such agency has determined that reporting the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(b) "Employer" means a person or entity doing business in the state that engages an employee for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation. "Employer" also includes any governmental entity and any labor organization.

(c) "Labor organization" means any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or of providing other mutual aid or protection in connection with employment.

(2) The state department, or its agent, shall establish and maintain a state directory of new hires on and after October 1, 1997, for the purpose of locating newly hired individuals for the purposes of establishing, enforcing, or modifying child support obligations and for other purposes specified in paragraph (b) of subsection (8) of this section.

(3) Effective October 1, 1997, each employer shall submit to the state directory of new hires a copy of the W-4 form or, at the option of the employer, an equivalent form for each new employee hired to work in Colorado on or after said date. The report may be transmitted to the state department by first class mail, magnetically, or electronically. The report shall contain the employee's name, address, and social security number. The report shall contain the name and address of the employer and the identifying number assigned to the employer under section 6109 of the federal "Internal Revenue Code of 1986", as

amended. No liability shall attach to any employer for furnishing information pursuant to this section. No employer shall be required to submit to the state directory of new hires a report concerning any employee hired for less than thirty days.

(4) Beginning not later than May 1, 1998, the state child support enforcement agency shall conduct automated comparisons of the social security numbers reported by employers pursuant to this section and the social security numbers appearing in the records of the family support registry for cases being enforced under the state plan. The state department may contract for the performance of the comparisons required by this subsection (4) with another governmental agency or a private entity.

(5) An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may designate one state to which the employer shall submit reports. Any multistate employer that elects to transmit all reports to one state shall notify the secretary of the federal department of health and human services, in writing, which state the employer has designated for purposes of reporting.

(6) All employers shall report a newly hired employee within twenty calendar days after the date the employer hires the employee or, at the election of the employer, at the time of the first regularly scheduled payroll following the date of hire if such payroll is subsequent to the expiration of the twenty-day period. Reports submitted magnetically or electronically shall be submitted by two monthly transmissions, when necessary, and in all instances, the report shall be transmitted no more than twenty calendar days after the date of hire or, at the election of the employer, at the time of the first regularly scheduled payroll following the date of hire if such payroll is subsequent to the expiration of the twenty-day period.

(7) (a) Within five business days after receipt of a report from an employer concerning a newly hired employee, the state child support enforcement agency shall enter the information into the state directory of new hires.

(b) Within two business days after the date the information regarding a newly hired employee is entered into the state directory of new hires, the state child support enforcement agency shall transmit an income assignment to the employer of the employee directing the employer to withhold an amount equal to the monthly child support obligation, including any past-due support obligation of the employee.

(c) Within three business days after the date the information regarding a newly hired employee is entered into the state directory of new hires, the state directory of new hires shall furnish the information to the national directory of new hires.

(d) No later than two years after the date the information regarding a newly hired employee is entered into the state directory of new hires, the state child support enforcement agency shall remove such name and information from the directory.

(8) (a) Information contained within the reports shall be made available to delegate child support enforcement units and their agents in order to locate individuals for purposes of establishing paternity or for purposes of establishing, modifying, or enforcing child support obligations.

(b) Information contained within the reports shall be made available to the administrators of the following programs for purposes of establishing or verifying eligibility or benefit amounts: Public assistance pursuant to the Colorado works program, as defined in section 26-2-703 (5); medicaid; food stamps; supplemental security income benefits; cash assistance programs under this title; public assistance as defined in section 26-2-103 (7); and unemployment compensation.

(c) Information contained within the reports shall be available to the department of labor and employment and the state agency operating the workers' compensation program.

Source: L. 97: Entire section added, p. 1298, § 43, effective July 1. L. 2006: (2) and (8)(b) amended, p. 947, § 2, effective August 7.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative intent contained in the 2006 act amending subsections (2) and (8)(b), see section 8(2) of chapter 208, Session Laws of Colorado 2006.

26-13-126. Authority to deny, suspend, or revoke professional, occupational, and recreational licenses. (1) The state board of human services is authorized, in coordination with any state agency, board, or commission that is authorized by law to issue, revoke, deny, terminate, or suspend a professional, occupational, or recreational license, to promulgate rules for the suspension, revocation, or denial of professional, occupational, and recreational licenses of individuals who owe more than six months' gross dollar amount of child support and who are paying less than fifty percent of their current monthly child support obligation each month, or those individuals who fail, after receiving proper notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(2) (a) To effectuate the purposes of this section, the executive director of the state department may request the denial, suspension, or revocation of any professional, occupational, or recreational license issued by a state agency, board, or commission, referred to in this section as the "licensing agency". Upon such request, the state child support enforcement agency shall send a notice to the obligor by first class mail stating that the obligor has thirty days after the date of the notice within which to pay the past-due obligation, to negotiate a payment plan with the state child support enforcement agency, to request an administrative hearing with the delegate child support enforcement unit, or to comply with the warrant or subpoena. If the obligor fails to pay the past-due obligation, negotiate a payment plan, request an administrative hearing, or comply with the warrant or subpoena within thirty days after the date of the notice, the state child support enforcement agency shall send a notice to the licensing agency to deny, revoke, or suspend the professional, occupational, or recreational license of the individual identified as not in compliance with the court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or of the individual who failed, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(b) The rules promulgated to implement this section shall provide that, if it is the first time the procedures authorized by this section have been employed to enforce support against the obligor, the state child support enforcement agency may only issue a notice to the licensing agency to suspend or to deny such obligor's license. However, the rules shall also provide that, in second and subsequent circumstances in which the provisions of this section are utilized to enforce support against the obligor, the state child support enforcement agency shall be authorized to issue a notice to the licensing agency to revoke an obligor's license, subject to full reapplication procedures upon compliance as specified by the licensing agency.

(c) No later than thirty days after the date of the notice to the obligor, the obligor may request in writing that the delegate child support enforcement unit conduct an administrative review pursuant to the rules and regulations developed by the state board to implement the provisions of this article.

(d) No later than thirty days after the date of the delegate child support enforcement unit's decision, the obligor may request in writing an administrative review from the state child support enforcement agency.

(e) The sole issues to be determined at the administrative review by both the delegate child support enforcement unit and the state child support enforcement agency shall be whether there is: A mistake in the identity of the obligor; a disagreement concerning the amount of the child support debt, an arrearage balance, retroactive support due, or the amount of the past-due child support when combined with maintenance; a showing that all child support payments were made when due; a showing that the individual has complied with the subpoena or warrant; a showing that the individual was not properly served with the subpoena or warrant; or a showing that there was a technical defect with respect to the subpoena or warrant.

(f) The decision of the state child support enforcement agency shall be final agency action and may be reviewed pursuant to section 24-4-106, C.R.S.

(g) A notice to the licensing agency pursuant to paragraph (a) of this subsection (2) shall not be sent to the licensing agency unless the obligor has failed to request a review within the time specified or until a hearing has been concluded and all rights of review have been exhausted.

(h) Each licensing agency affected may promulgate rules, as necessary, and procedures to implement the requirements of this section. Such licensing agencies shall enter into memoranda of understanding, as necessary, with the state child support enforcement agency with respect to the implementation of this section. All due process hearings shall be conducted by the state department rather than the licensing agency.

(i) Nothing in this section shall limit the ability of each licensing agency to deny, suspend, or revoke a license on any other grounds provided by law.

(j) A licensing agency, or any person acting on its behalf, shall not be liable for any actions taken to deny, suspend, or revoke the obligor's license pursuant to this section.

(3) It is the intent of the general assembly that the same or similar conditions placed upon the issuance and renewal of a state license to practice a profession or occupation, as set forth in this section, should also be placed upon persons applying to or licensed to practice law. The general assembly, however, recognizes the practice of the Colorado Supreme Court in the licensure, registration, and discipline of persons practicing law in this state. Specifically, the general assembly acknowledges that in order to obtain a license to practice law in Colorado, a person must verify that he or she is not delinquent with respect to a court-ordered obligation to pay child support. In addition, the general assembly recognizes that pursuant to the "Colorado Rules of Professional Conduct" a lawyer may be disciplined, including by disbarment, for failing to pay child support.

(4) Subject to section 24-33-110 (1), C.R.S., for purposes of this section, "license" means any recognition, authority, or permission that the state or any principal department of the state or an agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

Source: L. 97: Entire section added, p. 1300, § 43, effective July 1. **L. 2004:** (4) amended, p. 1076, § 1, effective May 21.

Cross references: (1) For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

(2) For the "Colorado Rules of Professional Conduct", see the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

26-13-127. State case registry. (1) The state department, or its agent, shall establish, maintain, update, and monitor an automated state case registry which shall include all cases in which child support orders have been established or modified on or after October 1, 1998.

(2) The judicial department shall collect and electronically transfer on a weekly basis, or more frequently as mutually agreeable, to the state department, or its agent, the following basic elements of all child support orders established or modified on or after October 1, 1998, which shall be stored in the state case registry:

- (a) The name of the court, the county, and the case number;
- (b) The names of the obligor, the obligee, and the children who are the subject of the order;
- (c) (Deleted by amendment, L. 2008, p. 1350, § 8, effective July 1, 2008.)
- (d) The date of birth of each parent and of each child for whom the order requires the payment of child support;
- (e) The date the child support order was established or modified;
- (f) The amount of monthly or other periodic support owed under the order.

(2.5) Notwithstanding the provisions of subsection (2) of this section, the parties shall provide the judicial department with the social security number of each party and each child who is the subject of a child support order. The judicial department shall collect and electronically transfer the social security numbers to the state department, or its agent, on a weekly basis or more frequently, as per mutual agreement. Nothing in this subsection (2.5) shall require that a person's social security number appear on the face of any court order

entered pursuant to section 14-10-115, 14-14-104, or 19-4-116, C.R.S., or section 26-13-114 or 26-13.5-105.

(3) For each case in which services are being provided under Title IV-D of the federal “Social Security Act”, as amended, and for which a support order has been established or modified, the state case registry shall include the basic information listed in subsection (2) of this section and the following additional information:

(a) Amounts owed, including arrears, interest, or late payment penalties and fees, due or past-due, under the order;

(b) The distribution of collected amounts;

(c) (Deleted by amendment, L. 98, p. 763, §13, effective July 1, 1998.)

(d) The amount of any lien imposed with respect to the order pursuant to section 14-10-122 (1.5), C.R.S.

(4) Information in the state case registry shall be accessible only by the state child support enforcement agency, the delegate child support enforcement units, the federal office of child support enforcement, the courts, or the agents of such agency, units, office, or courts.

Source: L. 97: Entire section added, p. 1303, § 43, effective July 1. L. 98: (2) and (3) amended, p. 763, § 13, effective July 1. L. 99: (2) amended, p. 1090, § 10, effective July 1. L. 2008: (2)(c) amended and (2.5) added, p. 1350, § 8, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-128. Agreements with financial institutions - data match system - limited liability - definitions. (1) The general assembly authorizes the state department, or its agent, to design and implement a program pursuant to this section. The state department, or its agent, and financial institutions doing business in the state shall enter into agreements to effectuate the purpose of this section. The executive director may request and shall receive from such financial institutions or any state entity, such as a department, board, or agency of the state or any of its political subdivisions, the information and action described in this section.

(2) (a) The purpose of the program authorized by this section shall be to develop and operate, in coordination with such financial institutions and state entities, a data match system, using automated data exchanges, to the maximum extent feasible.

(b) The data match required by paragraph (a) of this subsection (2) shall be conducted quarterly.

(c) The state department shall provide to the financial institutions or any state entity the name, record address, and social security number of any person who owes past-due child support, as identified by the state.

(d) The agreement required pursuant to subsection (1) of this section shall provide that the data match be performed by the financial institution or state entity within forty-five days after the receipt of the informational electronic or magnetic data. The agreement shall also provide that the data be returned in electronic or magnetic form within three business days after the match is conducted. The financial institution or state entity shall include information concerning all accounts where a data match occurs, including but not limited to information regarding account numbers, account types, joint accounts, partnership accounts, sole proprietorship accounts, custodial accounts, and commercial accounts. The child support enforcement agency shall make a reasonable effort to accommodate those financial institutions upon which the requirements of this subsection (2) would pose a hardship.

(e) The financial institution or state entity, in response to a notice of lien or levy from the state department, shall encumber or surrender assets, except for custodial accounts created pursuant to the “Colorado Uniform Transfers to Minors Act”, article 50 of title 11, C.R.S., funds in escrow and trust accounts of moneys held in trust for a third party, held by such institution or entity on behalf of any obligor parent who is subject to a child support lien, subject to any right of setoff the financial institution may have against such assets.

Before the financial institution surrenders any assets of the obligor parent to the state department, the financial institution may apply, at the sole discretion of the financial institution, any assets held by the financial institution on behalf of the obligor parent against the balance of any amounts owed by the obligor parent to the financial institution, regardless of whether the obligor parent is in default under any agreement with the financial institution or whether any payments are currently due to the financial institution. Service of a notice of lien or levy pursuant to this subsection (2) shall be made by United States first class mail and, in addition, may be made by United States registered or certified mail, return receipt requested, the cost for which may be withheld by the financial institution or state entity from the account of the obligor parent.

(3) Notwithstanding any other provision of federal or state law, a financial institution or state entity shall not be liable under any federal, state, or local law to any person for any disclosure of information to the state department for the purpose of establishing, modifying, or enforcing a child support obligation of an individual, or for encumbering, holding, refusing to release to the obligor, surrendering, or transferring any assets held by such financial institution or state entity in response to a notice of lien or levy issued by the state department or for any other action taken in good faith to comply with the requirements of this section regardless of whether such action was specifically authorized or described by this section. A financial institution shall not be required to give notice to an account holder or customer of the financial institution concerning whom the financial institution has provided information or taken any action pursuant to this section. The financial institution shall not be liable for the failure to provide such notice.

(4) The state department shall assure, through rules of the state board, that there are appropriate procedures to be followed by the state department or the delegate child support enforcement unit with respect to certain special types of financial institution accounts, including but not limited to joint, partnership, sole proprietorship, custodial, and commercial accounts, which rules shall identify factors the delegate child support enforcement unit shall consider in determining whether to attach the account or any portion of such account. Such rules shall specifically provide that custodial accounts created pursuant to the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., and trust accounts of moneys held in trust for a third party shall not be attached, encumbered, or surrendered for purposes of enforcing support.

(5) The state department, after obtaining a financial record of an individual from a financial institution pursuant to this section, may disclose such financial record only for the purpose of and to the extent necessary to establish, modify, or enforce a child support obligation of such individual. If a state officer, employee, or authorized agent of the state knowingly, or by reason of negligence, discloses a financial record of an individual in violation of this subsection (5), such individual may bring a civil action for damages against the officer, employee, or authorized agent of the state pursuant to 42 U.S.C. sec. 669A (c).

(6) A financial institution shall be entitled to a reasonable fee in the amount of five cents per name per quarter, not to exceed its costs, for fulfilling the requirements of subsection (2) of this section.

(7) For purposes of this section:

(a) (I) "Account" includes:

- (A) A deposit account;
- (B) A demand deposit account;
- (C) A checking account;
- (D) A negotiable withdrawal order account;
- (E) A savings account;
- (F) A certificate of deposit;
- (G) A passbook account;
- (H) A time and term deposit account;
- (I) A share account;
- (J) A share draft account;
- (K) A share certificate of deposit;
- (L) A money market share account;
- (M) A money market mutual fund account;

(N) A “N.O.W.” account; or

(O) A similar account.

(II) “Account” shall also include:

(A) An interest in a mutual fund, a brokerage account, a fixed-rate annuity, a variable-rate annuity, a whole life insurance product, a universal life insurance product, a variable universal life insurance product, a fiduciary account, a trust account, or similar account;

(B) The securities of or issued by an investment company registered under the federal “Investment Company Act of 1940”, a unit investment trust, a real estate investment trust, a commodity pool operator, a future commission merchant, or an introducing broker registered under the federal “Commodity Exchange Act”, a general or limited partnership, or a similar entity; and

(C) Property, including funds held in or payable from any pension or retirement plan or deferred compensation plan, including a plan in which the debtor has received benefits or payments, has the present right to receive benefits or payments, or has the right to receive benefits or payments in the future and including a pension or plan that qualifies under the federal “Employee Retirement Income Security Act of 1974” as an employee pension benefit plan as defined in 29 U.S.C. sec. 1002, any individual retirement account, as defined in 26 U.S.C. sec. 408, and any plan as defined in 26 U.S.C. sec. 410 and as these plans may be amended from time to time, or any similar plan under state or local law.

(b) “Financial institution” includes:

(I) A state or nationally chartered bank, an industrial bank, a bank and trust company, a trust company, a savings and loan association, a savings bank, a credit union;

(II) An investment company registered under the federal “Investment Company Act of 1940”, a securities dealer, a commodity pool operator, a future commission merchant, or an introducing broker registered under the federal “Commodity Exchange Act”, or other legal entity engaged in the business of buying or selling securities;

(III) A benefit association, a life insurance company, a safe deposit company, or a state repository of moneys held for individuals; and

(IV) Any similar entity doing business in this state.

(c) “Financial record” has the meaning given such term in section 1101 of the federal “Right to Financial Privacy Act of 1978”, 12 U.S.C. sec. 3401.

Source: **L. 97:** Entire section added, p. 1304, § 43, effective July 1. **L. 98:** (2) amended, p. 1414, § 82, effective February 1, 1999. **L. 2000:** (1), (2), (4), and (6) amended, p. 1713, § 10, effective July 1. **L. 2004:** (2) amended, p. 389, § 9, effective July 1. **L. 2012:** (1) and (2) amended, (SB 12-042), ch. 30, p. 121, § 2, effective March 19.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

26-13-129. Exemption from federal law. Upon a determination, finding, or warning of noncompliance or upon such other notification from the federal department of health and human services that the state may not be, or is not, in compliance with a provision of the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”, Public Law 104-193, relating to the establishment of paternity or the establishment, modification, or enforcement of support, the state department shall seek a federal waiver or exemption pursuant to 42 U.S.C. sec. 666 (d) from the specific requirement of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” with which the state is alleged to be out of compliance.

Source: **L. 97:** Entire section added, p. 1307, § 43, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

ARTICLE 13.5

**Administrative Procedure
for Child Support
Establishment and Enforcement**

26-13.5-101.	Short title.		court determinations.
26-13.5-102.	Definitions.	26-13.5-108.	Request for court hearing.
26-13.5-103.	Notice of financial responsibility issued - contents.		(Repealed)
26-13.5-103.5.	Notice of financial responsibility amended - adding children.	26-13.5-109.	Notice of financial responsibility - issued in which county.
26-13.5-104.	Service of notice of financial responsibility.	26-13.5-110.	Paternity - establishment - filing of order with court.
26-13.5-105.	Negotiation conference - issuance of order of financial responsibility - filing of order with district court.	26-13.5-111.	Establishment and enforcement of duties of support upon request of agency of another state. (Repealed)
26-13.5-106.	Default - issuance of order of default - filing of order with district court.	26-13.5-112.	Modification of an order.
26-13.5-107.	Orders - duration - effect of	26-13.5-113.	Rules and regulations.
		26-13.5-114.	Applicability of administrative procedure act.
		26-13.5-115.	Additional remedies.

26-13.5-101. Short title. This article shall be known and may be cited as the “Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support”.

Source: L. 89: Entire article added, p. 1238, § 1, effective April 1, 1990.

26-13.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Administrative order” means an order that involves payment or collection of support issued by a delegate child support enforcement unit or an administrative agency of another state or comparable jurisdiction with similar authority.

(2) “Arrears” or “arrearages” means amounts of past-due and unpaid monthly support obligations established by court or administrative order.

(3) “Child support debt” means, in the case in which there is no existing order for child support, an amount ordered by the court pursuant to section 14-14-104, C.R.S., or by a delegate child support enforcement unit pursuant to this article for unreimbursed public assistance provided to a family that has received or is receiving aid to families with dependent children or temporary assistance to needy families. In the case in which there is an existing court or administrative order for support, “child support debt” means an amount equal to the amount of public assistance paid to the extent of the full amount of arrearages which have accrued as of the date of the court or administrative order that determines the child support debt.

(4) “Costs of collection” means attorney fees, costs for administrative staff time, service of process fees, court costs, costs of genetic tests, and costs for certified mail. Attorney fees and costs for administrative time shall only be collected in accordance with federal law and rules and regulations.

(5) “Court” or “judge” means any court or judge in this state having jurisdiction to determine the liability of persons for the support of another person. “Court” or “judge” includes a juvenile magistrate and a district court magistrate.

(6) “Custodian” means a parent, relative, legal guardian, or other person or agency having physical custody of a child.

(7) “Delegate child support enforcement unit” means the unit of a county department of social services or its contractual agent which is responsible for carrying out the provisions of article 13 of this title. The term contractual agent shall include a private child support collection agency, operating as an independent contractor with a county department

of social services, or a district attorney's office, that contracts to provide any services that the delegate child support enforcement unit is required by law to provide.

(8) "Dependent child" means any person who is legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(8.5) "District court" means any district court in this state and includes the juvenile court of the city and county of Denver and the juvenile division of the district court outside of the city and county of Denver.

(9) "Duty of support" means a duty of support imposed by law, by order, decree, or judgment of any court, or by administrative order, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise. "Duty of support" includes the duty to pay a monthly support obligation, a child support debt, any retroactive support due, support of children in foster care, medical support, and any arrangements.

(10) "Monthly support obligation" means the monthly amount of current child support that an obligor is ordered to pay by the court or by the delegate child support enforcement unit pursuant to this article.

(11) "Obligee" means any person or agency to whom a duty of support is owed or any person or agency having commenced a proceeding for the establishment or enforcement of an alleged duty of support.

(12) "Obligor" means any person owing a duty of support or against whom a proceeding for the establishment or enforcement of a duty of support is commenced.

(13) "Receipt of notice" means either the date on which service of process of a notice of financial responsibility is actually accomplished or the date on the return receipt if service is by certified mail, both in accordance with one of the methods of service specified in section 26-13.5-104.

Source: **L. 89:** Entire article added, p. 1238, § 1, effective April 1, 1990. **L. 90:** (4) and (7) amended and (8.5) added, p. 896, § 19, effective July 1. **L. 91:** (5) amended, p. 365, § 39, effective April 9; (9) amended, p. 216, § 5, effective July 1. **L. 96:** (9) amended, p. 618, § 25, effective July 1. **L. 97:** (4) amended, p. 563, § 15, effective April 29. **L. 2003:** (7) amended, p. 1271, § 64, effective July 1. **L. 2005:** (7) amended, p. 498, § 3, effective August 8. **L. 2011:** (3) amended, (SB 11-123), ch. 46, p. 121, § 9, effective August 10.

26-13.5-103. Notice of financial responsibility issued - contents. (1) The delegate child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes a child support debt or who is responsible for the support of a child on whose behalf the custodian of that child is receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title. The notice shall advise the obligor:

(a) That the obligor is required to appear at the time and location stated in the notice for a negotiation conference to determine the obligor's duty of support;

(a.5) That a request for genetic tests shall not prejudice the obligor in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S., and that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date;

(b) That the delegate child support enforcement unit shall issue an order of default setting forth the amount of the obligor's duty of support, if the obligor:

(I) Fails to appear for the negotiation conference as scheduled in the notice; and
(II) Fails to reschedule a negotiation conference prior to the date and time stated in the notice; and

(III) Fails to send the delegate child support enforcement unit a written request for a court hearing prior to the time scheduled for the negotiation conference;

(b.5) That, if the notice is issued for the purpose of establishing the paternity of and financial responsibility for a child, the delegate child support enforcement unit shall issue an order of default establishing paternity and setting forth the amount of the obligor's duty of support, if:

(I) The obligor fails to appear for the initial negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility; or

(II) The obligor fails to take a genetic test or fails to appear for an appointment to take a genetic test without good cause; or

(III) The results of the genetic test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice and fails to reschedule a negotiation conference prior to the date and time stated in the notice;

(c) (Deleted by amendment, L. 92, p. 213, § 17, effective August 1, 1992.)

(d) That the order of default shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued; that, as soon as the order of default is filed, it shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court; and that execution may be issued on the order in the same manner and with the same effect as if it were an order of the court;

(e) That a judgment may be entered on the order of financial responsibility issued pursuant to this article, and that if a judgment is not entered on the order of financial responsibility and needs to be enforced, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period and that, notwithstanding the provisions of this paragraph (e), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund;

(f) The name of the custodian of the child on whose behalf support is being sought and the name, birth date, and social security number of such child;

(g) That the amount of the monthly support obligation shall be based upon the child support guidelines as set forth in section 14-10-115, C.R.S.;

(h) That, in calculating the amount of monthly support obligation pursuant to the child support guidelines as set forth in section 14-10-115, C.R.S., the delegate child support enforcement unit shall set the monthly support obligation based upon reliable information concerning the parents' income, which may include wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements and other information provided by the parents and that, in the absence of any such information, the delegate child support enforcement unit may set the monthly support obligation based on the current minimum wage for a forty-hour workweek;

(i) That the delegate child support enforcement unit may issue an administrative subpoena to obtain income information from the obligor;

(i.5) That the court or delegate child support enforcement unit may enter an order directing the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period prior to the entry of an order establishing paternity or for a time period prior to the entry of the support order established pursuant to section 19-6-104, C.R.S.;

(j) The amount of the child support debt accrued and accruing;

(k) The amount of arrears or arrearages which have accrued under an administrative or a court order for support;

(l) That the costs of collection, as defined in section 26-13.5-102 (3), may be assessed against and collected from the obligor;

(m) If applicable, that foster care maintenance may be collected against the obligor;

(n) The interest rate on any support payments which are not made on time;

(o) That the obligor may assert the following objections in the negotiation conference and that, if such objections are not resolved, the delegate child support enforcement unit shall schedule a court hearing pursuant to section 26-13.5-105 (3):

(I) That he is not the parent of the dependent child; however, if parentage has been previously determined by or pursuant to the law of another state, the obligor is advised that any challenge to the determination of parentage must be resolved in the state where the determination of parentage was made;

(II) That the dependent child has been adopted by a person other than the obligor;

(III) That the dependent child is emancipated; or

(IV) That there is an existing court or administrative order of support as to the monthly support obligation;

(p) That the duty to provide medical support shall be established under this article in accordance with section 14-10-115, C.R.S.;

(q) That an administrative order issued pursuant to this article may also be modified under this article;

(r) That the obligor is responsible for notifying the delegate child support enforcement unit of any change of address or employment within ten days of such change;

(s) That, if the obligor has any questions, the obligor should telephone or visit the delegate child support enforcement unit;

(t) That the obligor has the right to consult an attorney and the right to be represented by an attorney at the negotiation conference; and

(u) Such other information as set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

Source: **L. 89:** Entire article added, p. 1239, § 1, effective April 1, 1990. **L. 90:** IP(1), IP(1)(b), (1)(b)(I), (1)(b)(II), and (1)(m) amended, p. 896, § 20, effective July 1. **L. 91:** (1)(c) amended, p. 257, § 22, effective July 1. **L. 92:** (1)(b.5) added and (1)(c) and (1)(e) amended, pp. 184, 213, §§ 5, 17, effective August 1. **L. 94:** (1)(b.5) amended and (1)(i.5) added, p. 1544, § 21, effective May 31. **L. 96:** (1)(d) amended, p. 618, § 26, effective July 1. **L. 97:** (1)(b.5)(II) and (1)(b.5)(III) amended, p. 564, § 16, effective July 1. **L. 2005:** (1)(a.5) added, p. 380, § 10, effective January 1, 2006. **L. 2006:** (1)(h) amended, p. 517, § 6, effective August 7. **L. 2007:** (1)(p) amended, p. 109, § 7, effective March 16. **L. 2011:** (1)(o)(I) amended, (SB 11-123), ch. 46, p. 121, § 10, effective August 10.

26-13.5-103.5. Notice of financial responsibility amended - adding children.

(1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case and at least one of the presumptions of paternity specified in section 19-4-105, C.R.S., applies, the delegate child support enforcement unit shall issue an amended notice of financial responsibility to add the child to the case.

(2) The amended notice of financial responsibility to add a child to an existing case shall be served in the manner set forth in section 26-13.5-104.

(3) The amended notice of financial responsibility to add a child to an existing case shall contain all of the advisements required in an original notice of financial responsibility as set forth in section 26-13.5-103.

(4) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, C.R.S., a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated pursuant to rule 42 of the Colorado rules of civil procedure.

Source: **L. 2008:** Entire section added, p.1350, § 9, effective January 1, 2009.

26-13.5-104. Service of notice of financial responsibility. (1) The delegate child support enforcement unit shall serve a notice of financial responsibility on the obligor not less than ten days prior to the date stated in the notice for the negotiation conference:

- (a) In the manner prescribed for service of process in a civil action; or
 - (b) By an employee appointed by the delegate child support enforcement unit to serve such process; or
 - (c) By certified mail, return receipt requested, signed by the obligor only. The receipt shall be prima facie evidence of service.
- (2) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in subsection (1) of this section or by any of the other methods of service specified in said subsection (1).
- (3) If process has been served pursuant to this section, no additional service of process shall be necessary if the case is referred to court for further review.

Source: **L. 89:** Entire article added, p. 1241, § 1, effective April 1, 1990. **L. 90:** IP(1) amended, p. 896, § 21, effective July 1. **L. 92:** Entire section amended, p. 184, § 6, effective August 1.

26-13.5-105. Negotiation conference - issuance of order of financial responsibility - filing of order with district court. (1) Every obligor who has been served with a notice of financial responsibility pursuant to section 26-13.5-104 shall appear at the time and location stated in the notice for a negotiation conference or shall reschedule a negotiation conference prior to the date and time stated in the notice. The negotiation conference shall be scheduled not more than thirty days after the date of the issuance of the notice of financial responsibility. A negotiation conference shall not be rescheduled more than once and shall not be rescheduled for a date more than ten days after the date and time stated in the notice without good cause as defined in rules and regulations promulgated pursuant to section 26-13.5-113. If a negotiation conference is continued, the obligor shall be notified of such continuance by first-class mail or by hand delivery. If a stipulation is agreed upon at the negotiation conference as to the obligor's duty of support, the delegate child support enforcement unit shall issue an administrative order of financial responsibility setting forth the following:

- (a) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;
 - (b) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;
 - (c) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;
 - (d) The names and dates of birth of the parties and of the children for whom support is being sought and the parties' residential and mailing addresses.
- (e) and (f) (Deleted by amendment, L. 99, p. 1091, § 12, effective July 1, 1999.)

(2) A copy of the administrative order of financial responsibility issued pursuant to subsection (1) of this section, along with proof of service, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order and shall assign the order a case number. The order of financial responsibility shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

(3) (a) If no stipulation is agreed upon at the negotiation conference because the obligor contests the issue of paternity, the delegate child support enforcement unit shall

issue an order for genetic testing and continue the negotiation conference to allow for the receipt of the genetic testing results. The delegate child support enforcement unit shall pay the costs of the genetic testing and may recover any testing costs from the presumed or alleged father if paternity is established.

(b) If no stipulation is agreed upon at the continued negotiation conference and the evidence relating to paternity does not meet the requirements set forth in section 13-25-126 (1) (g), C.R.S., the delegate child support enforcement unit may dismiss the action or take such other appropriate action as allowed by law.

(c) If no stipulation is agreed upon at the negotiation conference and paternity is not an issue, or, if paternity is an issue and either the evidence relating to paternity meets the requirements set forth in section 13-25-126 (1) (g), C.R.S., or parentage has been previously determined by another state, the delegate child support enforcement unit shall issue temporary orders establishing current child support, arrears, foster care maintenance, medical support, and reasonable support for a time period prior to the entry of the order for support and shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued and shall request the court to set a hearing for the matter.

(d) Notwithstanding any rules of the Colorado rules of civil procedure, a complaint is not required in order to initiate a court action pursuant to this subsection (3). The court shall inform the delegate child support enforcement unit of the date and location of the hearing and the court or the delegate child support enforcement unit shall send a notice to the obligor informing the obligor of the date and location of the hearing. In order to meet federal requirements of expedited process for child support enforcement, the court shall hold a hearing and decide only the issue of child support within ninety days after receipt of notice, as defined in section 26-13.5-102 (13), or within six months after receipt of notice, as defined in section 26-13.5-102 (13), if the obligor is contesting the issue of paternity. If the obligor raises issues relating to the allocation of parental responsibilities, decision-making responsibility, or parenting time and the court has jurisdiction to hear such matters, the court shall set a separate hearing for those issues after entry of the order of support. In any action, including an action for paternity, no additional service beyond that originally required pursuant to section 26-13.5-104 shall be required if no stipulation is reached at the negotiation conference and the court is requested to set a hearing in the matter.

(4) The determination of the monthly support obligation shall be based on the child support guidelines set forth in section 14-10-115, C.R.S. The delegate child support enforcement unit may issue an administrative subpoena requesting income information, including but not limited to wage statements, pay stubs, and tax records. In the absence of reliable information, which may include such information as wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements made by the obligee, the delegate child support enforcement unit shall set the amount included in the order of financial responsibility pursuant to section 14-10-115, C.R.S., based on the current minimum wage for a forty-hour workweek.

(5) If the court or delegate child support enforcement unit finds that the respondent has an obligation to support the child or children mentioned in the petition or notice, the court or delegate child support enforcement unit may enter an order directing the respondent to pay such sums for support as may be reasonable under the circumstances, taking into consideration the factors found in section 19-4-116 (6), C.R.S. The court or delegate child support enforcement unit may also enter an order directing the appropriate party to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period which occurred prior to the entry of the support order established pursuant to section 19-6-104, C.R.S.

(6) If a parent is unemployed and not incapacitated, the delegate child support enforcement unit may order such parent to pay such support in accordance with a plan approved by the delegate child support enforcement unit or to participate in work activities, as described in section 14-10-115 (5) (b) (II), C.R.S., as deemed appropriate by that delegate child support enforcement unit, as a condition of the child support order.

Source: **L. 89:** Entire article added, p. 1242, § 1, effective April 1, 1990. **L. 90:** IP(1), (2), and (3) amended, p. 897, § 22, effective July 1. **L. 92:** Entire section amended, p. 213, § 18, effective August 1. **L. 93:** (3) amended, p. 582, § 22, effective July 1; (3) amended, p. 1565, § 20, effective September 1. **L. 94:** (5) added, p. 1544, § 22, effective May 31. **L. 96:** IP(1), (1)(e), (2), and (3) amended, p. 619, § 27, effective July 1. **L. 97:** (1)(d) and (3) amended and (6) added, p. 1307, § 44, effective July 1. **L. 98:** (3)(d) amended, p. 1415, § 83, effective February 1, 1999. **L. 99:** (1)(d), (1)(e), and (1)(f) amended, p. 1091, § 12, effective July 1. **L. 2005:** (3)(b) and (3)(c) amended, p. 773, § 53, effective June 1. **L. 2007:** (6) amended, p. 109, § 8, effective March 16. **L. 2008:** (1)(d) amended, p. 1351, § 10, effective July 1. **L. 2011:** (3)(c) amended, (SB 11-123), ch. 46, p. 121, § 11, effective August 10.

Editor's note: Amendments to subsection (3) by Senate Bill 93-25 and Senate Bill 93-154 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act, effective July 1, 1993, amending subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Hearing procedure in subsection (3) does not apply unless the parties fail to reach a stipulated agreement at a negotiation conference because the obligor contests paternity. Where no such conference was held and, therefore, the

issue of paternity was not contested or otherwise properly placed in issue, court lacked jurisdiction to enter an order for support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

26-13.5-106. Default - issuance of order of default - filing of order with district court. (1) (a) If an obligor fails to appear for a negotiation conference as scheduled in the notice of financial responsibility, and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility. If an obligor fails to appear for a rescheduled negotiation conference, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility.

(b) In an action to establish paternity and financial responsibility, the delegate child support enforcement unit shall issue an order of default establishing paternity and financial responsibility in accordance with the notice of financial responsibility if:

(I) The obligor fails to appear for the initial negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility; or

(II) The obligor fails to take a genetic test or fails to appear for an appointment to take a genetic test without good cause; or

(III) The results of the genetic test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility.

(b.5) The state board shall promulgate rules defining what constitutes good cause for failure to appear at a negotiation conference.

(c) Such order of default shall be approved by the court and shall include the following:

(I) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(II) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(III) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(IV) The name of the custodian of the child and the name, birth date, and social security number of the child for whom support is being sought;

(V) The information required by section 14-14-111.5 (2) (f) (II), C.R.S.;

(VI) In a default order establishing paternity, a statement that the obligor has been determined to be the natural parent of the child;

(VII) Such other information set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

(d) Such order for default may direct the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period prior to the entry of the order establishing paternity.

(2) A copy of any order of default issued pursuant to subsection (1) of this section, along with proof of service, and, in the case of a default order establishing paternity and financial responsibility under paragraph (b) of subsection (1) of this section, the obligee's verified affidavit regarding paternity and the genetic test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order of default and shall assign the order a case number. The order of default shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

Source: **L. 89:** Entire article added, p. 1243, § 1, effective April 1, 1990. **L. 90:** IP(1) and (2) amended, p. 898, § 23, effective July 1. **L. 92:** (1) and (2) amended, p. 185, § 7, effective August 1; entire section amended, p. 215, § 19, effective August 1. **L. 94:** (1) amended, p. 1545, § 23, effective May 31. **L. 96:** (1)(c)(V) and (2) amended, p. 620, § 28, effective July 1. **L. 97:** (1)(b)(II), (1)(b)(III), and (2) amended, p. 564, § 17, effective July 1.

Editor's note: Amendments to this section by House bill 92-1214 and House Bill 92-1232 were harmonized.

ANNOTATION

Requirements of this section are jurisdictional. Where record contained no administrative default order establishing paternity and financial responsibility as required by this

section, court was without authority to order child support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

26-13.5-107. Orders - duration - effect of court determinations. (1) A copy of any order of financial responsibility or of any order of default or of any temporary order of financial responsibility issued by the delegate child support enforcement unit shall be sent by such unit by first-class mail to the obligor or his attorney of record and to the custodian of the child.

(2) Any order of financial responsibility, any order of default, and any temporary order of financial responsibility shall continue notwithstanding the fact that the child is no longer receiving benefits under the programs listed in section 26-13-102.5 (2) (a), unless the child is emancipated or is otherwise no longer entitled to support. Any order of financial

responsibility, any order of default, and any temporary order of financial responsibility shall continue until modified by administrative order or court order or by emancipation of the child. In the event that the order of financial responsibility, order of default, or temporary order of financial responsibility is entered in a case at a time when there is a court action on the same case, the court may credit a portion of a monthly amount paid under the administrative process order towards future payments due in the court case only if the order in the court case is established at a lower amount than the administrative process order and only to the extent of the difference between the amount of the court order and the amount of the administrative process order.

(3) Nothing contained in this article shall deprive a court of competent jurisdiction from determining the duty of support of an obligor against whom an administrative order is issued pursuant to this article. Such a determination by the court shall supersede the administrative order as to support payments due subsequent to the entry of the order by the court but shall not affect any arrearage which may have accrued under the administrative order.

Source: L. 89: Entire article added, p. 1244, § 1, effective April 1, 1990. L. 92: (1) and (2) amended, p. 217, § 20, effective August 1. L. 2010: (2) amended, (HB 10-1043), ch. 92, p. 317, § 15, effective April 15.

26-13.5-108. Request for court hearing. (Repealed)

Source: L. 89: Entire article added, p. 1244, § 1, effective April 1, 1990. L. 90: (1) and (2) amended, p. 898, § 24, effective July 1. L. 91: (2) amended, p. 258, § 23, effective July 1. L. 92: Entire section repealed, p. 217, § 21, effective August 1.

26-13.5-109. Notice of financial responsibility - issued in which county. A notice of financial responsibility may be issued by a delegate child support enforcement unit pursuant to this article in any county where public assistance was paid, the county where the obligor resides, the county where the obligee resides, or the county where the child resides as prescribed by rule and regulation pursuant to section 26-13.5-113.

Source: L. 89: Entire article added, p. 1245, § 1, effective April 1, 1990.

26-13.5-110. Paternity - establishment - filing of order with court. (1) The delegate child support enforcement unit may issue an order establishing paternity of and financial responsibility for a child in the course of a support proceeding under this article when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established and that the parents are the natural parents of the child and if neither parent is contesting the issue of paternity or may issue an order of default establishing paternity and financial responsibility in accordance with section 26-13.5-106. Prior to issuing an order under this section, the delegate child support enforcement unit shall advise both parents in writing as prescribed by rule and regulation promulgated pursuant to section 26-13.5-113 of their legal rights concerning the determination of paternity.

(2) A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the genetic test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or as otherwise provided in accordance with the provisions of section 26-13.5-105 (2). The order establishing paternity and financial responsibility shall have all the force, effect, and remedies of an order of the district court, and the order may be executed upon and enforced in the same manner as set forth in section 26-13.5-105 (2).

(3) If the order establishing paternity is at variance with the child's birth certificate, the delegate child support enforcement unit shall order that a new birth certificate be issued under section 19-4-124, C.R.S.

(4) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in section 26-13.5-104 or by any of the other methods of service specified in said section.

Source: **L. 89:** Entire article added, p. 1245, § 1, effective April 1, 1990. **L. 90:** (2) amended, p. 899, § 25, effective July 1. **L. 92:** Entire section amended, p. 186, § 8, effective August 1. **L. 97:** (2) amended, p. 565, § 18, effective July 1.

ANNOTATION

Requirements of this section are jurisdictional. Where record contained no verified affidavit from the obligee as required by this sec-

tion, court was without authority to order child support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

26-13.5-111. Establishment and enforcement of duties of support upon request of agency of another state. (Repealed)

Source: **L. 89:** Entire article added, p. 1245, § 1, effective April 1, 1990. **L. 93:** (4) amended, p. 1607, § 14, effective January 1, 1995. **L. 2003:** Entire section repealed, p. 1271, § 65, effective April 22.

26-13.5-112. Modification of an order. (1) At any time after the entry of an order of financial responsibility or an order of default under this article, in order to add, alter, or delete any provisions to such an order, the delegate child support enforcement unit may issue a notice of financial responsibility to the obligor and obligee advising the obligor and obligee of the possible modification of the existing administrative order issued pursuant to this article. The delegate child support enforcement unit shall serve the obligor and the obligee with a notice of financial responsibility by first-class mail or by electronic means if mutually agreed upon. The obligor or the obligee may file a written request for modification of an administrative order issued under this article with the delegate child support enforcement unit. If the delegate child support enforcement unit denies the request for modification based upon the failure to demonstrate a showing of changed circumstances required pursuant to section 14-10-122, C.R.S., the delegate child support enforcement unit shall advise the requesting party of the party's right to seek a modification pursuant to section 14-10-122, C.R.S.

(1.2) At any time after entry of an administrative order issued pursuant to this article, an obligor or obligee may file a written request for review of the order with the delegate child support enforcement unit. The written request for review shall include financial information of the requesting party necessary to conduct a calculation pursuant to the Colorado child support guidelines described in section 14-10-115, C.R.S. The requesting party shall provide his or her financial information on the form required by the division of child support enforcement. The delegate child support enforcement unit shall review each request received and grant or deny the request using the standards described in section 26-13-121 (2) (a) or (2) (b).

(1.3) If there is an active assignment of rights, the delegate child support enforcement unit shall, once every thirty-six months, review the administrative order to determine if an adjustment of the administrative order is appropriate.

(1.4) If the request for review is granted or in case of an automatic review where there is an active assignment of rights, a notice of review shall be issued to the requesting and nonrequesting parties. In the case of a review in which there is an active assignment of rights, the obligor and obligee shall be considered nonrequesters. The notice of review shall advise the obligor and obligee that a review is to be conducted and provide the nonrequesters twenty days within which to provide the financial information necessary to calculate the child support obligation pursuant to the Colorado child support guidelines described in section 14-10-115, C.R.S.

(1.5) (a) The review of the administrative order shall be conducted on or before the thirtieth day after notice of review is sent to the parties. During the review, the determi-

nation of the monthly support obligation shall be based on the child support guidelines set forth in section 14-10-115, C.R.S. The delegate child support enforcement unit may grant a continuance of the review for good cause. The continuance shall be for a reasonable period of time to be determined by the delegate child support enforcement unit, not to exceed thirty days.

(b) In order to obtain information necessary to conduct the review, the delegate child support enforcement unit is authorized, pursuant to sections 26-13.5-103 (1) and 26-13-121 (3) (d), to serve, by first-class mail or by electronic means if mutually agreed upon, an administrative subpoena to any person, corporation, partnership, public employee retirement benefit plan, financial institution, labor union, or other entity to appear or for the production of records and financial documents.

(c) An adjustment to the administrative order shall be appropriate only if the standard set forth in section 14-10-122 (1) (b), C.R.S., is met.

(1.7) (a) After the review is completed, the delegate child support enforcement unit shall provide a post-review notice and child support guideline worksheet advising the obligor and obligee of the review results. If a review indicates that an adjustment should be made, a notice of financial responsibility and a proposed order of financial responsibility shall be included. The delegate child support enforcement unit shall provide all supporting financial documentation used to calculate the monthly support obligation to both parties. The notice of financial responsibility shall advise the parties of the right to challenge the post-review notice of the review results, the time frame for challenging the review results, and the method for asserting the challenge.

(b) The obligor and obligee shall be given fifteen days from the date of the post-review notice to challenge the review results. The grounds for the challenge shall be limited to the issue of mathematical or factual error in the calculation of the monthly support obligation. The delegate child support enforcement unit may grant an extension of up to fifteen days to challenge the review results based upon a showing of good cause. Any challenge may be presented at the negotiation conference scheduled pursuant to section 26-13.5-103 via first-class mail or via an electronic communication method.

(c) The delegate child support enforcement unit shall have fifteen days from the date of receipt of the challenge to respond to a challenge based upon a mathematical or factual error. If a challenge results in a change to the monthly support obligation, the delegate child support enforcement unit shall provide an amended notice of review to the obligor and obligee. The parties shall be given fifteen days from the date of the amended notice of review to challenge the results of any subsequent review. The grounds for the challenge shall be limited to the issue of mathematical or factual error in the calculation of the monthly support obligation.

(1.9) (a) If the review indicates that a change to the monthly support obligation is appropriate and the review is not challenged or all challenges have been addressed, the delegate child support enforcement unit shall file the notice of financial responsibility, the order of financial responsibility accompanied by the guideline worksheet, and the supporting financial documentation with the court. When the order of financial responsibility is filed with the court, it shall be provided to the parties and shall contain an advisement that the parties have fifteen days from the date of filing to file a written objection to the order of financial responsibility with the court.

(b) If the delegate child support enforcement unit has filed an order of financial responsibility modifying the monthly support obligation and an objection has not been received by the court within fifteen days after the order is filed with the court, the order of financial responsibility shall become final. If an objection is received within the fifteen-day period, the court may affirm the order of financial responsibility as submitted, issue an order revising the monthly support obligation, or set the matter for a hearing. If a hearing is necessary, the court shall hold a hearing within forty-five days after the filing of the order of financial responsibility, and the court shall decide only the issues of child support and medical support. Any documentary evidence provided by the obligee or the obligor or by the delegate child support enforcement unit may be admitted into evidence by the court without the necessity of laying a foundation for its admissibility, and the court may determine the relative weight or credibility to give any such documentation.

(2) A request for modification made pursuant to this section shall not stay the delegate child support enforcement unit from enforcing and collecting upon the existing order pending the modification proceeding.

(3) Only payments accruing subsequent to the request for modification may be modified. Modification shall be based upon the standard set forth in section 14-10-122, C.R.S.

Source: **L. 89:** Entire article added, p. 1246, § 1, effective April 1, 1990. **L. 90:** (1) amended, p. 899, § 26, effective July 1. **L. 91:** (1) amended, p. 258, § 24, effective July 1. **L. 94:** (1) amended, p. 1546, § 24, effective May 31. **L. 2007:** (1) amended and (1.2), (1.3), (1.4), (1.5), (1.7), and (1.9) added, p. 1658, § 18, effective July 1, 2008.

26-13.5-113. Rules and regulations. The state board shall adopt rules and regulations establishing uniform forms and procedures to implement the administrative process set forth in this article and may adopt rules and regulations as may be necessary to carry out the provisions of this article.

Source: **L. 89:** Entire article added, p. 1246, § 1, effective April 1, 1990.

26-13.5-114. Applicability of administrative procedure act. Except for the promulgation of rules and regulations as authorized in section 26-13.5-113, the provisions of this article shall not be subject to the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

Source: **L. 89:** Entire article added, p. 1246, § 1, effective April 1, 1990.

26-13.5-115. Additional remedies. The remedies created by this article are in addition to and not in substitution for any other existing remedies authorized by law to establish and enforce the duty of support.

Source: **L. 89:** Entire article added, p. 1246, § 1, effective April 1, 1990.

ARTICLE 15

Reform Act for the Provision of Health Care for the Medically Indigent

26-15-101 to 26-15-206. (Repealed)

Source: **L. 2006:** Entire article repealed, p. 1997, § 27, effective July 1.

Editor’s note: (1) This article was added in 1983. For amendments to this article prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 1 of article 3 of title 25.5. For the location of specific provisions, see the editor’s notes following each section in said part 1 and the comparative tables located in the back of the index.

(2) Section 26-15-114, enacted by chapter 323, Session Laws of Colorado 2006, was renumbered as and relocated to § 25.5-3-112.

Cross references: For current provisions concerning the indigent care program, see part 1 of article 3 of title 25.5.

ARTICLE 16

Program of All-inclusive Care for the Elderly

26-16-101 to 26-16-109. (Repealed)

Source: **L. 91:** Entire article repealed, p. 1859, § 23, effective April 11.

Editor’s note: This article was added in 1990 and was not amended prior to its repeal in 1991. For the text of this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions concerning a program of all-inclusive care for the elderly, see § 25.5-5-412.

ARTICLE 17
Children’s Health Plan

26-17-101 to 26-17-115. (Repealed)

Editor’s note: (1) Section 26-17-115 provided for the repeal of this article, effective July 1, 1999. (See L. 98, p. 458)

(2) This article was added in 1990. For amendments to this article prior to its repeal in 1999, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 18
Family Resource Center Program

26-18-101.	Legislative declaration.		pealed)
26-18-102.	Definitions.	26-18-104.	Program created.
26-18-103.	State council created - powers and duties - report. (Re-	26-18-105.	Selection of centers - grants.
		26-18-106.	Repeal of article. (Repealed)

26-18-101. Legislative declaration. (1) The general assembly hereby declares that Colorado needs healthy and cohesive families at all income levels in order for the state to be economically viable. A number of families in communities throughout Colorado temporarily may not have access to the basic necessities of life or to resources or services designed to promote individual development and family growth.

(2) The general assembly further declares that many of Colorado’s vulnerable families, individuals, children, and youth do not necessarily live in at-risk neighborhoods. Such persons may not have appropriate resources or sufficient income for adequate housing, health care, or child care because the primary wage earners are unemployed, underemployed, or work at jobs that pay minimum wage or less. Further, many such persons not only live in poverty, but also experience divorce, domestic violence, or are single parents. Children and youth who are raised in vulnerable families experience an increased risk of being abused, being illiterate, being undereducated, dropping out of school, becoming teen parents, abusing drugs, and engaging in at-risk behaviors, including but not limited to criminal activities. Such children and youth are often influenced by and are likely to repeat behaviors that began with their parents.

(3) Therefore, the general assembly finds that it is appropriate to establish a program to provide family resource centers in communities to serve as a single point of entry for providing comprehensive, intensive, integrated, and collaborative state and community-based services to vulnerable families, individuals, children, and youth.

Source: L. 93: Entire article added, p. 1900, § 1, effective July 1. L. 97: (3) amended, p. 1115, § 1, effective May 28. L. 2001: Entire section amended, p. 246, § 1, effective March 29. L. 2009: (3) amended, (SB 09-055), ch. 48, p. 172, § 1, effective March 20.

26-18-102. Definitions. As used in this article, unless the context otherwise requires: (1) “At-risk neighborhood” means an urban or rural neighborhood or community in which there are incidences of poverty, unemployment and underemployment, substance

abuse, crime, school dropouts, illiteracy, teen pregnancies and teen parents, domestic violence, or other conditions that put families at risk.

(2) “Case management” means the process whereby a family advocate for the family resource center assesses a family’s need for services in accordance with section 26-18-104 (2).

(3) “Community applicant” means any local entity interested and willing to commit private and public resources to establish a family resource center and which applies for a family resource center grant pursuant to section 26-18-105. “Community applicant” includes, but is not limited to, any state or local governmental agency or governing body, a local private nonprofit agency, a local board of education on a cost-shared basis, a local recreational center, or a local child care agency.

(3.5) “Division” means the prevention services division in the department of public health and environment.

(4) “Family resource center” means a unified single point of entry where vulnerable families, individuals, children, and youth in communities or within at-risk neighborhoods or participants in Colorado works, pursuant to part 7 of article 2 of this title, can obtain information, assessment of needs, and referral to delivery of family services described in section 26-18-104 (2) and for which a grant is awarded to a community applicant in accordance with section 26-18-105.

(4.5) “Family support and parent education” means a program or service that promotes a family’s positive and meaningful engagement in its children’s lives by providing an experiential and supportive adult learning environment through which a primary caregiver can learn how to create a safe, stable, and supportive family unit.

(5) “Local advisory council” means the body that oversees the operation of the family resource center and which is described in section 26-18-105 (1) (b).

(6) Repealed.

Source: **L. 93:** Entire article added, p. 1901, § 1, effective July 1. **L. 2000:** (6) repealed, p. 583, § 2, effective May 18. **L. 2001:** Entire section amended, p. 247, § 2, effective March 29. **L. 2004:** (3.5) amended, p. 114, § 4, effective August 4. **L. 2009:** (4.5) added, (SB 09-055), ch. 48, p. 172, § 2, effective March 20.

26-18-103. State council created - powers and duties - report. (Repealed)

Source: **L. 93:** Entire article added, p. 1902, § 1, effective July 1. **L. 94:** (1)(a), (2), and (4) amended, pp. 2613, 2635, §§ 17, 71, effective July 1. **L. 97:** (1)(b), (4), (6), and (7) amended, p. 1115, § 2, effective May 28. **L. 2000:** Entire section repealed, p. 583, § 3, effective May 18.

26-18-104. Program created. (1) (a) There is hereby established in the prevention services division in the department of public health and environment a family resource center program. The purposes of said program shall be to provide grants to community applicants for the creation of family resource centers or to provide grants to family resource centers for the continued operation of such centers through which services for vulnerable families, individuals, children, and youth who live in communities or in at-risk neighborhoods are accessible and coordinated through a single point of entry.

(b) The division shall operate the family resource center program in accordance with the provisions of this article, the requirements for prevention, intervention, and treatment programs specified in article 20.5 of title 25, C.R.S., and the rules for prevention, intervention, and treatment programs adopted by the state board of health pursuant to section 25-20.5-106, C.R.S. In addition, the division may establish any other procedures necessary to implement the program, including establishing the procedure for the submittal of grant applications by community applicants seeking to establish a family resource center or by a family resource center applying for a grant for continued operation of a family resource center.

(c) (I) The family resource center program may receive direct appropriations from the state general fund.

(II) Any moneys received by family resource centers pursuant to the temporary assistance for needy families block grant or from the family issues cash fund created in section 26-5.3-106 shall be from funds directly disbursed by a county at the discretion of the county; except that a family resource center may apply for and receive moneys from the Colorado works statewide strategic use fund pursuant to section 26-2-721.7.

Editor's note: This version of subparagraph (II) is effective until April 1, 2013.

(II) Any moneys received by family resource centers pursuant to the temporary assistance for needy families block grant or from the family issues cash fund created in section 26-5.3-106 shall be from funds directly disbursed by a county at the discretion of the county.

Editor's note: This version of subparagraph (II) is effective April 1, 2013.

(III) The division is authorized to accept and expend any grants from any public or private source for the purpose of making grants to community applicants for the establishment or continued operation of family resource centers and for the purpose of evaluating the effectiveness of the family resource center program. Nothing in this article shall be construed to prohibit a family resource center from accepting and expending funds received through an authorized contract, grants, or donations from public or private sources.

(2) (a) Services provided by a family resource center shall be coordinated and services should reflect the needs of the community and the resources available to support such programs and services. Services may be delivered directly to a family at the center by center staff or by providers who contract with or have provider agreements with the center. Any family resource center that provides direct services shall comply with applicable state and federal laws and regulations regarding the delivery of such services, unless required waivers or exemptions have been granted by the appropriate governing body.

(b) Each family resource center shall provide case management by a family advocate who screens and assesses a family's needs and strengths. The family advocate shall then assist the family with setting its own goals and, together with the family, develop a written plan to pursue the family's goals in working toward a greater level of self-reliance or in attaining self-sufficiency. The plan shall provide for the following:

(I) A negotiated agreement that includes reciprocal responsibilities of the individual or family members and the personnel of each human service agency providing services to the family;

(II) A commitment of resources as available and necessary to meet the family's plan;

(III) The delivery of applicable services to the individual or family, if feasible, or referral to an appropriate service provider;

(IV) The coordination of services;

(V) The monitoring of the progress of the family toward greater self-reliance or self-sufficiency and an evaluation of services provided; and

(VI) Assistance to the individual or family in applying for the children's basic health plan, medical assistance benefits, or other benefits.

(c) In addition to services required by paragraph (b) of this subsection (2), the family resource center may provide for the direct delivery of or referral to a provider of the following six services:

(I) Early childhood care and education, including programs that contribute to school readiness;

(II) Family support and parent education;

(III) Well child check-ups and basic health services;

(IV) Early intervention for identifying infants, toddlers, and preschoolers who are developmentally disabled in order to provide necessary services to such children;

(V) Before and after school care;

(VI) Programs for children and youth.

(d) A family resource center may also provide services, including, but not limited to, the following:

(I) Additional educational programs, such as mentoring programs for students in elementary, junior, and senior high schools; adult education and family literacy programs; and educational programs that link families with local schools and alternative educational programs, including links with boards of cooperative services;

(II) Job skills training and self-sufficiency programs for adults and youth;

(III) Social, health, mental health, and child welfare services and housing, homeless, food and nutrition, domestic violence support, recreation, and substance abuse services;

(IV) Outreach, education, and support programs, including programs aimed at preventing teen pregnancies and school dropouts and programs providing parent support and advocacy;

(V) Transportation services to obtain other services provided pursuant to this subsection (2).

(e) (Deleted by amendment, L. 2000, p. 583, § 4, effective May 18, 2000.)

Source: **L. 93:** Entire article added, p. 1903, § 1, effective July 1. **L. 97:** (1) amended, p. 1116, § 3, effective May 28. **L. 2000:** (1) and (2)(e) amended, p. 583, § 4, effective May 18. **L. 2001:** Entire section amended, p. 247, § 3, effective March 29. **L. 2004:** (1)(a) amended, p. 114, § 5, effective August 4. **L. 2007:** (1)(c) amended, p. 1478, § 1, effective August 3. **L. 2009:** (1)(c)(II), IP(2)(b), (2)(b)(VI), (2)(c)(I), (2)(c)(II), and (2)(d)(I) amended, (SB 09-055), ch. 48, p. 172, § 3, effective March 20. **L. 2012:** (1)(c)(II) amended, (HB 12-1341), ch. 155, p. 555, § 5, effective April 1, 2013.

26-18-105. Selection of centers - grants. (1) The division may award a grant for the purpose of establishing a family resource center based on a plan submitted to the division by the applicant or for the continued operation of a family resource center. The plan shall meet specific criteria which the division is hereby authorized to set, but the criteria shall include at least the following provisions:

(a) That members of the community will participate in the development and implementation of the family resource center;

(b) That the center shall be governed by a local advisory council comprised of community representatives such as:

(I) Families living in the community;

(II) Local public or private service provider agencies;

(III) Local job skills training programs, if any;

(IV) Local governing bodies;

(V) Local businesses serving families in the community; and

(VI) Local professionals serving families in the community;

(c) That the advisory council shall establish rules concerning the operation of the family resource center, including provisions for staffing;

(d) That services provided by the family resource center shall be coordinated and tailored to the specific needs of individuals and families who live in the community;

(e) That the family resource center will:

(I) Promote and support, not supplant, successful individual and family functioning and increase the recognition of the importance of successful individuals and families in the community;

(II) Contribute to the strength of family ties;

(III) Establish programs that focus on the needs of family members, such as preschool programs, family preservation programs, and teenage pregnancy prevention programs, and assist the individual or family in moving toward greater self-sufficiency;

(IV) Recognize the diversity of families within the community;

(V) Support family stability and unity;

(VI) Treat families as partners in providing services;

(VII) Encourage intergovernmental cooperation and a community-based alliance between government and the private sector. Such cooperation may include but not be limited to the pooling of public and private funds available to state agencies upon appropriation or transfer by the general assembly.

(VIII) Provide programs that reduce institutional barriers related to categorical funding and eligibility requirements;

(IX) Make information regarding available resources and services readily accessible to individuals and families;

(X) Coordinate efforts of public and private entities to connect families to services and supports that encourage the development of early childhood and other family support systems; and

(f) That the family resource center shall coordinate the provision of services and shall pool the resources of providers of services to aid in funding and operating the center.

(2) The local advisory council for a community applicant awarded a grant pursuant to subsection (1) of this section shall evaluate the overall effectiveness of the family resource center annually and shall submit an annual report to the division in accordance with section 25-20.5-108, C.R.S.

(3) In the event the division determines, from any report submitted by a local advisory council or any other source, that the operation of a family resource center is not in compliance with this article or any rule adopted pursuant to the provisions of this article, the division may impose sanctions including termination of the grant.

Source: **L. 93:** Entire article added, p. 1905, § 1, effective July 1. **L. 2000:** IP(1), (2), and (3) amended, p. 584, § 5, effective May 18. **L. 2001:** Entire section amended, p. 250, § 4, effective March 29. **L. 2009:** (1)(e)(IX) amended and (1)(e)(X) added, (SB 09-055), ch. 48, p. 173, § 4, effective March 20.

26-18-106. Repeal of article. (Repealed)

Source: **L. 93:** Entire article added, p. 1906, § 1, effective July 1. **L. 97:** Entire section amended, p. 1116, § 4, effective May 28. **L. 2000:** Entire section amended, p. 585, § 6, effective May 18. **L. 2009:** Entire section repealed, (SB 09-055), ch. 48, p. 174, § 5, effective March 20.

ARTICLE 19
Children’s Basic Health Plan

26-19-101 to 26-19-113. (Repealed)

Source: **L. 2006:** Entire article repealed, p. 1997, § 27, effective July 1.

Editor’s note: This article was added in 1997. For amendments to this article prior to its repeal in 2006, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. The provisions of this article were relocated to article 8 of title 25.5. For the location of specific provisions, see the editor’s notes following each section in said article and the comparative tables located in the back of the index.

Cross references: For current provisions concerning the children’s basic health plan, see article 8 of title 25.5.

ARTICLE 20
Protection of Persons from Restraint

26-20-101.	Short title.	26-20-104.	Duties relating to use of re-
26-20-102.	Definitions.		straint.
26-20-103.	Basis for use of restraint.	26-20-105.	Staff training.

26-20-106.	Documentation requirements.	26-20-108.	Rules.
26-20-107.	Review of the use of re- straint.	26-20-109.	Limitations.

26-20-101. Short title. This article shall be known and may be cited as the “Protection of Persons from Restraint Act”.

Source: L. 99: Entire article added, p. 377, § 1, effective April 22.

26-20-102. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) “Agency” means:

(I) Any one of the principal departments of state government created in article 1 of title 24, C.R.S., or any division, section, unit, office, or agency within one of such principal departments of state government, except as excluded in paragraph (b) of this subsection (1);

(II) Any county, city and county, municipality, school district, or other political subdivision of the state or any department, division, section, unit, office, or agency of such county, city and county, municipality, school district, or other political subdivision of the state;

(III) Any public or private entity that has entered into a contract for services with an entity described in subparagraph (I) or (II) of this paragraph (a);

(IV) Any public or private entity licensed or certified by one of the entities described in subparagraph (I) or (II) of this paragraph (a);

(V) A person regulated pursuant to article 43 of title 12, C.R.S.

(b) “Agency” does not include:

(I) The department of corrections or any public or private entity that has entered into a contract for services with such department;

(II) Any law enforcement agency of the state or of a political subdivision of the state;

(III) A juvenile probation department or division authorized pursuant to section 19-2-204, C.R.S.;

(IV) Any county department of social services when engaged in performance of duties pursuant to part 3 of article 3 of title 19, C.R.S.

(2) “Chemical restraint” means giving an individual medication involuntarily for the purpose of restraining that individual; except that “chemical restraint” does not include the involuntary administration of medication pursuant to section 27-65-111 (5), C.R.S., or administration of medication for voluntary or life-saving medical procedures.

(3) “Emergency” means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm.

(4) “Mechanical restraint” means a physical device used to involuntarily restrict the movement of an individual or the movement or normal function of a portion of his or her body.

(5) “Physical restraint” means the use of bodily, physical force to involuntarily limit an individual’s freedom of movement; except that “physical restraint” does not include the holding of a child by one adult for the purposes of calming or comforting the child.

(6) “Restraint” means any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, or chemicals. “Restraint” includes a chemical restraint, a mechanical restraint, a physical restraint, and seclusion. “Restraint” does not include:

(a) The use of any form of restraint in a licensed or certified hospital when such use:

(I) Is in the context of providing medical or dental services that are provided with the consent of the individual or the individual’s guardian; and

(II) Is in compliance with industry standards adopted by a nationally recognized accrediting body or the conditions of participation adopted for federal medicare and medicaid programs;

(b) The use of protective devices or adaptive devices for providing physical support, prevention of injury, or voluntary or life-saving medical procedures;

(c) The holding of an individual for less than five minutes by a staff person for protection of the individual or other persons;

- (d) Placement of an inpatient or resident in his or her room for the night; or
- (e) The use of time-out as may be defined by written policies, rules, or procedures of an agency.
- (7) "Seclusion" means the placement of a person alone in a room from which egress is involuntarily prevented.

Source: L. 99: Entire article added, p. 377, § 1, effective April 22. L. 2004: (1)(a)(V) added, p. 920, § 28, effective July 1. L. 2010: (2) amended, (SB 10-175), ch. 188, p. 805, § 79, effective April 29.

26-20-103. Basis for use of restraint. (1) Subject to the provisions of this article, an agency may only use restraint:

- (a) In cases of emergency; and
- (b) (I) After the failure of less restrictive alternatives; or
- (II) After a determination that such alternatives would be inappropriate or ineffective under the circumstances.
- (2) An agency that uses restraint pursuant to the provisions of subsection (1) of this section shall use such restraint:
 - (a) For the purpose of preventing the continuation or renewal of an emergency;
 - (b) For the period of time necessary to accomplish its purpose; and
 - (c) In the case of physical restraint, using no more force than is necessary to limit the individual's freedom of movement.

(3) In addition to the circumstances described in subsection (1) of this section, a facility, as defined in section 27-65-102 (7), C.R.S., that is designated by the executive director of the department of human services to provide treatment pursuant to section 27-65-105, 27-65-106, 27-65-107, or 27-65-109, C.R.S., to a person with mental illness, as defined in section 27-65-102 (14), C.R.S., may use seclusion to restrain a person with a mental illness when the seclusion is necessary to eliminate a continuous and serious disruption of the treatment environment.

(4) (a) The general assembly recognizes that skilled nursing and nursing care facilities that participate in federal medicaid programs are subject to federal statutes and regulations concerning the use of restraint in such facilities that afford protections from restraint in a manner consistent with the purposes and policies set forth in this article.

(b) If the use of restraint in skilled nursing and nursing care facilities licensed under state law is in accordance with the federal statutes and regulations governing the medicare program set forth in 42 U.S.C. sec. 1395i-3(c) and 42 CFR part 483, subpart B and the medicaid program set forth in 42 U.S.C. sec. 1396r(c) and 42 CFR part 483, subpart B and with the rules of the department of public health and environment relating to the licensing of these facilities, there shall be a conclusive presumption that such use of restraint is in accordance with the provisions of this article.

(5) (a) The general assembly recognizes that article 10.5 of title 27, C.R.S., and the rules promulgated pursuant to the authority set forth in that article, address the use of restraint on a person with a developmental disability.

(b) If any provision of this article concerning the use of restraint conflicts with any provision concerning the use of restraint stated in article 10.5 of title 27, C.R.S., or any regulation adopted pursuant thereto, the provision of article 10.5 of title 27, C.R.S., or the regulation adopted pursuant thereto shall prevail.

(6) The provisions of this article shall not apply to any agency while engaged in transporting a person from one facility or location to another facility or location when it is within the scope of that agency's powers and authority to effect such transportation.

Source: L. 99: Entire article added, p. 379, § 1, effective April 22. L. 2006: (3) amended, p. 1389, § 20, effective August 7. L. 2010: (3) amended, (SB 10-175), ch. 188, p. 805, § 80, effective April 29.

26-20-104. Duties relating to use of restraint. (1) Notwithstanding the provisions of section 26-20-103, an agency that uses restraint shall ensure that:

(a) At least every fifteen minutes, staff shall monitor any individual held in mechanical restraints to assure that the individual is properly positioned, that the individual's blood circulation is not restricted, that the individual's airway is not obstructed, and that the individual's other physical needs are met;

(b) No physical or mechanical restraint of an individual shall place excess pressure on the chest or back of that individual or inhibit or impede the individual's ability to breathe;

(c) During physical restraint of an individual, an agent or employee of the agency shall check to ensure that the breathing of the individual in such physical restraint is not compromised;

(d) A chemical restraint shall be given only on the order of a physician or an advanced practice nurse with prescriptive authority who has determined, either while present during the course of the emergency justifying the use of the chemical restraint or after telephone consultation with a registered nurse, licensed physician assistant, or other authorized staff person who is present at the time and site of the emergency and who has participated in the evaluation of the individual, that such form of restraint is the least restrictive, most appropriate alternative available. Nothing in this subsection (1) shall modify the requirements of section 26-20-102 (2) or 26-20-103 (3).

(e) An order for a chemical restraint, along with the reasons for its issuance, shall be recorded in writing at the time of its issuance;

(f) An order for a chemical restraint shall be signed at the time of its issuance by such physician if present at the time of the emergency;

(g) An order for a chemical restraint, if authorized by telephone, shall be transcribed and signed at the time of its issuance by an individual with the authority to accept telephone medication orders who is present at the time of the emergency;

(h) Staff trained in the administration of medication shall make notations in the record of the individual as to the effect of the chemical restraint and the individual's response to the chemical restraint.

(2) For individuals in mechanical restraints, agency staff shall provide relief periods, except when the individual is sleeping, of at least ten minutes as often as every two hours, so long as relief from the mechanical restraint is determined to be safe. During such relief periods, the staff shall ensure proper positioning of the individual and provide movement of limbs, as necessary. In addition, during such relief periods, staff shall provide assistance for use of appropriate toileting methods, as necessary. The individual's dignity and safety shall be maintained during relief periods. Staff shall note in the record of the individual being restrained the relief periods granted.

(3) Relief periods from seclusion shall be provided for reasonable access to toilet facilities.

(4) An individual in physical restraint shall be released from such restraint within fifteen minutes after the initiation of physical restraint, except when precluded for safety reasons.

Source: L. 99: Entire article added, p. 380, § 1, effective April 22. L. 2001: (1)(d) amended, p. 185, § 18, effective August 8. L. 2008: (1)(d) amended, p. 135, § 26, effective January 1, 2009.

26-20-105. Staff training. (1) All agencies shall ensure that staff utilizing restraint in facilities or programs are trained in the appropriate use of restraint.

(2) All agencies shall ensure that staff are trained to explain, where possible, the use of restraint to the individual who is to be restrained and to the individual's family if appropriate.

Source: L. 99: Entire article added, p. 381, § 1, effective April 22.

26-20-106. Documentation requirements. Each agency shall ensure that an appropriate notation of the use of restraint is documented in the record of the individual restrained.

Each agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions specifying the documentation requirements for purposes of this section.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

26-20-107. Review of the use of restraint. Each agency shall ensure that a review process is established for the appropriate use of restraint.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

26-20-108. Rules. Each agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions that establish procedures for the use of restraint consistent with the provisions of this article. Any agency that has rules or ordinances in existence on April 22, 1999, is not required to promulgate additional rules or adopt additional ordinances unless that agency’s existing rules or ordinances do not meet the minimum requirements of this article.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

26-20-109. Limitations. (1) Nothing in this article shall be deemed to form an independent basis of statutory authority for the use of restraint.

(2) Nothing in this article shall be deemed to authorize an agency to implement policies, procedures, or standards or promulgate rules or adopt ordinances that would limit, decrease, or adversely impact any policies, procedures, standards, rules, or ordinances in effect on April 22, 1999, that provided greater protection concerning the use of restraint than is set forth in this article.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

ARTICLE 21

Colorado Commission for the
Deaf and Hard of Hearing

26-21-101.	Short title.		grants, and donations - re-imbursement.
26-21-102.	Legislative declaration.		
26-21-103.	Definitions.	26-21-107.5.	Colorado commission for the deaf and hard of hearing
26-21-104.	Commission created - appointments.		grant program - creation - standards - applications.
26-21-105.	Procedures of the commission.	26-21-107.7.	Colorado commission for the deaf and hard of hearing
26-21-106.	Powers, functions, and duties of the commission - equipment distribution program.		grant program subcommittee - members - duties - fund - creation.
26-21-107.	Colorado commission for the deaf and hard of hearing cash fund - creation - gifts,	26-21-108.	Repeal of article - sunset review.

26-21-101. Short title. This article shall be known and may be cited as the “Colorado Commission for the Deaf and Hard of Hearing Act”.

Source: L. 2000: Entire article added, p. 1624, § 1, effective June 1.

26-21-102. Legislative declaration. The general assembly hereby finds, determines, and declares that a commission for the deaf and hard of hearing would facilitate the

provision of general governmental services to the deaf and hard of hearing community while making government more efficient. Under the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101, Colorado has a duty to provide to the deaf and hard of hearing equivalent access to governmental services. This duty requires state departments and agencies to provide auxiliary services, telecommunications equipment, and other resources in order to enable access for the deaf and hard of hearing community. Centralizing and unifying such resources under a commission has the potential to create cost savings for both the state and the deaf and hard of hearing community. In addition, such consolidation of resources will facilitate quality control, and thus increase the quality of governmental services while increasing access by the deaf and hard of hearing community to those services.

Source: L. 2000: Entire article added, p. 1624, § 1, effective June 1. **L. 2009:** Entire section amended, (SB 09-144), ch. 219, p. 985, § 1, effective August 5.

26-21-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Administrator" means the person who is responsible for the overall management and development of the commission office and of programs included in the commission's statutory duties.

(2) "Auxiliary services" means qualified interpreters, communication access realtime translation providers, assistive listening devices or systems, and other effective methods of making spoken or written information available to deaf or hard of hearing individuals.

(3) "Commission" means the Colorado commission for the deaf and hard of hearing.

(4) "Fund" means the Colorado commission for the deaf and hard of hearing cash fund created in section 26-21-107.

(5) "Grant program" means the Colorado commission for the deaf and hard of hearing grant program created in section 26-21-107.5.

(6) "Late deafened" means a person whose hearing loss began in late childhood, adolescence, or adulthood, after the person acquired oral language skills.

(7) "State court system" means the system of courts, or any part thereof, established pursuant to articles 1 to 9 of title 13, C.R.S., and article VI of the state constitution. "State court system" shall not include the municipal courts or any part thereof.

(8) "Telecommunications" means the science and technology of transmitting voice, audio, facsimile, image, video, computer data, and multimedia information over significant distances by the use of electromagnetic energy in the form of electricity, radio, or fiber optics.

Source: L. 2000: Entire article added, p. 1625, § 1, effective June 1. **L. 2009:** Entire section amended, (SB 09-144), ch. 219, p. 985, § 2, effective August 5. **L. 2011:** (7) amended, (HB 11-1303), ch. 264, p. 1171, § 79, effective August 10.

26-21-104. Commission created - appointments. (1) Effective July 1, 2000, there is hereby created the Colorado commission for the deaf and hard of hearing in the department of human services. The Colorado commission for the deaf and hard of hearing shall exercise its powers, duties, and functions under the department of human services as if it were transferred to said department by a **type 2** transfer under the provisions of the "Administrative Organization Act of 1968".

(2) The commission shall consist of seven members as follows:

(a) One member who is deaf;

(b) One member who is hard of hearing;

(c) One member who is a professional in the field of deafness;

(d) One member who is a parent of a deaf or hard of hearing person;

(e) One member who is late deafened;

(f) One member who is an interpreter for the deaf or hard of hearing and who is qualified to use at least one of the titles listed in section 6-1-707 (1) (e), C.R.S.; and

(g) One member who is a member of the public.

(3) (a) The governor, with the consent of the senate, shall appoint the commission members referenced in subsection (2) of this section. Beginning July 1, 2000, four of these commission members shall serve initial terms of four years, and three shall serve initial terms of six years. After the initial appointments of the commission members referenced in subsection (2) of this section, all subsequent appointees shall serve terms of four years.

(b) The governor shall appoint a qualified person to fill any vacancy on the commission for the remainder of any unexpired term.

(4) At least ninety days prior to the expiration of a member's term of office, the commission shall create a list of nominees. The nominees' names shall be submitted to the governor at least forty-five days prior to the expiration of the preceding term for which the nominees are being considered. If the governor approves the nominees, the governor shall appoint one of the nominees for each open position within ninety days after the date of each vacancy; otherwise, the governor shall appoint qualified persons in consultation with the commission.

Source: L. 2000: Entire article added, p. 1625, § 1, effective June 1. L. 2009: (2)(c), (2)(f), and (4) amended, (SB 09-144), ch. 219, p. 986, § 3, effective August 5.

26-21-105. Procedures of the commission. (1) The executive director of the department of human services or his or her designee shall appoint the administrator of the Colorado commission for the deaf and hard of hearing. The members of the commission may interview candidates for administrator and provide comment and input to the executive director on the hiring of a candidate.

(2) (a) The commission shall convene for its first meeting no later than September 1, 2000. At the first meeting, a chair shall be elected by the commission.

(b) The commission may adopt such policies as are necessary to facilitate orderly conduct of its business.

(c) The commission shall meet at least quarterly. Meetings shall also be held on call of the chair or at the request of at least three members of the commission.

(d) The commission shall adopt no official position, recommendation, or action except by the concurrence of a majority of the members.

(e) The commission shall encourage development and coordination of public and private agencies that provide assistance to deaf and hard of hearing citizens.

(3) and (4) (Deleted by amendment, L. 2009, (SB 09-144), ch. 219, p. 987, § 4, effective August 5, 2009.)

Source: L. 2000: Entire article added, p. 1626, § 1, effective June 1. L. 2009: Entire section amended, (SB 09-144), ch. 219, p. 987, § 4, effective August 5.

26-21-106. Powers, functions, and duties of the commission - equipment distribution program. (1) The powers, functions, and duties of the commission shall include, but not be limited to, the following:

(a) The commission shall serve as a liaison between the deaf and hard of hearing community and the general assembly, governor, and Colorado departments and agencies.

(b) The commission shall serve as an informational resource to the state, the deaf and hard of hearing community, private agencies, and other entities.

(c) The commission shall serve as a referral agency for the deaf and hard of hearing community to the state agencies and institutions providing services to the community, local agencies of government, private agencies, and other entities.

(d) The commission shall assess how technology has affected the needs of the deaf and hard of hearing community. The commission shall assess the type and amount of equipment needed by low-income deaf and hard of hearing persons in order to reasonably interact with society.

(e) The commission shall assess the needs of the deaf and hard of hearing community and recommend to the general assembly any legislation that may facilitate and streamline the provision of general governmental services to the deaf and hard of hearing community. The commission shall consider the following:

(I) Implementing the commission as a statewide coordinating agency that advocates for deaf and hard of hearing citizens of Colorado;

(II) Any methods, programs, or policies that may improve communication accessibility and quality of existing services, promote or deliver necessary new services, and assist state agencies in the delivery of services to the deaf and hard of hearing;

(III) Any methods, programs, or policies that may make providing access to governmental services more efficient;

(IV) Any methods, programs, or policies that may improve implementation of state policies affecting the deaf and hard of hearing community and their relationship with the general public, industry, health care, and educational institutions.

(2) The commission shall consider the findings of any study authorized under this section and may approve, disapprove, or amend such findings. Upon approval of the findings, the commission shall submit a report with recommendations including proposed legislation, if necessary, to the governor and to the general assembly.

(3) The commission shall establish a telecommunications equipment distribution program that is consistent with the findings of subsection (1) of this section to obtain and distribute interactive telecommunications equipment needed by deaf and hard of hearing persons.

(4) The commission, in collaboration with the judicial department, shall arrange for auxiliary services for the state court system, and establish, monitor, coordinate, and publish a list of available resources regarding communication accessibility for persons who are deaf or hard of hearing.

(5) Arranging auxiliary services for the state court system includes, but is not limited to:

(a) Coordinating statewide and day-to-day scheduling of auxiliary services for the proceedings as defined by statute;

(b) Creating and managing a process by which requests from the state court system for auxiliary services may be filed;

(c) Identifying, coordinating, and placing the appropriate auxiliary services with all concerned parties;

(d) Coordinating the purchase, shipment, and receipt of assistive listening devices and systems pursuant to applicable state rules;

(e) Creating and managing efficient and consistent processes through which auxiliary service providers may submit required documentation and receive payment for services; and

(f) Communicating among auxiliary service users and providers and the state court system to resolve any issues that may arise.

(6) The commission shall establish and maintain an active system navigator specialist for technical assistance to improve and ensure equivalent access to auxiliary services by critical state and local government agencies, private agencies, and other entities and to increase awareness of the programs for and rights of deaf and hard of hearing individuals from moneys appropriated by the general assembly from the Colorado disabled telephone users fund established pursuant to section 40-17-104, C.R.S.

(7) The system navigator specialist for technical assistance shall perform the following duties:

(a) Respond to and assist individuals who have encountered barriers in obtaining accommodation and access in their efforts to receive necessary auxiliary services;

(b) Assist individuals in understanding and accessing auxiliary services that may be available to them;

- (c) Ensure that state agencies and private entities are equipped to provide accommodations to deaf and hard of hearing individuals;
- (d) Increase public awareness of the needs and issues facing deaf and hard of hearing individuals; and
- (e) Develop and maintain a comprehensive resource directory of auxiliary services and programs that may be of use to deaf and hard of hearing citizens and to agencies that serve them.

Source: L. 2000: Entire article added, p. 1626, § 1, effective June 1. L. 2002: (3) added, p. 776, § 1, effective May 30. L. 2006: (4) added, p. 1090, § 10, effective May 25. L. 2009: Entire section amended, (SB 09-144), ch. 219, p. 987, § 5, effective August 5.

26-21-107. Colorado commission for the deaf and hard of hearing cash fund - creation - gifts, grants, and donations - reimbursement. (1) There is hereby created in the state treasury the Colorado commission for the deaf and hard of hearing cash fund, and all moneys credited to the fund shall be used exclusively for the administration and discharge of this article. All moneys credited to the fund and any interest earned on the fund shall remain in the fund and shall not revert to the general fund or any other fund at the end of any fiscal year.

(2) The commission, subject to spending authority granted by the general assembly, is authorized to receive and expend gifts, grants, and donations from individuals, private organizations, foundations, or any governmental unit; except that no gift, grant, or donation may be accepted by the commission if it is subject to conditions that are inconsistent with this article or any other law of this state.

(3) Commission members shall be reimbursed for actual and necessary expenses incurred in the discharge of their official duties, including an allowance for mileage as provided in section 24-9-104 (2), C.R.S. The commission may establish a standardized per diem designed to cover the actual expenses of the members pursuant to this subsection (3).

Source: L. 2000: Entire article added, p. 1627, § 1, effective June 1. L. 2002: (1) amended, p. 776, § 2, effective May 30. L. 2009: (1) and (2) amended, (SB 09-144), ch. 219, p. 990, § 6, effective August 5.

26-21-107.5. Colorado commission for the deaf and hard of hearing grant program - creation - standards - applications. (1) The Colorado commission for the deaf and hard of hearing grant program is hereby established to provide funding for entities to address the needs of Colorado's deaf and hard of hearing community.

(2) (a) The Colorado commission for the deaf and hard of hearing grant program subcommittee appointed pursuant to section 26-21-107.7 shall administer the grant program as provided in section 26-21-107.7.

(b) The commission shall pay the grants awarded through the grant program from moneys appropriated by the general assembly.

(c) Beginning in the 2009-10 fiscal year, and for each fiscal year thereafter subject to available moneys, the general assembly shall appropriate to the commission no more than fifty thousand dollars annually to administer the grant program.

(3) The state department shall adopt rules addressing timelines and guidelines for the grant program and establishing criteria for approving or disapproving grant applications.

(4) An entity seeking to provide services to deaf or hard of hearing persons or to enhance existing deaf or hard of hearing programs may apply for a grant through the grant program.

(5) For purposes of this section, "entity" means a local government, state agency, state-operated program, or private nonprofit or not-for-profit community-based organization.

(6) Grants shall be awarded as provided in section 26-21-107.7 (3) and in compliance with applicable state rules.

(7) Grantees shall comply with reporting requirements established by the commission.

Source: L. 2009: Entire section added, (SB 09-144), ch. 219, p. 990, § 7, effective August 5.

26-21-107.7. Colorado commission for the deaf and hard of hearing grant program subcommittee - members - duties - fund - creation. (1) (a) There is hereby created the Colorado commission for the deaf and hard of hearing grant program subcommittee, referred to in this section as the “subcommittee”, consisting of five members, for the purpose of recommending to the commission approval or disapproval of applications for the grant program. The commission shall appoint four members to the subcommittee as follows:

(I) One person who has knowledge and awareness of the issues faced by deaf persons;

(II) One person who has knowledge and awareness of the issues faced by hard of hearing persons; and

(III) Two representatives from the deaf and hard of hearing community.

(b) In addition to the appointed subcommittee members, the administrator of the commission shall serve as an ex-officio member of the subcommittee.

(c) In appointing members to the subcommittee, the commission shall choose persons who have knowledge and awareness of innovative strategies that address challenges faced by the deaf and hard of hearing community.

(d) The appointed members of the subcommittee shall serve three-year terms; except that, of the members first appointed, one of the members shall serve a two-year term and two of the members shall serve one-year terms. The commission shall choose those members who shall serve the initial shortened terms. If a vacancy arises in one of the appointed positions, the commission shall fill the vacancy and appoint a replacement to fill the vacancy for the remainder of the term.

(e) Members of the subcommittee shall serve without compensation but shall be reimbursed out of available appropriations for all actual and necessary expenses incurred in the performance of their duties.

(f) The subcommittee may meet via telecommunications when necessary.

(2) The subcommittee shall review all applications received pursuant to section 26-21-107.5. Based on criteria established by the commission, the subcommittee shall recommend to the commission those applications to approve, with recommended grant amounts, and those to disapprove.

(3) The commission shall review and may follow the recommendations of the subcommittee for approval or disapproval of applications for the grant program and for grant amounts. If the commission disagrees with the recommendations of the subcommittee, the executive director of the department shall have final decision-making authority to approve or disapprove the applications and to set the grant amounts.

Source: L. 2009: Entire section added, (SB 09-144), ch. 219, p. 991, § 7, effective August 5.

26-21-108. Repeal of article - sunset review. (1) This article is repealed, effective July 1, 2015.

(2) Prior to such repeal, the commission shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2000: Entire article added, p. 1628, § 1, effective June 1. **L. 2010:** (1) amended, (HB 10-1255), ch. 132, p. 438, § 1, effective July 1.

ARTICLE 22**Integrated System of Care
Family Advocacy Demonstration Programs for
Mental Health Juvenile Justice Populations****26-22-101 to 26-22-106. (Repealed)**

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: (1) This article was added in 2007. For amendments to this article prior to its repeal in 2010, consult the 2009 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. The provisions of this article were relocated to article 69 of title 27. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

(2) Sections 26-22-101 through 26-22-104, amended by Senate Bill 10-014 and harmonized with Senate Bill 10-175, were renumbered and relocated to §§ 27-69-101 through 27-69-104 respectively.

(3) Section 26-22-105, amended by Senate Bill 10-014 and Senate Bill 10-213 and harmonized with Senate Bill 10-175, was renumbered and relocated to § 27-69-105.

TITLE 27
BEHAVIORAL HEALTH

THE

REPOSITORY OF THE

TITLE 27

BEHAVIORAL HEALTH

DEPARTMENT OF HUMAN SERVICES

- Art. 1. Department of Human Services (Repealed).
- Art. 2. General Administrative Provisions (Repealed).

MENTAL ILLNESS AND DEFECTS

General Provisions

- Art. 9. Commitment and General Provisions (Repealed).
- Art. 10. Care and Treatment of Persons with Mental Illness (Repealed).
- Art. 10.3. Child Mental Health Treatment Act (Repealed).
- Art. 10.5. Care and Treatment of the Developmentally Disabled, 27-10.5-101 to 27-10.5-1001.
- Art. 11. Community Centers - Mentally Retarded and Handicapped (Repealed).
- Art. 12. Charges for Patients (Repealed).

Institutions

- Art. 13. Colorado Mental Health Institute at Pueblo (Repealed).
- Art. 14. Homes for Mental Defectives (Repealed).
- Art. 15. Colorado Mental Health Institute at Fort Logan (Repealed).
- Art. 16. Western Regional Mental Health Center (Repealed).

CORRECTIONS

- Art. 20. Penitentiary (Repealed).
- Art. 21. Women's Correctional Institution (Repealed).
- Art. 22. Reformatory (Repealed).
- Art. 23. Mentally Ill or Retarded Convicts - Transfer (Repealed).
- Art. 24. Convict Labor and Goods (Repealed).
- Art. 25. Correctional Industries (Repealed).
- Art. 26. Jails (Repealed).
- Art. 27. Community Correctional Facilities and Programs (Repealed).
- Art. 28. Restitution to Victims of Crime (Repealed).

OTHER INSTITUTIONS

- Art. 35. School for the Deaf and the Blind (Repealed).

COLORADO DIAGNOSTIC PROGRAM

- Art. 40. Colorado Diagnostic Program (Repealed).

BEHAVIORAL HEALTH

- Art. 60. General Provisions, 27-60-101.
- Art. 61. Behavioral Health Transformation Council, 27-61-101 and 27-61-102.

MENTAL HEALTH

- Art. 65. Care and Treatment of Persons with Mental Illness, 27-65-101 to 27-65-131.
- Art. 66. Community Mental Health Services - Purchase, 27-66-101 to 27-66-109.

- Art. 67. Child Mental Health Treatment Act, 27-67-101 to 27-67-108.
Art. 68. Mental Health Services Pilot Program for Families of Discharged Veterans of Operation Enduring Freedom and Operation Iraqi Freedom (Repealed).
Art. 69. Family Advocacy Mental Health Juvenile Justice Programs, 27-69-101 to 27-69-106.

ALCOHOL AND DRUG ABUSE

- Art. 80. Alcohol and Drug Abuse, 27-80-101 to 27-80-214.
Art. 81. Alcoholism and Intoxication Treatment, 27-81-101 to 27-81-117.
Art. 82. Drug Abuse Prevention, Education, and Treatment, 27-82-101 to 27-82-113.

INSTITUTIONS

- Art. 90. Institutions - Department of Human Services, 27-90-100.3 to 27-90-111.
Art. 91. Institutions - General Administrative Provisions, 27-91-101 to 27-91-109.
Art. 92. Institutions - Charges for Patients, 27-92-101 to 27-92-109.
Art. 93. Colorado Mental Health Institute at Pueblo, 27-93-101 to 27-93-105.
Art. 94. Colorado Mental Health Institute at Fort Logan, 27-94-101 to 27-94-105.

DEPARTMENT OF HUMAN SERVICES

ARTICLE 1

Department of Human Services

27-1-101 to 27-1-306. (Repealed)

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 11 of chapter 3, C.R.S. 1963. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to articles 66, 68, and 90 of this title. For the location of specific provisions, see the editor's notes following each section in said articles that were relocated and the comparative tables located in the back of the index.

ARTICLE 2

General Administrative Provisions

27-2-101 to 27-2-110. (Repealed)

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 3 of chapter 130, C.R.S. 1963. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to article 91 of this title. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

MENTAL ILLNESS AND DEFECTS**General Provisions****ARTICLE 9****Commitment and General Provisions****27-9-101 to 27-9-133. (Repealed)**

Editor's note: (1) This article was numbered as article 1 of chapter 71, C.R.S. 1963. This article was repealed on revision as obsolete, effective July 1, 1975. For pertinent information concerning this article, see (2) of this note.

(2) The article was repealed and reenacted in 1973 with an effective date of July 1, 1974. (See L. 73, p. 819.) Section 3 of chapter 67, Session Laws of Colorado 1974, changed the effective date of the repeal and reenactment from July 1, 1974, to July 1, 1975. (See L. 74, p. 287.) In compiling C.R.S. 1973, which was not available until 1974, two versions were printed. Article 1 of chapter 71, C.R.S. 1963, was reorganized and renumbered as article 9 of title 27 in the compilation of C.R.S. 1973 and contained the original version of article 1 of chapter 71 found in C.R.S. 1963 in effect until July 1, 1975. The repealed and reenacted version of article 1 of chapter 71, C.R.S. 1963, effective July 1, 1975, was renumbered as article 10 in the compilation of C.R.S. 1973 and replaced article 9. (For the version of article 1 of chapter 71 in effect until July 1, 1975, see article 9 of title 27 in the original volume of C.R.S. 1973, pages 381 through 398.) For a detailed comparison of the former article 9 prior to its repeal by revision in 1975, see the comparative tables located in the back of the index.

Cross references: For current provisions concerning care and treatment of persons with mental illness, see article 65 of this title.

ARTICLE 10**Care and Treatment of Persons
with Mental Illness****27-10-101 to 27-10-129. (Repealed)**

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 1 of chapter 71, C.R.S. 1963. This article replaced article 9 of this title, effective July 1, 1975. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the repeal of article 9 of this title. (For the version of article 1 of chapter 71 in effect July 1, 1975, see article 10 of title 27 in the original volume of C.R.S. 1973, pages 399 through 414.) The provisions of this article were relocated to article 65 of this title. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

ARTICLE 10.3**Child Mental Health Treatment Act****27-10.3-101 to 27-10.3-108. (Repealed)**

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was added in 1999. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. The provisions of this article were relocated to article 67 of this title. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

ARTICLE 10.5

Care and Treatment of the Developmentally Disabled

Cross references: For provisions concerning home- and community-based services for persons with developmental disabilities, see part 3 of article 6 of title 25.5.

PART 1

RIGHTS OF DEVELOPMENTALLY DISABLED		
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- 27-10.5-702. Definitions.
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- 27-10.5-705. Authorized services - conditions of funding - purchases of services - rules.
- 27-10.5-706. Coordinated system of payment for early intervention services - duties of departments.
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- 27-10.5-801. Pilot program - creation - goals - implementation - reporting.

PART 9

PART 10

STATE EMPLOYMENT OF PERSONS
WITH
DEVELOPMENTAL DISABILITIES

GENERAL PROVISIONS

27-10.5-1001. (Repealed)

- 27-10.5-901. Legislative declaration.
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 persons with disabilities -
 creation - rules.

PART 1

RIGHTS OF DEVELOPMENTALLY DISABLED

27-10.5-101. Legislative declaration. (1) In recognition of the varied, extensive, and substantial needs of persons with developmental disabilities, including the urgent need to enhance the development of children with developmental disabilities, the general assembly, subject to available appropriations and subject to the existence of appropriate services and supports with available resources, hereby declares that the purposes of this article are:

(a) To provide appropriate services and supports to persons with developmental disabilities throughout their lifetimes regardless of their age or degree of disability;

(b) To prohibit deprivation of liberty of persons with developmental disabilities, except when such deprivation is for the purpose of providing services and supports which constitute the least restrictive available alternative adequate to meet the person's needs, and to ensure that these services and supports afford due process protections;

(c) To ensure the fullest measure of privacy, dignity, rights, and privileges to persons with developmental disabilities;

(d) To ensure the provision of services and supports to all persons with developmental disabilities on a statewide basis;

(e) To enable persons with developmental disabilities to remain with their families and in their home communities, to minimize the likelihood of out-of-home placement, and to enhance the capacity of families to meet the needs of children with developmental disabilities;

(f) To provide community services and supports for persons with developmental disabilities which reflect typical patterns of everyday living;

(g) To encourage state and local agencies to provide a wide array of innovative and cost-effective services and supports for persons with developmental disabilities;

(h) To ensure that persons with developmental disabilities receive services and supports which encourage and build on existing social networks and natural sources of support, and result in increased interdependence, contribution, and inclusion in community life; and

(i) To recognize the efficacy of early intervention services and supports in minimizing developmental delays and reducing the future education costs to our society.

Source: L. 75: Entire article added, p. 906, § 1, effective July 1. L. 85: Entire section amended, p. 983, § 1, effective July 1. L. 92: Entire section amended, p. 1350, § 1, effective July 1.

ANNOTATION

The state has authority to enact legislation for the welfare of developmentally disabled citizens under its police powers. *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

Applied in *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978).

27-10.5-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Authorized representative" means an individual designated by the person receiv-

ing services, or by the parent or guardian of the person receiving services, if appropriate, to assist the person receiving services in acquiring or utilizing services or supports pursuant to this article. The extent of the authorized representative's involvement shall be determined upon designation.

(2) "Case management services" means the following:

- (a) The determination of eligibility for services and supports;
- (b) Service and support coordination; and
- (c) The monitoring of all services and supports delivered pursuant to the individualized plan, and the evaluation of results identified in the individualized plan.

(2.3) "Case manager" means an individual who assists with case management services and supports provided pursuant to this article for persons with developmental disabilities.

(2.5) (Deleted by amendment, L. 2008, p. 1442, § 1, effective August 5, 2008.)

(3) "Community centered board" means a private corporation, for profit or not for profit, that, when designated pursuant to section 27-10.5-105, provides case management services to persons with developmental disabilities, is authorized to determine eligibility of those persons within a specified geographical area, serves as the single point of entry for persons to receive services and supports under this article, and provides authorized services and supports to those persons either directly or by purchasing services and supports from service agencies.

(4) "Community residential home" means a group living situation accommodating at least four but no more than eight persons, licensed by the state, where services and supports are provided to persons with developmental disabilities.

(5) "Consent" means an informed assent that is expressed in writing and freely given. Consent shall always be preceded by the following:

- (a) A fair explanation of the procedures to be followed, including an identification of procedures that are experimental;
- (b) A description of the attendant discomforts and risks;
- (c) A description of the expected benefits;
- (d) A disclosure of appropriate alternative procedures together with an explanation of the respective benefits, discomforts, and risks;
- (e) An offer to answer any inquiries concerning procedures;
- (f) An instruction that the person giving consent is free to withdraw consent and to discontinue participation in the project or activity at any time; and
- (g) A statement that withholding or withdrawal of consent shall not prejudice future provision of appropriate services and supports to individuals.

(6) "Contribution" means the benefits gained by the household or community in which a person lives as the result of the person engaging in meaningful activities, including, but not limited to, income producing work, volunteer work, continuing education, and participation in community activities.

(7) "Court" means a district court of the state of Colorado or the probate court in the city and county of Denver.

(8) "Department" means the department of human services.

(9) "Designated service area" means the geographical area specified by the executive director to be served by a designated community centered board.

(10) "Developmental disabilities professional" means a person who has professional training and experience in the developmental disabilities field, as defined by the department.

(11) (a) "Developmental disability" means a disability that is manifested before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected individual, and that is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. sec. 15001 et seq. shall not apply.

(b) "Person with a developmental disability" means a person determined by a community centered board to have a developmental disability and shall include a child with a developmental delay.

(c) “Child with a developmental delay” means:

(I) A person less than five years of age with delayed development as defined by the department; or

(II) A person less than five years of age who is at risk of having a developmental disability as defined by the department.

(12) “Early intervention services and supports” means services described in and provided pursuant to part 7 of this article, including education, training, and assistance in child development, parent education, therapies, and other activities for infants and toddlers and their families that are designed to meet the developmental needs of infants and toddlers including, but not limited to, cognition, speech, communication, physical, motor, vision, hearing, social-emotional, and self-help skills.

(13) “Eligible for supports and services” refers to any person with a developmental disability as determined eligible by the community centered boards, pursuant to section 27-10.5-106.

(13.5) (Deleted by amendment, L. 2008, p. 1442, § 1, effective August 5, 2008.)

(13.7) “Enrolled” means that a person with a developmental disability who is eligible for supports and services has been authorized, as defined by rules promulgated by the department, to participate in a program funded pursuant to this article.

(14) “Executive director” means the executive director of the department of human services.

(15) (a) “Family” means the interdependent group of persons that consists of:

(I) A parent, child, sibling, grandparent, aunt, uncle, spouse, or any combination thereof and a family member with a developmental disability;

(II) An adoptive parent of and a family member with a developmental disability;

(III) One or more persons to whom legal custody of a person with a developmental disability has been given by a court and in whose home such person resides; or

(IV) Any other family unit as may be defined in rules developed pursuant to section 27-10.5-407.

(b) Department rules shall define the families that are eligible to receive services and supports pursuant to this article.

(15.5) “Family caregiver” means a family member of the person with a developmental disability who provides care to the person with a developmental disability in the family home, who meets the requirements for a qualified family caregiver, as established by rule of the department, and who is working through a program-approved service agency, as established by rule of the department.

(16) “Gastrostomy tube” means a tube that has been surgically inserted into the stomach through the abdominal wall, or a tube that has been inserted through the nasal passage into the stomach, or both.

(17) “Human rights committee” means a third-party mechanism to adequately safeguard the legal rights of persons receiving services by participating in the granting of informed consent, monitoring the suspension of rights of persons receiving services, monitoring behavior development programs in which persons with developmental disabilities are involved, monitoring the use of psychotropic medication by persons with developmental disabilities, and at the committee’s option, either providing or ensuring the investigation of allegations of abuse or neglect of persons with developmental disabilities who are receiving services or supports under this article.

(17.5) “IDEA” means the federal “Individuals with Disabilities Education Improvement Act of 2004”, 20 U.S.C. sec. 1400 et seq., as amended, and its implementing regulations, 34 CFR part 303.

(18) “Inclusion” means:

(a) The use by persons with developmental disabilities of the same community resources that are used by and available to other persons;

(b) The participation by persons with developmental disabilities in the same community activities in which persons without developmental disabilities participate. Participation includes regular contact with persons without developmental disabilities.

(c) Vocational experiences for persons with developmental disabilities in community settings that offer opportunities to associate with other individuals who do not have developmental disabilities; and

(d) Living in homes that are in residential neighborhoods and in proximity to community resources.

(19) "Independent residential support services" means a community living situation, defined by the department, where services and supports are provided to no more than three persons with developmental disabilities and that is not required to be licensed by the state.

(19.5) "Individualized family service plan" or "IFSP" means a written plan developed pursuant to 20 U.S.C. sec. 1436 and 34 CFR 303.340 that authorizes the provision of early intervention services to an eligible child and the child's family. An IFSP shall serve as the individualized plan, pursuant to paragraph (c) of subsection (20) of this section, for a child from birth through two years of age.

(20) (a) "Individualized plan" means a written plan designed by an interdisciplinary team for the purpose of identifying:

(I) The needs of the person or family receiving services;

(II) The specific services and supports appropriate to meet those needs;

(III) The projected date for initiation of services and supports; and

(IV) The anticipated results to be achieved by receiving the services and supports.

(b) Every individualized plan will include a statement of agreement with the plan, signed by the person receiving services or other such person legally authorized to sign on behalf of the person and a representative of the community centered board.

(c) Any other service or support plan, designated by the department, that meets all of the requirements of an individualized plan will be considered to be an individualized plan pursuant to this article.

(d) (I) Every individualized plan that includes the provision of respite care for medical purposes, pursuant to section 27-10.5-104, shall include a process by which the person receiving services and supports may receive necessary care if the person's family or caregiver is unavailable due to an emergency situation or unforeseen circumstances. The family or caregiver shall be duly informed by the interdisciplinary team of these alternative care provisions at the time the individualized plan is initiated.

(II) Nothing in this paragraph (d) requires the provision of respite care, only that each individual plan that includes the provision of respite care for medical purposes have a contingency plan.

(21) "Infants and toddlers" means a child with a developmental delay from birth through two years of age.

(22) "Interdependence" means those multiple interactive relationships that are necessary to create a sense of belonging and support between people that are mutually sought, sustained over time, and beneficial to those involved.

(23) "Interdisciplinary team" means a group of people convened by a designated community centered board that shall include the person receiving services, the parents or guardian of a minor, a guardian or an authorized representative, as appropriate, the person who coordinates the provisions of services and supports, and others as determined by the person's needs and preference, who are assembled to work in a cooperative manner to develop or review the individualized plan.

(24) "Least restrictive environment" means an environment that represents the least departure from the normal patterns of living and that effectively meets the needs of the person receiving services. Least restrictive environment may include, but need not be limited to, receiving services from a community centered board, service agency, or a family caregiver in the family home.

(25) "Person receiving services" means a person with a developmental disability who is enrolled in a program funded pursuant to this article.

(25.5) "Program" means a specific group of services or supports as defined by rules promulgated by the department and for which funding is available pursuant to this article to a person with a developmental disability who is eligible for supports and services.

(26) Repealed.

(27) "Regional center" means a facility or program operated directly by the department that provides services and supports to persons with developmental disabilities.

(28) "Service agency" means an individual or any publicly or privately operated program, organization, or business providing services or supports for persons with developmental disabilities.

(29) "Service and support coordination" means planning, locating, facilitating access to, coordinating, and reviewing all aspects of needed services, supports, and resources that are provided in cooperation with the person receiving services, the person's family, as appropriate, the family of a child with a developmental delay, and the involved public or private agencies. Planning includes the development or review of an existing individualized plan. "Service and support coordination" also includes the reassessment of the needs of the person receiving services or the needs of the family of the person, with maximum participation of the person receiving services and the person's parents, guardian, or authorized representative, as appropriate.

(30) "Services and supports" means one or more of the following: Education, training, independent or supported living assistance, therapies, identification of natural supports, and other activities provided to:

(a) Enable persons with developmental disabilities to make increasingly responsible choices, exert greater control over their lives, experience presence and inclusion in their communities, develop their competencies and talents, maintain relationships, foster a sense of belonging, and experience personal security and self-respect;

(b) Enhance child development and healthy parent-child and family interaction for eligible infants and toddlers and their families pursuant to part 7 of this article; and

(c) Enable families, who choose or desire to maintain a family member with a developmental disability at home, to obtain support and to enjoy a typical lifestyle.

(31) "Sterilization" means any surgical or other medical procedure that has as its primary purpose to render a person permanently incapable of reproduction.

(32) "Waiting list" means the list of persons with developmental disabilities who are waiting for enrollment into a program provided pursuant to this article.

Source: **L. 75:** Entire article added, p. 906, § 1, effective July 1. **L. 76:** (4)(a) amended, p. 671, § 1, effective May 20. **L. 85:** Entire section R&RE, p. 984, § 2, effective July 1. **L. 88:** (6)(b) amended, p. 1082, § 1, effective April 9. **L. 91:** (13.5) added, p. 1163, § 4, effective March 29. **L. 92:** Entire section R&RE, p. 1351, § 2, effective July 1. **L. 93:** (11)(a) amended, p. 1668, § 81, effective July 1; (8) and (14) amended, p. 1162, § 132, effective July 1, 1994. **L. 2001:** (4) amended, p. 106, § 4, effective March 21. **L. 2002:** (11)(a) amended, p. 1024, § 47, effective June 1. **L. 2004:** (20)(d) added, p. 480, § 1, effective August 4. **L. 2007:** (2.5), (13.5), and (17.5) added, p. 1559, § 5, effective May 31. **L. 2008:** (15.5) added and (24) amended, p. 2179, § 1, effective June 5; entire section amended, p. 1442, § 1, effective August 5; (2.3) and (32) added, p. 2206, § 1, effective August 5. **L. 2009:** (15.5) amended, (SB 09-044), ch. 57, p. 208, § 9, effective March 25. **L. 2010:** (13.7) and (25.5) added and (25) and (32) amended, (HB 10-1213), ch. 220, p. 960, § 1, effective May 10; (26) repealed, (SB 10-208), ch. 314, p. 1472, § 1, effective May 27.

Editor's note: (1) House Bill 08-1031 and Senate Bill 08-002 harmonized with House Bill 08-1366.

(2) Subsection (19.5) was originally numbered as (20.5) in House Bill 08-1366 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1993 act amending subsections (8) and (14), see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (February 2006).

Adoption of section permitting developmentally disabled persons to live in group homes reflects legislative intent to assist such

persons to live in normal residential surroundings. Double D Manor v. Evergreen Meadows, 773 P.2d 1046 (Colo. 1989).

27-10.5-103. Duties of the executive director - rules. (1) In order to implement the provisions of this article, the executive director shall, subject to available appropriations, carry out the following duties:

(a) Prepare a statewide plan for the provision of services and supports for persons with developmental disabilities based upon input from persons with developmental disabilities, their families, community centered boards, service agencies, and other interested persons. The statewide plan shall consider state and local needs.

(b) Conduct monitoring and review activities that include community centered boards and service agencies;

(c) Provide or obtain training and technical assistance through community centered boards and service agencies in order to improve the quality of services and supports provided to persons with developmental disabilities;

(d) Prepare and transmit annually to the governor and the joint budget committee of the general assembly, in the form and manner prescribed pursuant to section 24-1-136, C.R.S., a report detailing the following information, as available and appropriate, that shall be broken down into designated service areas as well as provided in an overall statewide format:

(I) The total number of persons receiving services pursuant to this article;

(II) The types of services and supports provided;

(III) The costs of services and supports regardless of funding source;

(IV) An evaluation of the quality of the services and supports rendered;

(V) An evaluation of the effectiveness of the services and supports rendered in implementing the individualized plans of persons receiving services;

(VI) The numbers, types, and resolution of appeals that were heard by the department arising from disputes specified in section 27-10.5-107; and

(VII) The number of persons determined to be eligible to receive services and supports who are not receiving services or supports pursuant to this article along with an analysis of the reasons they are not receiving services and supports;

(e) Designate a community centered board in each designated service area in the state;

(f) Consistent with the policies adopted by the department of health care policy and financing, implement the provision of home- and community-based services to eligible persons with developmental disabilities and pursue other medicaid-funded services determined by the department to be appropriate for persons with developmental disabilities, pursuant to part 4 of article 6 of title 25.5, C.R.S., and subject to available appropriations;

(g) Promote effective coordination with agencies serving persons with developmental disabilities in order to improve continuity of services and supports for persons facing life transitions from toddler to preschool, school to adult life, and work to retirement; and

(h) Conduct appropriate part C child find activities as described in section 27-10.5-704. Part C child find activities conducted by the department shall include, but need not be limited to, case management, referral, transitions, and public education outreach and awareness of early intervention services.

(2) The department shall adopt such rules, in accordance with section 24-4-103, C.R.S., as are necessary to carry out the provisions and purposes of this article, including but not limited to the following subjects:

(a) Standards for services and supports, including preparation of individualized plans;

(b) The designation of community centered boards and the organization of those entities, including standards of organization, staff qualifications, and other factors necessary to ensure program integrity;

(c) Purchase of services and supports and financial administration;

(d) Procedures for resolving disputes over eligibility determination and the modification, denial, or termination of services;

(e) Eligibility determination, the criteria for determination, and admission to the program;

- (f) Systems of quality assurance and data collection;
- (g) The rights of a person receiving services;
- (h) Confidentiality of records of a person receiving services;
- (i) Designation of authorized representatives and delineation of their rights and duties pursuant to this article;
- (j) Repealed.
- (k) (I) The establishment of guidelines and procedures for authorization of individuals for administration of nutrition and fluids through gastrostomy tubes.
- (II) The department shall require that a service agency providing residential or day program services or supports have a staff member qualified pursuant to subparagraph (III) of this paragraph (k) on duty at any time the facility administers said nutrition and fluids through gastrostomy tubes, and that the facility maintain a written record of each nutrient or fluid administered to each person receiving services, including the time and the amount of the nutrient or fluid.
- (III) An individual who is not otherwise authorized by law to administer nutrition and fluids through gastrostomy tubes shall be allowed to perform the duties only under the supervision of a licensed nurse or physician. An individual who administers nutrition and fluids in compliance with the provisions of this paragraph (k) shall be exempt from the licensing requirements of the "Colorado Medical Practice Act" and the "Nurse Practice Act". Nothing in this paragraph (k) shall be deemed to authorize the administration of medications through gastrostomy tubes. An individual administering medications through gastrostomy tubes shall be subject to the requirements of part 3 of article 1.5 of title 25, C.R.S.
- (IV) For purposes of this paragraph (k), "administration" means assisting a person in the ingestion of nutrition or fluids according to the direction and supervision of a licensed nurse or physician.
- (V) Repealed.
- (l) Child find activities, as described in section 27-10.5-704.
- (3) (Deleted by amendment, L. 92, p. 1357, § 3, effective July 1, 1992.)

Source: **L. 75:** Entire article added, p. 908, § 1, effective July 1. **L. 79:** (4)(b) amended, p. 1640, § 47, effective July 19. **L. 85:** Entire section R&RE, p. 987, § 3, effective July 1. **L. 88:** (2)(j) repealed and (3) amended, pp. 1083, 1082, §§ 9, 2, effective April 9. **L. 91:** (2)(k) added, p. 1164, § 6, effective March 29; (1)(f) amended, p. 1859, § 22, effective April 11. **L. 92:** (2)(k)(V) repealed, p. 2011, § 5, effective June 2; entire section amended, p. 1357, § 3, effective July 1. **L. 93:** (1)(f) amended, p. 1162, § 133, effective July 1, 1994; (1)(f) repealed, p. 1121, § 32, effective July 1, 1994. **L. 94:** (1)(f) RC&RE, p. 2613, § 18, effective July 1. **L. 2003:** IP(2) and (2)(k)(III) amended, p. 714, § 54, effective July 1. **L. 2006:** (1)(f) amended, p. 2021, § 112, effective July 1. **L. 2007:** Entire section amended, p. 1559, § 6, effective May 31. **L. 2008:** (1)(h) and (2)(l) amended, p. 1448, § 2, effective August 5. **L. 2009:** IP(2) amended, (SB 09-044), ch. 57, p. 208, § 10, effective March 25. **L. 2010:** (2)(e) amended, (SB 10-208), ch. 314, p. 1472, § 2, effective May 27.

Editor's note: Amendments to this section by Senate Bill 92-096 and Senate Bill 92-133 were harmonized.

Cross references: (1) For the "Colorado Medical Practice Act", see article 36 of title 12; for the "Nurse Practice Act", see article 38 of title 12.

(2) For the legislative declaration contained in the 1993 act repealing subsection (1)(f), see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act recreating and reenacting subsection (1)(f), see section 1 of chapter 345, Session Laws of Colorado 1994.

27-10.5-103.5. Community centered boards and service agencies - local public procurement units. For purposes of entering into a cooperative purchasing agreement pursuant to section 24-110-201, C.R.S., a nonprofit community centered board or a nonprofit service agency may be certified as a local public procurement unit as provided in section 24-110-207.5, C.R.S.

Source: L. 92: Entire section added, p. 1077, § 3, effective July 1. **L. 96:** Entire section amended, p. 1476, § 37, effective June 1.

27-10.5-104. Authorized services and supports - conditions of funding - purchase of services and supports - boards of county commissioners - appropriation. (1) Subject to annual appropriations by the general assembly, the department shall provide or purchase, pursuant to subsection (4) of this section, authorized services and supports from community centered boards or service agencies for persons who have been determined to be eligible for such services and supports pursuant to section 27-10.5-106, and as specified in the eligible person's individualized plan. Those services and supports may include, but are not limited to, the following:

(a) Family support services, including an array of supportive services provided to the person receiving services and the person's family, that enable the family to maintain the person in the family home, thereby preventing or delaying the need for out-of-home placement that is unwanted by the person or the family, pursuant to section 27-10.5-401;

(b) Early intervention services and supports that offer infants and toddlers and their families services and supports to enhance child development in the areas of cognition, speech, communication, physical, motor, vision, hearing, social-emotional development, and self-help skills; parent-child or family interaction; and early identification, screening, and assessment services that are provided pursuant to part 7 of this article;

(c) Case management services;

(d) Respite care services, including temporary care of a person with a developmental disability to offer relief to the person's family or caregiver or to allow the family or caregiver to deal with emergency situations or to engage in personal, social, or routine activities and tasks that otherwise may be neglected, postponed, or curtailed due to the demands of caring for a person who has a developmental disability;

(e) Day services and supports that offer opportunities for persons with developmental disabilities to experience and actively participate in valued adult roles in the community. These services and supports will enable persons receiving services to access and participate in community activities, such as work, recreation, higher education, and senior citizen activities. Day services and supports, including early intervention services, may also include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician.

(f) Residential services and supports, including an array of training, learning, experiential, and support activities provided in living alternatives designed to meet the individual needs of persons receiving services and may include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician;

(g) Ancillary services, including activities that are secondary but integral to the provision of the services and supports specified in this subsection (1).

(2) Service agencies receiving funds pursuant to subsection (1) of this section shall comply with all of the provisions of this article and the rules and regulations promulgated thereunder.

(3) Service and support coordination shall be purchased from the community centered board designated pursuant to section 27-10.5-105, except as otherwise provided in subsection (4) of this section and in part 7 of this article.

(4) (a) The department of human services may, directly or in coordination with the department of health care policy and financing, purchase services and supports, including service and support coordination, directly from service agencies if:

(I) Required by the federal requirements for the state to qualify for federal funds under Title XIX of the federal "Social Security Act", as amended, including programs authorized pursuant to part 4 of article 6 of title 25.5, C.R.S.; or

(II) (Deleted by amendment, L. 2008, p. 2216, § 1, effective June 5, 2008.)

(III) The executive director has determined that a service or support provided or purchased by a designated community centered board does not meet established standards

and the continuation of purchase of the service or support through the community centered board is not in the best interests of the persons receiving services.

(a.5) The department shall only purchase services and supports directly from those community centered boards or service agencies that meet established standards.

(a.7) The department may purchase services and supports, including service and support coordination, from a family caregiver if the executive director has determined that the provision of a service or support by a family caregiver in the family home would provide the person receiving the service or support with the least restrictive environment.

(b) (Deleted by amendment, L. 2008, p. 2216, § 1, effective June 5, 2008.)

(c) Nothing in this section shall be construed to prohibit the provision of services and supports, including case management services, directly by the department through regional centers, for persons receiving services in regional centers.

(d) Nothing in this section shall be construed to require the provision of services and supports, including case management services, directly by the department.

(5) Governmental units, including but not limited to counties, municipalities, school districts, health service districts, and state institutions of higher education, are authorized at their own expense to furnish money, materials, or services and supports to persons with developmental disabilities, or to purchase services and supports for such persons through designated community centered boards or service agencies, so long as no conditions or requirements imposed as a result of the provision or purchase through a community centered board or service agency are in conflict with the provisions of this article or the rules promulgated thereunder.

(6) Boards of county commissioners may levy up to one mill for the purpose of purchasing services and supports for persons with developmental disabilities. To the extent authorized by federal law, and subject to annual appropriation by the general assembly, and pursuant to rules established by the department of human services and the department of health care policy and financing, a county may transfer the revenue raised pursuant to the mill levy to the department of health care policy and financing or the department of human services to receive matching federal funds to provide medicaid-approved waiver services to persons with developmental disabilities.

(7) (a) Each year the general assembly shall appropriate funds to the department of human services to provide or purchase services and supports for persons with developmental disabilities pursuant to this section. Unless specifically provided otherwise, services and supports shall be purchased on the basis of state funding less any federal or cash funds received for general operating expenses from any other state or federal source, less funds available to a person receiving residential services or supports after such person receives an allowance for personal needs or for meeting other obligations imposed by federal or state law, and less the required local school district funds specified in paragraph (b) of this subsection (7). The yearly appropriation, when combined with all other sources of funds, shall in no case exceed one hundred percent of the approved program costs as determined by the general assembly. Funds received for capital construction shall not be considered in the calculation for the distribution of funds under the provisions of this section.

(b) Each school district shall pay to the community centered board providing programs attended by a student with a developmental disability, who is domiciled in the school district and may be counted in the district's pupil enrollment, an amount at least equal to the district's per pupil revenues as determined pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S. This subsection (7) shall apply to students who are less than twenty-two years of age.

(c) The department is authorized to use up to three percent of the appropriation allocated for early intervention services and supports for training and technical assistance to assure that the latest developments for early intervention services and supports are rapidly integrated into service provision throughout the state.

Source: L. 75: Entire article added, p. 909, § 1, effective July 1. L. 79: (6)(b) amended, p. 1640, § 48, effective July 19. L. 85: Entire section R&RE, p. 988, § 4, effective July 1. L. 88: (2) and (8) amended, p. 1082, § 3, effective April 9; (7)(b) amended, p. 812, § 13, effective May 24. L. 91: (1)(d) amended, p. 1163, § 5, effective March 29. L. 92:

Entire section R&RE, p. 1359, § 4, effective July 1. **L. 93:** (1)(a) amended, p. 1789, § 75, effective June 6; IP(1), IP(4)(a), and (7)(a) amended, p. 1162, § 134, effective July 1, 1994. **L. 94:** (7)(b) amended, p. 823, § 51, effective April 27. **L. 96:** (5) amended, p. 472, § 6, effective July 1. **L. 2008:** Entire section amended, p. 2216, § 1, effective June 5; (4)(a.7) added, p. 2180, § 2, effective June 5; (1) and (3) amended, p. 1448, § 3, effective August 5. **L. 2010:** (7)(b) amended, (HB 10-1013), ch. 399, p. 1916, § 48, effective June 10.

Editor's note: House Bill 08-1366 and Senate Bill 08-002 harmonized with House Bill 08-1220.

Cross references: For the legislative declaration contained in the 1993 act amending the introductory portions to subsections (1) and (4)(a) and subsection (7)(a), see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Annotator's note. Since provisions similar to those in repealed § 27-11-103 were included in this section as amended in 1985, relevant cases construing those provisions in the repealed section have been included in the annotations to this section.

School board lacks standing to challenge the constitutionality of this section because, as a political subdivision of the state whose duty it is to carry out the educational policies of the state, the school district and officers thereof cannot question the constitutionality of a statute fixing their duties. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Kindergarten included in school district's "regular school program". Where the defendant school board conceded that they maintain a free kindergarten for children who are five years of age and, but for the mental retardation or serious handicap of the children being educated through the board, they would attend the district's free kindergarten, such kindergarten is included in the school district's "regular school program" as that phrase is used in this section. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Mandamus proper remedy. Subsection (7)(b) clearly requires that the "school district

shall provide to the community incorporated board" a sum of money determined by a stated formula; therefore, the clear right of a school board to demand performance, and the clear legal duty on a school district to act, makes this a proper case for disposition by mandamus. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Superintendent not proper party defendant in mandamus action. Since under § 22-32-107 the official duty of paying over the amounts in question as required by this section was that of the treasurer, as authorized by the board of education, and not that of the superintendent, the superintendent was not a proper party defendant in a mandamus action to require such payment. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Amounts payable under section not subject to prejudgment interest. Since the amounts to be paid under this section arise neither out of contract nor out of a fiduciary relationship, the plaintiffs were not entitled to prejudgment interest. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Applied in Adams County Cmty. Center for Retarded & Seriously Handicapped, Inc. v. State Dept. of Insts., 197 Colo. 448, 594 P.2d 1046 (1979).

27-10.5-104.2. Services and supports - waiting list reduction - cash fund.

(1) There is hereby created in the state treasury the developmental disabilities services cash fund, consisting of moneys appropriated thereto by the general assembly. Any interest derived from the deposit and investment of moneys in the developmental disabilities services cash fund shall be credited to the fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(2) During each regular session of the general assembly, the joint budget committee and the health and human services committees of the senate and the house of representatives, or any successor committees, shall hold a joint hearing and take public testimony on the status of the waiting lists for adult comprehensive services, adult supported living services, and family support services for persons with developmental disabilities and the availability of general fund moneys to reduce the number of persons on the waiting lists and the amount of time eligible persons wait for such services. The goal of the hearing shall be to propose an appropriation from the general fund to the developmental disabilities services cash fund.

(3) The general assembly may annually appropriate moneys in the developmental disabilities services cash fund to:

(a) The department for program costs for adult comprehensive services, adult supported living services, and family support services for persons with developmental disabilities provided pursuant to this article or part 4 of article 6 of title 25.5, C.R.S.; and

(b) The department of health care policy and financing for program costs for adult comprehensive services and adult supported living services for persons with developmental disabilities provided pursuant to this article or part 4 of article 6 of title 25.5, C.R.S.

(4) Any moneys appropriated from the developmental disabilities services cash fund pursuant to subsection (3) of this section that are unexpended at the end of a fiscal year shall revert to the fund.

(5) It is the intent of the general assembly that the moneys in the developmental disabilities services cash fund be used to reduce the number of persons on the waiting lists for such services and the amount of time eligible persons wait for such services.

Source: L. 2008: Entire section added, p. 2209, § 2, effective August 5. **L. 2009:** (2) amended, (SB 09-228), ch. 410, p. 2264, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 431, Session Laws of Colorado 2008.

27-10.5-104.5. Service agencies - moneys - rules. (1) A service agency, including a community centered board when acting as a service agency, shall comply with the requirements set forth in this article and the rules promulgated thereunder.

(2) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

(3) The department shall promulgate rules to implement the purchase of services and supports from a community centered board, service agency, or family caregiver. The rules shall include, but need not be limited to:

(a) Terms and conditions necessary to promote the effective delivery of services and supports, including those services and supports delivered by a family caregiver;

(b) Procedures for obtaining an annual audit of designated community centered boards and service agencies not affiliated with a designated community centered board to provide financial information deemed necessary by the department to establish costs of services and supports and to ensure proper management of moneys received pursuant to section 27-10.5-104;

(c) Delineation of a system to resolve contractual disputes between the department and designated community centered boards or service agencies and between designated community centered boards and service agencies, including the contesting of any rates that the designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports;

(d) Specification of what services and supports are to be reimbursed by the department of human services and secondarily by the community centered board, the source of reimbursement, actual service or support costs, incentives, and program service objectives which affect reimbursement;

(e) The methods of coordinating the purchase of services and supports, including, but not limited to, service and support coordination, with other federal, state, and local programs which provide funding for authorized services and supports;

(f) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

(g) and (h) (Deleted by amendment, L. 2008, p. 2219, § 2, effective June 5, 2008.)

(i) Criteria for and limitations on any rates that designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports.

(3.5) Any incorporated service agency which is registered in Colorado as a foreign corporation shall organize a local advisory board consisting of individuals who reside within the designated service area. Such advisory board shall be representative of the community at large and persons receiving services and their families.

(4) Upon a determination by the executive director that services or supports have not been provided in accordance with the program or financial administration standards specified in this article and the rules and regulations promulgated thereunder, the executive director may reduce, suspend, or withhold payment to a designated community centered board, service agency under contract with a designated community centered board, or service agency from which the department of human services purchased services or supports directly. When the executive director decides to reduce, suspend, or withhold payment, the executive director shall specify the reasons therefor and the actions which are necessary to bring the service agency into compliance.

(5) Nothing in this article or in any rules or regulations promulgated pursuant thereto and no actions taken by the executive director pursuant to this article shall be construed to affect the obtaining of funds from local authorities, including those funds obtained from a mill levy assessed by a county or municipality for the purpose of purchasing services or supports for persons with developmental disabilities, or to require that such funds from local authorities be used to supplant state or federal funds available for purchasing services and supports for persons with developmental disabilities.

(6) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

Source: **L. 85:** Entire section added, p. 991, § 5, effective July 1. **L. 88:** (6) amended, p. 1083, § 4, effective April 9. **L. 92:** Entire section amended, p. 1363, § 5, effective July 1. **L. 93:** (3)(d) and (4) amended, p. 1163, § 135, effective July 1, 1994. **L. 2008:** (3) amended, p. 2219, § 2, effective June 5; IP(3) and (3)(a) amended, p. 2180, § 3, effective June 5. **L. 2009:** (1), IP(3), and (3)(b) amended, (SB 09-044), ch. 57, p. 208, § 11, effective March 25.

Editor's note: Amendments to subsection (3) by House Bill 08-1220 and Senate Bill 08-002 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

27-10.5-105. Community centered boards - designation - purchase of services and supports by community centered boards. (1) In order to be designated as the community centered board in a particular designated service area, a private corporation, for profit or not for profit, shall annually apply for such designation to the department in the form and manner specified by the executive director. Designation shall be based on the following factors:

(a) Utilization of existing service agencies or existing social networks or natural sources of support in the designated service area;

(b) Encouragement of competition among service agencies within the designated service area to provide newly identified services or supports, the variety of service agencies available to the person receiving services within the designated service area, and the demonstrated effort to purchase new or expanded services or supports from service agencies other than those affiliated with the community centered board;

(c) Utilization of state-funded services and supports administered at the local level, including but not limited to public education, social services, public health, and rehabilitation programs;

(d) Quality of services and supports provided directly or by contract for persons with developmental disabilities;

(e) The establishment of new services and supports for the prevention of institutionalization, the support of deinstitutionalization, and a commitment to innovative, effective, and inclusive services and supports for persons with developmental disabilities;

(f) The willingness of the applicant to pursue authorized services and supports from all eligible persons within the designated service area.

(2) Once a community centered board has been designated pursuant to this section, it shall, subject to available appropriations:

(a) Be under the control and direction of a board of directors or trustees comprised of one or more persons from each of the following categories:

(I) Interested persons representing the community at large;

(II) Family members of persons with developmental disabilities who are receiving services or supports; and

(III) Persons with developmental disabilities who are receiving services or supports;

(b) Adopt bylaw provisions to ensure that:

(I) Members of the governing board are prohibited from voting on issues in which they have a conflict of interest;

(II) Staff members of the community centered board and employees or board members of service agencies shall not serve on the governing board;

(III) Staff members of the community centered board and employees or board members of service agencies are prohibited from voting in elections for members of the governing board; and

(IV) Board meetings shall be scheduled after adequate notice and shall be open to the public; except that by vote of a two-thirds majority of members present the board may elect to address the following matters in executive session:

(A) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest;

(B) Conferences with an attorney for the purpose of receiving legal advice on specific legal questions;

(C) Matters required to be kept confidential by federal or state law or rules or regulations;

(D) Specialized details of security arrangements or investigations;

(E) Determining positions relative to matters that may be subject to negotiations;

(F) Developing strategy for negotiations and instructing negotiators; and

(G) Personnel matters;

(c) Determine the needs of eligible persons within the community centered board designated service area and prepare and implement a long-range plan and annual updates to that plan for the development and coordination of services and supports to address those needs. The needs determination and designated service area plans or annual update shall be submitted to the department.

(d) Determine eligibility and develop an individualized plan for each person who receives services or supports pursuant to section 27-10.5-106; except that, for a child from birth through two years of age, eligibility determination and development of an individualized family service plan shall be made pursuant to part 7 of this article;

(e) Provide case management services, including service and support coordination and periodic reviews, for persons receiving services and families with children with developmental disabilities;

(f) Repealed.

(g) Obtain or provide early intervention services and supports pursuant to part 7 of this article;

(h) Take steps to notify eligible persons, and their families as appropriate, regarding the availability of services and supports;

(i) Establish a human rights committee. The human rights committee shall, to the extent possible, be comprised of two professional persons trained in the application of behavior development techniques and three representatives of persons receiving services, their parents, legal guardians, or authorized representatives. No employee or board member of a service agency within the community centered board's designated service area shall serve as a member of the human rights committee.

(j) Pursuant to section 27-10.5-704, collaborate with the department as it develops and implements a statewide plan for public education outreach and awareness efforts related to part C child find and the availability of early intervention services.

(3) The executive director shall review each designated community centered board program to ensure that the program complies with the requirements and standards set forth in this article and the rules promulgated thereunder.

Source: **L. 75:** Entire article added, p. 910, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 992, § 6, effective July 1. **L. 88:** (2)(f) repealed and (4) amended, p. 1083, §§ 9, 5, effective April 9. **L. 90:** (2)(a) amended, p. 412, § 42, effective June 7. **L. 92:** Entire section R&RE, p. 1365, § 6, effective July 1. **L. 93:** IP(1) amended, p. 1163, § 136, effective July 1, 1994. **L. 2007:** (2) amended, p. 1562, § 7, effective May 31. **L. 2008:** (2) amended, p. 2220, § 3, effective June 5; entire section amended, p. 1450, § 4, effective August 5. **L. 2010:** (2)(d) amended, (HB 10-1213), ch. 220, p. 961, § 2, effective May 10; (2)(f) repealed, (SB 10-208), ch. 314, p. 1472, § 3, effective May 27.

Editor's note: Amendments to subsection (2) by House Bill 08-1220 were harmonized with House Bill 08-1366.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

ANNOTATION

Nonprofit corporation offering services to the developmentally disabled pursuant to this section is not a political subdivision for purposes of the federal National Labor Relations Act. The corporation functions not as a state-created department or administrative arm of

government, but essentially as a private contractor. *Jefferson County Cmty. Center v. N.L.R.B.*, 732 F.2d 122 (10th Cir.), cert. denied, 496 U.S. 1086, 105 S. Ct. 591, 83 L. Ed.2d 701 (1984) (decided under former § 27-11-103).

27-10.5-105.5. Revocation of designation. (1) The executive director may revoke the designation of a community centered board upon a finding that the community centered board is in violation of the provisions of this article and the rules and regulations promulgated thereunder. Such revocation shall conform to the provisions and procedures specified in article 4 of title 24, C.R.S., and shall be made only after a hearing is provided as specified in that article.

(2) Once a designation has been revoked pursuant to subsection (1) of this section, the executive director may designate a service agency to perform the case management services of the designated community centered board pending designation of a new community centered board.

(3) (Deleted by amendment, L. 92, p. 1368, § 7, effective July 1, 1992.)

Source: **L. 85:** Entire section added, p. 995, § 7, effective July 1. **L. 88:** (3) amended, p. 1083, § 6, effective April 9. **L. 92:** Entire section amended, p. 1368, § 7, effective July 1.

27-10.5-106. Eligibility determination - individualized plan - periodic review - rules. (1) (a) Any person may request an evaluation to determine whether he or she has a developmental disability and is eligible to receive services and supports pursuant to this article. Application for eligibility determination shall be made to the designated community centered board in the designated service area where the person resides.

(b) Pursuant to contract with the department, designated community centered boards shall determine whether a person is eligible to receive services and supports pursuant to this article and, if so, shall develop an individualized plan for him or her as part of his or her enrollment into a program. The department shall promulgate rules, pursuant to article 4 of title 24, C.R.S., setting forth the procedure and criteria for determination of eligibility and individualized plan development. The procedure and criteria shall be uniform in nature and applied throughout the state in a consistent manner.

(2) Following intake and assessment by the designated community centered board, an individualized plan shall be developed as provided by rules promulgated by the department. The individualized family service plan for a child with disabilities from birth through two years of age shall be developed pursuant to section 27-10.5-703.

(2.5) Subject to available appropriations pursuant to section 27-10.5-104 and to the availability of space within an individual service agency, the person with a developmental

disability shall be provided options for services and supports within the designated service area that can appropriately meet the person's identified needs, as identified pursuant to subsection (2) of this section, and may select the service agency from which to receive services or supports.

(3) (a) Each person receiving services shall receive periodic and adequate reviews to ascertain whether the services and supports specified in his or her individualized plan have been provided, determine the appropriateness of current services and supports, identify whether the results specified in the person's individualized plan have been achieved, and modify and revise current services or supports to meet the identified needs of the person receiving services. Modifications or revisions to the individualized family service plan for a child with disabilities from birth through two years of age shall be developed pursuant to section 27-10.5-703.

(b) In order to accurately review the services and supports being provided, the community centered board or regional center may make cognitive, physical, medical, behavioral, social, vocational, educational, or other necessary types of evaluations of a person receiving services. The reviews shall be supervised by a developmental disabilities professional. The person receiving services, the parents or guardian of a minor, or the guardian of the person receiving services, and the authorized representative of the person receiving services may attend and shall receive adequate advance notice of the reviews. Parental or legal guardian consent must be obtained prior to administering evaluations for program review to minors. The results of a review shall be given to the person receiving services and to the person's parent, or guardian, as appropriate, and shall be made a part of the person's record.

(c) A person's individualized plan shall be reviewed at least annually; except that an individualized family service plan for a child with disabilities from birth through two years of age shall be reviewed as required pursuant to part 7 of this article.

(4) (Deleted by amendment, L. 92, p. 1368, 8, effective July 1, 1992.)

(5) An individualized plan shall not be required for a person with developmental disabilities who is eligible for supports and services and who is on a waiting list for enrollment into a program funded pursuant to this article. Each community centered board shall provide information and referral services to each person on the waiting list for enrollment in a program, at the time of his or her eligibility and annually thereafter, regarding services and supports that are relevant to the individual and are commonly used by persons with developmental disabilities as provided by rules promulgated by the department. The criteria for information and referral shall be uniform in nature and applied throughout the state in a consistent manner.

Source: L. 75: Entire article added, p. 910, § 1, effective July 1. L. 85: Entire section R&RE, p. 995, § 8, effective July 1. L. 88: (4) amended, p. 1083, § 7, effective April 9. L. 92: Entire section amended, p. 1368, § 8, effective July 1. L. 93: (1)(b) amended, p. 1163, § 137, effective July 1, 1994. L. 2007: (2) and (3) amended, p. 1564, § 8, effective May 31. L. 2008: Entire section amended, p. 1453, § 5, effective August 5. L. 2009: (1)(b) amended, (SB 09-044), ch. 57, p. 208, § 12, effective March 25. L. 2010: (1)(b) and (2) amended and (5) added, (HB 10-1213), ch. 220, p. 961, § 3, effective May 10.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

27-10.5-107. Procedure for resolving disputes over eligibility, modification of services or supports, and termination of services or supports. (1) Every state or local service agency receiving state moneys pursuant to section 27-10.5-104 shall adopt a procedure for the resolution of disputes arising between the service agency and any recipient of, or applicant for, services or supports authorized under section 27-10.5-104. Procedures for the resolution of disputes regarding early intervention services shall be in compliance with IDEA. The procedures shall be consistent with rules promulgated by the department pursuant to article 4 of title 24, C.R.S., and shall be applicable to the following disputes:

(a) A contested decision that the applicant is not eligible for services or supports;
(b) A contested decision to provide, modify, reduce, or deny services or supports set forth in the individualized plan or individualized family service plan of the person receiving services;

(c) A contested decision to terminate services or supports;
(d) A contested decision that the person receiving services is no longer eligible for services or supports.

(2) (Deleted by amendment, L. 92, p. 1369, § 9, effective July 1, 1992.)

(3) The department shall promulgate rules pursuant to article 4 of title 24, C.R.S., setting forth procedures for the resolution of disputes specified in subsection (1) of this section that shall:

(a) Require that all applicants for services and supports and the parents or guardian of a minor, the guardian, or an authorized representative be informed orally and in writing, in their native language, of the dispute resolution procedures at the time of application, at the time the individualized plan is developed, and any time changes in the plan are contemplated;

(b) Require that a service agency keep a written record of all proceedings specified pursuant to this section;

(c) Require that no person receiving services be terminated from such services or supports during the resolution process;

(d) Require that utilizing the dispute resolution procedure shall not prejudice the future provision of appropriate services or supports to individuals; and

(e) Require that the intended action not occur until after reasonable notice has been provided to the person, the parents or guardian of a minor, the guardian, or an authorized representative, along with an opportunity to utilize the resolution process, except in emergency situations, as determined by the department.

(3.5) The resolution process need not conform to the requirements of section 24-4-105, C.R.S., as long as the rules adopted by the department include provisions specifically setting forth procedures, time frames, notice, an opportunity to be heard and to present evidence, and the opportunity for impartial review of the decision in dispute by the executive director or designee, if the resolution process has failed.

(4) and (5) (Deleted by amendment, L. 92, p. 1369, § 9, effective July 1, 1992.)

Source: L. 75: Entire article added, p. 911, § 1, effective July 1. L. 85: Entire section R&RE, p. 996, § 9, effective July 1. L. 88: (5) amended, p. 1083, § 8, effective April 9. L. 92: Entire section amended, p. 1369, § 9, effective July 1. L. 2008: (1) amended, p. 1454, § 6, effective August 5. L. 2009: IP(1), IP(3), and (3.5) amended, (SB 09-044), ch. 57, p. 209, § 13, effective March 25.

27-10.5-108. Discharge. (1) A person receiving services shall be discharged from services or supports upon a determination, made pursuant to the individualized planning process, that the services or supports are no longer appropriate. At least ten days prior to effectuation of the discharge, notification of discharge shall be given to the person receiving services, the parents or guardian of such a person who is a minor, and such person's legal guardian and authorized representative when applicable.

(2) When a person receiving services notifies a service agency that such person no longer wishes to receive a service or support, the person shall be discharged from such service or support unless the person is subject to a petition to impose a legal disability or to remove a legal right, filed pursuant to section 27-10.5-110, or for whom a legal guardian has been appointed, affecting the person's ability to voluntarily terminate services or supports. The parents of the person receiving services who is a minor and such person's guardian shall be notified of the person's wish to terminate services or supports, but no minor will be discharged without the consent of the parent or legal guardian.

Source: L. 75: Entire article added, p. 911, § 1, effective July 1. L. 85: Entire section R&RE, p. 997, § 10, effective July 1. L. 92: Entire section amended, p. 1371, § 10, effective July 1.

27-10.5-109. Community residential home - licenses - rules.

(1) (Deleted by amendment, L. 92, p. 1371, § 11, effective July 1, 1992.)

(2) (a) The department of public health and environment and the department of human services shall implement a system of joint licensure and certification of community residential homes. Independent residential support services provided by the department of human services do not require licensure by the department of public health and environment.

(b) By December 31, 2012, the department of public health and environment, the department of health care policy and financing, and the department of human services shall develop an implementation plan, in consultation with industry representatives, to resolve differing requirements and to eliminate obsolete, redundant rules and reporting, monitoring, compliance, auditing certification, licensing, and work processes pertaining to the regulation of community residential homes pursuant to this section. The departments shall study the feasibility of implementing a single, consolidated survey and methods for conducting surveys simultaneously. The departments shall report their progress in meeting the requirements of this paragraph (b) to their respective committees of reference when making their departmental presentations as required by part 2 of article 7 of title 2, C.R.S. The departments shall send copies of the report to the health care facility stakeholder forum created in section 25-3-113, C.R.S.

(3) (a) The department of public health and environment and the department of human services shall develop standards for the licensure and certification of community residential homes. The standards shall include health, life, and fire safety, as well as standards to ensure the effective delivery of services and supports to residents; except that any community residential home must comply with local codes.

(b) (I) The department of human services or the state board of health, as appropriate, shall adopt the standards by rule and shall specify the responsibilities of each department in the program. Surveys undertaken to ensure compliance with these standards shall, as appropriate, be undertaken as joint surveys by the departments.

(II) If a service agency operates a community residential home and provides personal care services, as defined in section 25-27.5-102, C.R.S., the department of public health and environment or the department of human services, as appropriate, is responsible for surveying those services provided by the service agency, which survey shall be conducted simultaneously with the survey of the community residential home.

(4) Any community residential home applying for a license or certification on or after January 1, 1986, shall accommodate at least four but no more than eight persons with developmental disabilities. All licenses and certificates issued by the department of public health and environment or the department of human services shall bear the date of issuance and shall be valid for not more than a twenty-four-month period.

(5) The issuance, suspension, revocation, modification, renewal, or denial of a license or certification shall be governed by the provisions of section 24-4-104, C.R.S. The failure of a community residential home to comply with the provisions of this article and the rules promulgated thereunder, or any local fire, safety, and health codes shall be sufficient grounds for the department of public health and environment or the department of human services to deny, suspend, revoke, or modify the community residential home's license or certification.

(6) The department of human services and the state board of health shall promulgate such rules as are necessary to implement this section, pursuant to the provisions specified in article 4 of title 24, C.R.S. The rules shall include, but shall not be limited to, the following:

(a) (Deleted by amendment, L. 92, p. 1371, § 11, effective July 1, 1992.)

(b) Requirements concerning the distance between the location of community residential homes and factors to be considered in waiving such requirements for existing community residential homes;

(c) Procedures to secure the health and safety of persons receiving services or supports residing in a community residential home in the event the community residential home closes or its license is denied, suspended, or revoked pursuant to this section.

Source: **L. 75:** Entire article added, p. 911, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 997, § 11, effective January 1, 1986. **L. 92:** Entire section amended, p. 1371, § 11, effective July 1. **L. 94:** Entire section amended, p. 2712, § 287, effective July 1. **L. 2008:** IP(6) amended, p. 1454, § 7, effective August 5. **L. 2009:** (3), (5), and IP(6) amended, (SB 09-044), ch. 57, p. 209, § 14, effective March 25. **L. 2012:** (2) and (3) amended, (HB 12-1294), ch. 252, p. 1260, § 12, effective June 4.

Cross references: (1) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

(2) For the legislative declaration in the 2012 act amending subsections (2) and (3), see section 1 of chapter 252, Session Laws of Colorado 2012.

ANNOTATION

Applied in *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978).

27-10.5-109.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure. (1) The department shall require any community residential home seeking licensure pursuant to section 27-10.5-109 to comply with any applicable zoning regulations of the municipality, city and county, or county where the home is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a home; except that nothing in this section shall be construed to supersede the provisions of sections 30-28-115 (2), 31-23-301 (4), and 31-23-303 (2), C.R.S.

(2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where a community residential home is situated, including the address of the home and the population and number of persons to be served by the home, when any of the following occurs:

(a) An application for a license to operate a community residential home pursuant to section 27-10.5-109 is made;

(b) A license is granted to a community residential home pursuant to section 27-10.5-109;

(c) A change in the license of a community residential home occurs; or

(d) The license of a community residential home is revoked or otherwise terminated for any reason.

(3) In the event of a zoning or other delay or dispute between a community residential home and the municipality, city and county, or county where the home is situated, the department may grant a provisional license to the home for up to one hundred twenty days pending resolution of the delay or dispute.

Source: **L. 2000:** Entire section added, p. 1517, § 5, effective June 1.

Cross references: For the legislative declaration contained in the 2000 act enacting this section, see section 1 of chapter 319, Session Laws of Colorado 2000.

27-10.5-110. Imposition of legal disability - removal of legal right. (1) Any interested person may petition the court to impose a legal disability on or to remove a legal right from a person with a developmental disability as defined in section 27-10.5-102. The petition shall set forth the disability to be imposed or the legal right to be removed and the reasons therefor. The petition may affect the right to contract, the right to determine place of abode or provisions of services and supports, the right to operate a motor vehicle, and other similar rights.

(2) (a) Prior to granting the petition, the court shall find:

(I) That the person subject to the petition has been determined to be a person with a developmental disability pursuant to the provisions of this article; and

(II) That the requested disability or removal is both necessary and desirable to implement the individualized plan developed for the person receiving services or supports under the supervision of a developmental disabilities professional and the interdisciplinary team. Such professional shall have an understanding of the rights of persons receiving services as set forth in sections 27-10.5-112 to 27-10.5-123. Such plan shall be submitted to the court and shall be signed by the developmental disabilities professional.

(b) When a petition filed pursuant to subsection (1) of this section seeks to impose a disability or to remove a legal right, related to the selection of place of abode by the person with a developmental disability, the court shall also find:

(I) That, based on the recent overt actions or omissions of the person subject to the petition, and because of the presence of a developmental disability, without the relief prayed for in the petition such person poses a probable threat of serious physical harm to such person or others or is unable to care for such person's own needs to the extent that such person's own life or safety is seriously threatened; and

(II) That the place of abode requested in the petition is the least restrictive residential setting which is appropriate for the individual needs of the person with a developmental disability.

(3) Within six months after a legal disability has been imposed or a legal right has been removed, the court shall hold a hearing to review its order and either reaffirm the findings made pursuant to subsection (2) of this section and continue the legal disability or removal or remove the legal disability or restore the legal rights to the person subject to the petition. The court may remove a legal disability from or restore a legal right to a person without a hearing upon the filing of a motion requesting such relief containing affidavits in support of the motion signed by all of the parties.

(4) Any interested person may move that the court remove a legal disability or restore a legal right. If such motion is contested, it shall be served on the person whose rights are affected and upon the party who filed the original petition if the person is not the moving party.

(5) The following procedures shall apply to any proceedings instituted pursuant to this section:

(a) When a petition is filed pursuant to subsection (1) of this section, the person subject to the petition shall be advised by the court of such person's right to retain and consult with an attorney at any time, and that if such person cannot afford to pay an attorney, one will be appointed by the court without cost. Attorney fees for court-appointed counsel shall be paid by the court.

(b) Upon the request of an indigent respondent or such respondent's attorney, the court shall appoint one or more developmental disabilities professionals of the respondent's choice to assist the respondent in the preparation of the respondent's case. Fees for such developmental disabilities professionals shall be paid by the court.

(c) The court may issue a temporary order imposing a legal disability or removing a legal right, pending a hearing, for a period not to exceed ten days, based upon the standards required for issuance of a temporary restraining order. No individualized plan shall be required by the court to support the issuance of such order.

(d) The burden of proof shall at all times be upon the party seeking imposition of a disability or removal of a legal right or opposing removal of a disability or restoration of a legal right, and the standard of proof shall be by clear and convincing evidence.

(e) Except as otherwise provided in this subsection (5), all proceedings shall be held in conformance with the Colorado rules of civil procedure, but no costs shall be assessed against the respondent.

(6) In order to provide representation to eligible persons as provided in this section, the judicial department is authorized to pay moneys, out of appropriations made therefor by the general assembly, directly to appointed counsel or developmental disabilities professionals on a case-by-case basis or, on behalf of the state, to contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations to provide legal representation for an agreed-upon lump sum.

(7) No person shall be admitted to a regional center without a court order issued pursuant to this section except in an emergency or for the purpose of temporary respite care.

Source: **L. 75:** Entire article added, p. 912, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 998, § 12, effective July 1. **L. 92:** Entire section amended, p. 1372, § 12, effective July 1. **L. 2010:** (2)(a)(II) amended, (HB 10-1213), ch. 220, p. 961, § 4, effective May 10.

27-10.5-111. Conduct of court proceedings. All court proceedings arising under section 27-10.5-110 shall be conducted by the district attorney of the county where the proceeding is held or by a qualified attorney acting for the district attorney appointed by the district court for that purpose; except that, in any county or in any city and county having a population exceeding one hundred thousand persons, the proceedings shall be conducted by the county attorney or by a qualified attorney acting for the county attorney appointed by the district court. In any case in which there has been a change of venue to a county other than the county of residence of the respondent or the county in which the proceeding was commenced, the county from which the proceeding was transferred shall either reimburse the county in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

Source: **L. 75:** Entire article added, p. 912, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 1000, § 13, effective July 1.

27-10.5-112. Individuals' rights. (1) Unless a person's rights are modified by court order, a person with a developmental disability shall have the same legal rights and responsibilities guaranteed to all other individuals under the federal and state constitutions and federal and state laws. No otherwise qualified person, by reason of having a developmental disability, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives public funds.

(2) The receipt of services and supports pursuant to this article shall not operate to deprive any person of any other rights, benefits, or privileges or cause the person to be declared legally incompetent.

(3) The rights of any person receiving services which are specified in this article may be suspended to protect the person receiving services from endangering such person, others, or property. Such rights may be suspended only by the developmental disabilities professional with subsequent review by the interdisciplinary team and by the human rights committee in order to provide specific services or supports to the person receiving services, which will promote the least restriction on the person's rights. Such person's legal rights may be removed by a court pursuant to section 27-10.5-110.

(4) None of the rights established pursuant to this article shall be construed to interfere with the rights and privileges of parents regarding their minor child.

Source: **L. 75:** Entire article added, p. 912, § 1, effective July 1. **L. 85:** Entire section R&RE, p. 1000, § 14, effective July 1. **L. 92:** Entire section amended, p. 1374, § 13, effective July 1.

ANNOTATION

Applied in *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978).

27-10.5-113. Right to individualized plan or individualized family service plan. (1) Each person receiving services shall have an individualized plan, an individualized family service plan, or a similar plan specified by the department that qualifies as an individualized plan, that is developed by the person's interdisciplinary team. The individualized family service plan for a child with disabilities from birth through two years of age shall be developed in compliance with part 7 of this article.

(2) Pursuant to section 27-10.5-106, the individualized plan for each person who receives services or supports shall be reviewed at least annually and modified as necessary or appropriate; except that an individualized family service plan for a child with disabilities from birth through two years of age shall be reviewed as required pursuant to part 7 of this article. A review shall consist of, but is not limited to, the determination by the interdisciplinary team as to whether the needs of the person receiving services or supports are accurately reflected in the plan, whether the services and supports provided pursuant to the plan are appropriate to meet the person's needs, and what actions are necessary for the plan to be achieved.

Source: **L. 75:** Entire article added, p. 913, § 1, effective July 1. **L. 85:** (1) and (2) amended and (3) repealed, pp. 1001, 1016, §§ 15, 46, effective July 1. **L. 92:** Entire section R&RE, p. 1375, § 14, effective July 1. **L. 2007:** Entire section amended, p. 1565, § 9, effective May 31. **L. 2008:** Entire section amended, p. 1455, § 8, effective August 5. **L. 2010:** (2) amended, (HB 10-1213), ch. 220, p. 962, § 5, effective May 10.

27-10.5-114. Right to medical care and treatment. (1) Each person receiving services shall have access to appropriate dental and medical care and treatment for any physical ailments and for the prevention of any illness or disability.

(2) No medication for which a prescription is required shall be administered without the written order of a physician. A physician shall conduct a review of all prescriptions and other orders for medications in order to determine the appropriateness of the person's medication regimen annually, or more often, if required by law.

(3) All service agencies which administer medication shall require that notation of the medication of a person receiving services be kept in the person's medical records. All medications shall be administered pursuant to part 3 of article 1.5 of title 25, C.R.S.

(4) Persons receiving services shall have a right to be free from unnecessary or excessive medication. The service agency's records shall state the effects of psychoactive medication if administered to the person receiving services. When dosages of such are changed or other psychoactive medications are prescribed, a notation shall be made in such person's record concerning the effect of the new medication or new dosages and the behavior changes, if any, which occur.

(5) Medication shall not be used for the convenience of the staff, for punishment, as a substitute for a treatment program, or in quantities that interfere with the treatment program of the person receiving services.

(6) Only appropriately trained staff shall be allowed to administer drugs.

(6.5) The executive director has the power to direct the administration or monitoring of medications to persons being cared for and treated in centers for the developmentally disabled pursuant to section 25-1.5-301 (2) (h), C.R.S.

(7) No person receiving services shall be subjected to any experimental research or hazardous treatment procedures without the consent of such person, if the person is over eighteen years of age and is able to give such consent, or of the person's parent, if the person is under eighteen years of age, or of the person's legal guardian. Such consent may be given only after consultation with the interdisciplinary team and a developmental disabilities professional not affiliated with the facility or community residential home in which the person receiving services resides. However, no such person of any age shall be subjected to experimental research or hazardous treatment procedures if said person implicitly or expressly objects to such procedure.

(8) No person receiving services shall have any organs removed for the purpose of transplantation without the consent of such person, if the person is over eighteen years of age and is able to give such consent. If the person's ability to give consent to the medical procedure is challenged by the physician, the same procedures as those set forth in section 27-10.5-129 shall be followed. Consent for the removal of organs for transplantation may be given by the parents of a person receiving services, if the person is under eighteen years of age, or by the person's legal guardian. Such consent may be given only after consultation with the interdisciplinary team and a developmental disabilities professional not affiliated with the facility or community residential home in which the person receiving services

resides. However, no person receiving services of any age shall be a donor of an organ if the person implicitly or expressly objects to such procedure.

(9) (a) As used in subsections (7) and (8) of this section, consent also shall require that the person whose consent is sought has been adequately and effectively informed as to the:

(I) Method of experimental research, hazardous treatment, or transplantation;

(II) Nature and consequence of such procedures; and

(III) Risks, benefits, and purposes of such procedures.

(b) The consent of any person may be revoked at any time.

(10) Subsections (7), (8), and (9) of this section shall not apply when a physician renders emergency medical care or treatment to any resident.

Source: **L. 75:** Entire article added, p. 913, § 1, effective July 1. **L. 85:** (1), (3) to (5), (7), and (8) amended, p. 1001, § 16, effective July 1. **L. 92:** Entire section amended and (6.5) added, pp. 1375, 1157, §§ 15, 13, effective July 1. **L. 97:** (6.5) amended, p. 1024, § 47, effective August 6. **L. 2003:** (3) and (6.5) amended, p. 714, § 55, effective July 1.

27-10.5-115. Right to humane care and treatment. (1) Corporal punishment of persons with a developmental disability shall not be permitted.

(2) All service agencies shall prohibit mistreatment, exploitation, neglect, or abuse in any form of any person receiving services.

(3) Service agencies shall provide every person receiving services with a humane physical environment.

(4) Each person receiving services shall be attended to by qualified staff in numbers sufficient to provide appropriate services and supports.

(5) Seclusion, defined as the placement of a person receiving services alone in a closed room for the purpose of punishment, is prohibited.

(6) "Time out" procedures, defined as separation from other persons receiving services and group activities, may be employed under close and direct professional supervision, as defined by the department, and only as a technique in behavior-shaping programs. Behavior-shaping programs utilizing a "time out" procedure shall be implemented only when it incorporates a positive approach designed to result in the acquisition of adaptive behaviors. Such behavior programs shall only be implemented following the completion of a comprehensive functional analysis, when alternative nonrestrictive procedures have been proven to be ineffective, and only with the informed consent of the individual, parents, or legal guardian. Such behavior programs shall be implemented only following the review and approval process defined in rules and regulations. Behavior development programs shall be developed in conjunction with the interdisciplinary team and implemented only following review by the human rights committee. Behavior development programs involving the use of the procedure in a "time out room" are prohibited.

(7) Behavior development programs involving the use of aversive or noxious stimuli are prohibited.

(8) Physical restraint, defined as the use of manual methods intended to restrict the movement or normal functioning of a portion of an individual's body through direct contact by staff, shall be employed only when necessary to protect the person receiving services from injury to self or others. Physical restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a program of services and supports. Physical guidance or prompting techniques of short duration such as those employed in training techniques are not considered physical restraint. Physical restraint shall be applied only if alternative techniques have failed and only if such restraint imposed the least possible restriction consistent with its purpose. If physical restraint is used in an emergency or on a continuing basis its use shall be reviewed by the interdisciplinary team and the human rights committee in accordance with the rules and regulations of the department.

(9) The use of a mechanical restraint, defined as the use of mechanical devices intended to restrict the movement or normal functioning of a portion of an individual's body, is subject to special review and oversight, as defined in rules and regulations. Use of mechanical restraints shall be applied only in an emergency if alternative techniques have failed and in conjunction with a behavior development program. Mechanical restraints shall

be designed and used so as not to cause physical injury to the person receiving services and so as to cause the least possible discomfort. The use of mechanical restraints shall be reviewed by the human rights committee. The use of posey vests, straight jackets, ankle and wrist restraints, and other devices defined in rules and regulations is prohibited.

(10) A record shall be maintained of all physical injuries to any person receiving services, all incidents of mistreatment, exploitation, neglect, or abuse, and all uses of physical or mechanical restraint. All records shall be subject to review by the human rights committee.

(11) Behavior development programs shall be supervised by a developmental disabilities professional having specific knowledge and skills to develop and implement positive behavioral intervention strategies.

Source: L. 75: Entire article added, p. 914, § 1, effective July 1. L. 85: (2) and (8) amended, p. 1002, § 17, effective July 1. L. 92: Entire section R&RE, p. 1377, § 16, effective July 1.

27-10.5-116. Right to religious belief, practice, and worship. No person receiving services shall be required to perform any act or be subject to any procedure whatsoever which is contrary to the person's religious belief, and each such person shall have the right to practice such religious belief and be accorded the opportunity for religious worship. Provisions for religious worship shall be made available to all persons receiving services on a nondiscriminatory basis. No such person shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

Source: L. 75: Entire article added, p. 915, § 1, effective July 1. L. 85: Entire section amended, p. 1004, § 18, effective July 1. L. 92: Entire section amended, p. 1379, § 17, effective July 1.

27-10.5-117. Rights to communications and visits. (1) Each person receiving services has the right to communicate freely and privately with others of the person's own choosing.

(2) Each person receiving services has the right to receive and send sealed, unopened correspondence. No such person's incoming or outgoing correspondence shall be opened, delayed, held, or censored by any person.

(3) Each person receiving services shall have the right to receive and send packages. No such person's outgoing packages shall be opened, delayed, held, or censored by any person.

(4) Repealed.

(5) Each person receiving services shall have reasonable access to telephones, both to make and to receive calls in privacy, and shall be afforded reasonable and frequent opportunities to meet with visitors.

(6) All service agencies shall ensure that persons receiving services have suitable opportunities for interaction with persons of their choice. Nothing in this section will limit the protections provided under article 3.1 of title 26, C.R.S.

(7) Repealed.

Source: L. 75: Entire article added, p. 915, § 1, effective July 1. L. 85: (1) to (3), (5), and (6) amended and (4) and (7) repealed, pp. 1004, 1016, §§ 19, 46, effective July 1. L. 92: Entire section amended, p. 1379, § 18, effective July 1.

27-10.5-118. Right to fair employment practices. (1) No person receiving services shall be required to perform labor; except that persons receiving services may voluntarily engage in such labor if the labor is compensated in accordance with applicable minimum wage laws.

(2) No person receiving services shall be involved in the physical care, care and treatment, training, or supervision of other persons receiving services unless such person has volunteered, has been specifically trained in the necessary skills, and has the judgment

required for such activities, is adequately supervised, and is reimbursed in accordance with the applicable minimum wage laws.

(3) Each person receiving services may perform vocational training tasks, subject to a presumption that an assignment longer than three months to any task is not a training task, if the specific task or any change in task assignment is an integral part of such person's individualized plan. If such person performs vocational training tasks for which the service agency is receiving compensation from any outside source, the person shall be compensated in accordance with the applicable minimum wage laws.

(4) Each person receiving services may voluntarily engage in labor for which the service agency would otherwise have to pay an employee if the specific labor or any change in labor is an integral part of such person's individualized plan and the person is compensated in accordance with the applicable minimum wage laws.

(5) Each person receiving services may be required to perform tasks of a personal housekeeping nature or tasks oriented to improving community living skills in accordance with the person's individualized plan.

(6) Payment to persons receiving services pursuant to this section shall not be collected by the service agency to offset the costs of providing services and supports to such person.

Source: L. 75: Entire article added, p. 916, § 1, effective July 1. L. 85: Entire section amended, p. 1004, § 20, effective July 1. L. 92: Entire section amended, p. 1379, § 19, effective July 1.

27-10.5-119. Right to vote. Each person receiving services who is eligible to vote according to law has the right to vote in all primary and general elections. As necessary, all service agencies shall assist such persons to register to vote, to obtain applications for mail-in ballots and to obtain mail-in ballots, to comply with other requirements which are prerequisite to voting, and to vote.

Source: L. 75: Entire article added, p. 916, § 1, effective July 1. L. 85: Entire section amended, p. 1005, § 21, effective July 1. L. 92: Entire section amended, p. 1380, § 20, effective July 1. L. 2007: Entire section amended, p. 1798, § 71, effective June 1.

27-10.5-120. Records and confidentiality of information pertaining to eligible persons or their families. (1) A record for each person receiving services shall be diligently maintained by the community centered board. The record shall include, but not be limited to, information pertaining to the determination of eligibility for services and the individualized plan. The record shall not be a public record.

(2) Except as otherwise provided by law, all information obtained and any records prepared in the course of determining eligibility or providing services and supports pursuant to this article shall be confidential and subject to the evidentiary privileges established by law. The disclosure of this information and these records in any manner shall be permitted only:

(a) To the applicant or person receiving services, to the parents of a minor, such person's legal guardian, and to any person authorized by the above named person;

(b) In communications between qualified professional personnel, including the board of directors of community centered boards and service agencies providing services to persons with developmental disabilities, to the extent necessary for the acquisition, provision, oversight, or referral of services and supports;

(c) (Deleted by amendment, L. 92, p. 1380, § 21, effective July 1, 1992.)

(d) To the extent necessary to make claims for aid, insurance, or medical assistance to which a person receiving services may be entitled, or to access services and supports pursuant to the individualized plan;

(e) For the purposes of evaluation, gathering statistics, or research when no identifying information concerning an individual person or family is disclosed. Identifying information is information which could reasonably be expected to identify a specific individual and

includes, but is not limited to, name, address, telephone number, social security number, medicaid number, household number, and photograph.

(f) To the court when necessary to implement the provisions of this article;

(g) To persons authorized by an order of court issued after a hearing, notice of which was given to the person, parents or legal guardian, where appropriate, and the custodian of the information;

(h) To the agency designated pursuant to 42 U.S.C. sec. 6012 as the protection and advocacy system for Colorado when:

(I) A complaint has been received by the protection and advocacy system from or on behalf of a person with a developmental disability; and

(II) Such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person;

(i) To the department or its designees as deemed necessary by the executive director to fulfill the duties prescribed by this article.

(3) Nothing in this section shall be construed to limit access by a person receiving services to such person's records.

(4) Nothing in this section shall be construed to interfere with the protections afforded to a person under the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d, and the federal "Family Education Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g.

Source: L. 75: Entire article added, p. 916, § 1, effective July 1. **L. 85:** Entire section amended, p. 1005, § 22, effective July 1. **L. 92:** Entire section amended, p. 1380, § 21, effective July 1. **L. 2008:** (4) added, p. 1455, § 9, effective August 5.

27-10.5-121. Right to personal property. (1) Each person receiving services has the right to the possession and use of such person's own clothing and personal effects. If the service agency holds any of such person's personal effects for any reason, such retention shall be promptly recorded in such person's record and the reason for retention shall also be recorded.

(2) Upon the request of a person receiving services, a service agency may hold money or funds belonging to the person receiving services, received by such person, or received by the service agency for such person. All such money or funds shall be held by the service agency as trustee for the person receiving services. Upon request, an accounting shall be rendered by the service agency.

(3) Upon request, a person receiving services shall be entitled to receive reasonable amounts of such person's money or funds held in trust.

Source: L. 75: Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section amended, p. 1006, § 23, effective July 1. **L. 92:** Entire section amended, p. 1381, § 22, effective July 1.

27-10.5-122. Right to influence policy. The persons receiving services of a service agency shall be entitled to establish a committee to hear the views and represent the interests of all such persons served by the agency and to attempt to influence the policies of the agency to the extent that they influence provision of services and supports.

Source: L. 75: Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section amended, p. 1007, § 24, effective July 1. **L. 92:** Entire section amended, p. 1382, § 23, effective July 1.

27-10.5-123. Right to notification. Each person receiving services shall have the right to read or have explained, in each person's or family's native language, any rules or regulations adopted by the service agency and pertaining to such person's activities.

Source: **L. 75:** Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section amended, p. 1007, § 25, effective July 1. **L. 92:** Entire section amended, p. 1382, § 24, effective July 1.

27-10.5-124. Discrimination. No person who has received services or supports under any provision of this article shall be discriminated against because of such status. For purposes of this section, “discrimination” means the giving of any unfavorable weight to the fact that a person has received such services or supports.

Source: **L. 75:** Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section amended, p. 1007, § 26, effective July 1. **L. 92:** Entire section amended, p. 1382, § 25, effective July 1.

27-10.5-125. Transfer of residents. (Repealed)

Source: **L. 75:** Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section repealed, p. 1016, § 46, effective July 1.

27-10.5-126. Return of residents. (Repealed)

Source: **L. 75:** Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section repealed, p. 1016, § 46, effective July 1.

27-10.5-127. Restoration of rights. (Repealed)

Source: **L. 75:** Entire article added, p. 917, § 1, effective July 1. **L. 85:** Entire section repealed, p. 1016, § 46, effective July 1.

27-10.5-128. Sterilization rights. (1) It is the intent of the general assembly that the procedures set forth in the following subsections be utilized when sterilization is being considered for the primary purpose of rendering the individual incapable of reproduction.

(2) Any person with a developmental disability over eighteen years of age who has given informed consent has the right to be sterilized, subject to the following:

(a) Prior to the procedure, competency to give informed consent and assurance that such consent is voluntarily and freely given shall be evaluated by the following:

(I) A psychiatrist, psychologist, or physician who does not provide services or supports to the person and who has consulted with and interviewed the person with a developmental disability; and

(II) A developmental disabilities professional who does not provide services or supports in which said person participates, and who has consulted with and interviewed the person with a developmental disability.

(b) The professionals who conducted the evaluation pursuant to paragraph (a) of this subsection (2) shall consult with the physician who is to perform the operation concerning each professional’s opinion in regard to the informed consent of the person requesting the sterilization.

(3) Any person with a developmental disability whose capacity to give an informed consent is challenged by the developmental disabilities professional or the physician may file a petition with the court to declare competency to give consent pursuant to the procedures set forth in section 27-10.5-129.

(4) No person with a developmental disability who is over eighteen years of age and has the capacity to participate in the decision-making process regarding sterilization shall be sterilized in the absence of the person’s informed consent. No minor may be sterilized without a court order pursuant to section 27-10.5-130.

(5) Sterilization conducted pursuant to this section shall be legal. Consent given by any person pursuant to subsection (2) of this section shall not be revocable after sterilization, and no person shall be liable for acting pursuant to such consent.

Source: L. 75: Entire article added, p. 918, § 1, effective July 1. L. 85: IP(1), (1)(b), and (2) amended, p. 1007, § 27, effective July 1. L. 92: Entire section R&RE, p. 1382, § 26, effective July 1.

ANNOTATION

Law reviews. For article, "Involuntary Sterilization of Retarded Minors in Colorado", see 11 Colo. Law. 421 (1982). For article, "Cruzan: The Right to Die, Parts I and II", see 19 Colo. Law. 2055 and 2237 (1990). For article, "In re Romero: Sterilization and Competency", see 68 Den. U. L. Rev. 105 (1991).

Constitutional rights extend to incompetents. The constitutionally-protected procreative alternatives available to competent adults must also extend where possible to individuals who are not mentally competent to make the choice for themselves. In re A.W., 637 P.2d 366 (Colo. 1981).

Sterilization sections not limited to competent adults. The general assembly did not intend §§ 27-10.5-128 through 27-10.5-132 to limit sterilizations to competently consenting adults. In re A.W., 637 P.2d 366 (Colo. 1981).

Court's power to act in absence of statutory authorization. A district court acting in its probate capacity has the power in the absence of statutory authorization to act on a petition for sterilization of a mentally retarded minor. In re A.W., 637 P.2d 366 (Colo. 1981).

A court's inherent *parens patriae* jurisdiction over incompetents may extend to decisions involving irrevocable consequences for the incompetent individual. In re A.W., 637 P.2d 366 (Colo. 1981).

Since statutory provisions concerning sterilization of mentally retarded persons do not address the issue of sterilization of a minor, it is within the district court's inherent authority to consider a petition for sterilization of a minor, and, in the absence of legislative pronouncement, it is proper and necessary for the supreme

court to promulgate standards for determining the circumstances under which such a procedure may be performed. In re A.W., 637 P.2d 366 (Colo. 1981).

Preliminary determinations court must make. In considering a petition to sterilize a mentally retarded minor, the district court must make the following preliminary determinations. First, while the mentally retarded person need not testify or be present at the proceedings if the person's presence would serve no useful purpose, the trial judge should talk with the person and observe the person's physical and mental condition. The wishes of the person, although not conclusive, are relevant, and a strong indication that the person does not wish to be sterilized must weigh heavily against authorizing the procedure. Second, the district court must determine that the person's capacity to make a decision about sterilization is unlikely to improve in the future. Third, the person for whom sterilization is requested must be proven capable of reproduction. In re A.W., 637 P.2d 366 (Colo. 1981).

Sterilization of mentally retarded minor must be medically necessary. Once a district court determines preliminary matters relating to a petition to sterilize a mentally retarded minor, it must find by clear and convincing evidence that the sterilization is medically essential. A sterilization is medically essential if clearly necessary, in the opinion of experts, to preserve the life or physical or mental health of the mentally retarded person. In re A.W., 637 P.2d 366 (Colo. 1981).

For legislative history of provisions relating to sterilization, see In re A.W., 637 P.2d 366 (Colo. 1981).

27-10.5-129. Competency to give consent to sterilization. (1) If the competency of the person with a developmental disability to give consent to sterilization is disputed by the developmental disabilities professional, the psychiatrist or psychologist, or physician, said person may file a petition for declaration of competency to give consent to sterilization with the court. Upon the filing of a petition which shows that said person is over eighteen years of age and desires to give consent to sterilization, the court shall immediately set a hearing to determine the person's competency to give such consent. For the purpose of determining competency, the court shall appoint two or more independent professional persons with expertise in the field of developmental disabilities who do not provide services and supports to said person to examine said person and to present their findings as to said person's competency to give consent to sterilization at the competency hearing.

(2) If the court determines that the person has given consent to sterilization and is competent to give such consent, the court shall order that the sterilization be performed unless the person withdraws consent to sterilization prior to the sterilization being performed. If the court determines that the person is incompetent to give consent to steriliza-

tion, the court shall order that no sterilization be performed without further court proceedings pursuant to section 27-10.5-130.

(3) Determination of competency in these proceedings is specific to the ability to give consent to sterilization and does not determine legal competency for any other purpose.

Source: **L. 75:** Entire article added, p. 918, § 1, effective July 1. **L. 85:** IP(1) and (2) to (4) amended, p. 1008, § 28, effective July 1. **L. 92:** Entire section R&RE, p. 1383, § 27, effective July 1.

ANNOTATION

When petition required. A petition is required if the retarded person's competency is questioned either by the physician from whom

sterilization is sought or by a parent, legal guardian, or custodian of the person. In re A.W., 637 P.2d 366 (Colo. 1981).

27-10.5-130. Court-ordered sterilization. (1) A person with a developmental disability who has been determined to be incompetent to give consent, the person's legal guardian, or the parents of a minor with a developmental disability, may petition the court to hold a hearing to determine whether said person should be ordered to be sterilized. The petition shall set forth the following:

- (a) The name, age, and residence of the person to be sterilized;
- (b) The name, address, and relation to said person of the petitioner;
- (c) The names and addresses of any parents, spouse, legal guardian, or custodian of said person;
- (d) The mental condition of the person to be sterilized;
- (e) A statement that the sterilization is medically necessary to preserve the life or physical or mental health of the person, including a short and plain description of the reasons behind the determination of medical necessity;
- (f) A statement that other less intrusive measures were considered and the reasons behind the determination that less intrusive means would not protect the interests of the individual.

(2) Upon petition to the court, the court shall appoint an attorney who will represent the interests of the person with a developmental disability and one or more experts in the developmental disability field to examine the person and to give testimony at the hearing regarding the person's mental and physical status and other relevant matters.

(3) The hearing on the petition shall be held promptly. The person with a developmental disability shall be represented by an attorney and shall have the opportunity to present testimony and to cross-examine witnesses.

(4) Copies of the petition and notices of the time and place of the hearing shall be mailed, not less than ten days prior to the hearing, to the person with a developmental disability, that person's attorney, a parent or next of kin, and legal guardian or custodian.

(5) Reasonable fees and costs incurred pursuant to this section shall be paid by the court for a person who is indigent.

- (6) Prior to ordering sterilization, the court must find:
 - (a) That the person lacks the capacity to effectively participate in the decision-making process regarding sterilization or is a minor with a developmental disability;
 - (b) That the court has heard from the person regarding that person's desires, if possible, and the court has considered the desires of the person;
 - (c) That the person lacks the capacity to make a decision regarding sterilization and that the person's capacity to make such a decision is unlikely to improve in the future;
 - (d) That the person is capable of reproduction and is likely to engage in activities at the present or in the near future which could result in pregnancy;
 - (e) By clear and convincing evidence, that the sterilization is medically necessary to preserve the life or physical or mental health of the person, including a short and plain description of the reasons behind the determination of medical necessity;
 - (f) That other less intrusive measures were considered and the reasons behind the determination that less intrusive means would not protect the interests of the person.

Source: **L. 75:** Entire article added, p. 919, § 1, effective July 1. **L. 85:** (1) amended, p. 1009, § 29, effective July 1. **L. 92:** Entire section R&RE, p. 1384, § 28, effective July 1.

ANNOTATION

Law reviews. For article, “Cruzan: The Right to Die, Parts I and II”, see 19 Colo. Law. 2055 and 2237 (1990). For article, “In re Romero: Sterilization and Competency”, see 68 Den. U. L. Rev. 105 (1991).

27-10.5-131. Confidentiality of sterilization proceedings. All records, hearings, and proceedings pursuant to sections 27-10.5-128 to 27-10.5-130 shall be strictly confidential unless requested to be open to the public by the person with a developmental disability or the person’s legal guardian.

Source: **L. 75:** Entire article added, p. 919, § 1, effective July 1. **L. 85:** Entire section amended, p. 1009, § 30, effective July 1. **L. 92:** Entire section amended, p. 1386, § 29, effective July 1.

27-10.5-132. Limitations on sterilization. (1) Consent to sterilization shall be made neither a condition for release from any institution nor a condition for the exercise of any right, privilege, or freedom.

(2) Nothing in this article shall require any hospital or any person to participate in any sterilization, nor shall any hospital or any person be civilly or criminally liable for refusing to participate in any sterilization.

Source: **L. 75:** Entire article added, p. 919, § 1, effective July 1.

27-10.5-133. Group homes for the developmentally disabled. (Repealed)

Source: **L. 75:** Entire article added, p. 919, § 1, effective July 1. **L. 76:** (1)(a), (1)(b), and (2) amended and (2.5) added, p. 671, § 2, effective May 20. **L. 85:** Entire section repealed, p. 1016, § 46, effective July 1.

27-10.5-134. Civil action and attorney fees. A violation of any provision of this article shall give rise to a civil cause of action by the person adversely affected by such violation, and any judgment may include plaintiff’s reasonable attorney fees.

Source: **L. 75:** Entire article added, p. 920, § 1, effective July 1.

27-10.5-135. Terminology. (1) Whenever the terms “insane”, “insanity”, “mentally or mental incompetent”, “mental incompetency”, or “of unsound mind” are used in the laws of the state of Colorado, they shall be deemed to refer to the insane, as defined in section 16-8-101, C.R.S., or to a person with a developmental disability, as defined in section 27-10.5-102, as the context of the particular law requires.

(2) Whenever the term “mentally deficient person” is used in the laws of the state of Colorado, it shall be deemed to mean and be included with the term “person with a developmental disability”, as defined in section 27-10.5-102 (1) (b).

Source: **L. 75:** Entire article added, p. 920, § 1, effective July 1. **L. 85:** Entire section amended, p. 1009, § 31, effective July 1. **L. 92:** Entire section amended, p. 1386, § 30, effective July 1. **L. 2005:** (2) amended, p. 773, § 54, effective June 1. **L. 2006:** (1) amended, p. 1406, § 72, effective August 7.

27-10.5-136. Adjudication of competency. (Repealed)

Source: L. 75: Entire article added, p. 920, § 1, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1976. (See L. 75, p. 920.)

27-10.5-137. Federal funds. The department is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. The executive director of the department, with the approval of the governor, shall have power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which they are given.

Source: L. 85: Entire section added, p. 1009, § 32, effective July 1.

27-10.5-138. Service provision system evaluation. (Repealed)

Source: L. 85: Entire section added, p. 1009, § 32, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1988. (See L. 85, p. 1009.)

27-10.5-139. Evaluations to determine whether a defendant is mentally retarded for purposes of class 1 felony trials. Upon request of the court, the executive director, or his or her designee, shall recommend specific professionals who are qualified to perform an evaluation to determine whether a defendant is mentally retarded, as defined in section 18-1.3-1101, C.R.S. Any professional who is recommended shall be licensed as a psychologist in the state of Colorado and shall have experience in and shall have demonstrated competence in determination and evaluation of persons with mental retardation. The executive director shall convene a panel of not fewer than three individuals with expertise in mental retardation who shall assess the qualifications of licensed psychologists and make recommendations to the executive director.

Source: L. 95: Entire section added, p. 1258, § 24, effective July 1. L. 2002: Entire section amended, p. 1541, § 281, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

27-10.5-140. Child find - responsibilities - interagency operating agreements - rules. (Repealed)

Source: L. 2007: Entire section added, p. 1565, § 10, effective May 31. L. 2008: Entire section repealed, p. 1455, § 10, effective August 5.

Editor's note: Subsection (4) was amended in House Bill 08-1412, effective August 5, 2008, but those amendments did not take effect due to the repeal of this section by House Bill 08-1366, effective August 5, 2008.

27-10.5-141. Retaliation prohibited. No person shall be discriminated against because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this article, including the dispute resolution procedures in section 27-10.5-107. A service agency, including the department and any community centered board, shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of any right pursuant to this article, or on account

of his or her having exercised or enjoyed any right pursuant to this article, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right pursuant to this article.

Source: L. 2008: Entire section added, p. 1235, § 5, effective May 27.

27-10.5-142. Caregiver abuse - duties of the department - working group - issues - report - funding. (1) The general assembly hereby finds and declares that:

(a) Persons with developmental disabilities are four to ten times more likely to be victims of crime than the general population. Studies have shown that most crimes against persons with developmental disabilities are unreported, and, for those that are reported, there are excessively low rates of prosecution and conviction.

(b) Persons with developmental disabilities frequently depend upon others to meet their basic needs, leading to a power imbalance between the caregiver and the client with developmental disabilities.

(c) The general assembly is especially concerned by the prevalence of abuse, neglect, and exploitation of persons with developmental disabilities by caregivers who are in a position of trust. Studies estimate that most perpetrators who abuse persons with developmental disabilities had access to their victims through their work providing care for those persons.

(d) The protection of populations who are at risk due to advanced age or developmental disabilities requires the creation of a system to protect these vulnerable populations from those who abuse or neglect them.

(e) Therefore, the general assembly hereby determines that it is necessary to create a caregiver abuse registry to track those persons who abuse, neglect, or exploit at-risk adults and, to that end, tasks the department of human services to develop a plan to create and implement such a registry.

(2) On or before August 30, 2008, the department shall convene a working group to make recommendations for the development of a plan by the department to implement a registry of caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability. The working group shall include representation from interested parties, including but not limited to the division for developmental disabilities, community centered boards, service providers, family members, advocates for persons with developmental disabilities, the judicial department, law enforcement, and any other experts as determined by the department. In developing the plan, the department and the working group shall consider existing registry models in Colorado, as well as statutory models for caregiver abuse registries in other states.

(3) In developing the plan, the department and the working group shall consider, at a minimum, the following issues related to the creation and implementation of a registry of caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability:

(a) A review and evaluation of existing processes to determine current best practices and how to build on the existing system;

(b) Clear and consistent standards concerning what constitutes a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability;

(c) A definition of family and a determination of whether a family member who acts as a caregiver to a person with a developmental disability should be included on the registry;

(d) Due process considerations for individuals whose names are on the registry or are going to be placed on the registry, including the right to be advised of any allegations and an opportunity to be heard, request a hearing, and be represented by legal counsel;

(e) The need for thorough and fair investigations, including who would perform the investigations and uniform standards and training for those investigators;

(f) Any statutes that need modification due to the creation of a caregiver abuse registry;

(g) Information technology needs and personnel services associated with the creation, implementation, and ongoing administration of a caregiver abuse registry;

(h) The costs associated with creating and implementing a caregiver abuse registry, including whether federal funds or other potential funding sources may be available to cover any part of such costs; and

(i) A process and timeline to phase in the registry.

(4) On or before January 30, 2009, the department shall submit a report to the health and human services committees of the senate and the house of representatives, or any successor committees, summarizing the work of the department pursuant to this section. The report shall include the department's plan for a caregiver abuse registry and any recommendations for implementing legislation.

(5) The department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the caregiver abuse registry fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. All unexpended and unencumbered moneys remaining in the fund as of June 30, 2010, shall be transferred to the general fund.

(6) The department shall not be obligated to implement the provisions of this section until such time as there is at least thirty-three thousand dollars in the fund, whether received from gifts, grants, donations, or other sources.

Source: L. 2008: Entire section added, p. 2212, § 1, effective June 5.

27-10.5-143. Caregiver abuse - task force. (1) There is hereby created a task force to study and make recommendations for developing a plan for the department to implement a registry of caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability, referred to in this section as a "registry". The task force shall be limited to twenty members and may include voluntary representation from interested parties, including but not limited to persons with disabilities, members of the general assembly, the division for developmental disabilities in the department, community centered boards, service providers, family members, advocates for persons with developmental disabilities, the judicial department, law enforcement agencies, persons with legal or judicial expertise in abuse registries, and any other interested party. The members of the task force shall select a chair and vice-chair at the first meeting. In developing the plan, the task force may consider existing registry models in Colorado, as well as statutory models for caregiver abuse registries in other states. The department shall not provide staff support to the task force. Members of the task force shall serve without pay and without compensation for expenses. Members of the task force are encouraged to meet monthly, beginning on or before June 2009 and ending June 2010, at which time the task force shall make a report of its activities and findings to the department of human services.

(2) In developing the plan, the task force is encouraged to consider the following issues related to the creation and implementation of a registry:

(a) A review and evaluation of existing processes to determine current best practices and ways to build on the existing system;

(b) Clear and consistent standards concerning what constitutes a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability;

(c) A definition of family and a determination of whether a family member who acts as a caregiver to a person with a developmental disability should be included on the registry;

(d) Due process considerations for individuals whose names are on the registry or are going to be placed on the registry, including the right to be advised of any allegations and an opportunity to be heard, request a hearing, and be represented by legal counsel;

(e) The need for thorough and fair investigations, including who would perform the investigations and uniform standards and training for those investigators;

(f) Any statutes that need modification due to the creation of a registry;

(g) Information technology needs and personnel services associated with the creation, implementation, and ongoing administration of a registry;

(h) The costs associated with creating and implementing a registry, including whether federal funds or other potential funding sources may be available to cover any portion of such costs; and

(i) A process and timeline to phase in a registry.

Source: L. 2009: Entire section added, (HB 09-1178), ch. 84, p. 308, § 1, effective April 2.

PART 2

STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

27-10.5-201. Legislative declaration. The general assembly finds that state and local agencies provide a variety of services and supports to persons with developmental disabilities including institutional care, residential, social, and income maintenance services, diagnostic and health-related services, and educational and other programs. Because these services and supports are supported by many diverse agencies and organizations and because congress, through the federal “Developmental Disabilities Services and Facilities Construction Act”, and amendments thereto, has called for the establishment of state councils to provide coordination and planning in the field of developmental disabilities, the general assembly declares that there is need to establish a state council on developmental disabilities to be responsible for the coordination of services and supports to the persons with developmental disabilities and to serve as an advocate for such persons. The general assembly further finds that there is need to carefully define the duties and responsibilities of a state council on developmental disabilities.

Source: L. 79: Entire part added, p. 1117, § 1, effective July 1. **L. 85:** Entire section amended, p. 1010, § 33, effective July 1. **L. 92:** Entire section amended, p. 1386, § 31, effective July 1. **L. 2002:** Entire section amended, p. 1024, § 48, effective June 1.

27-10.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) “Developmental disability” means a severe, chronic disability of a person nine years of age or older which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Results in substantial functional limitations in three or more of the following areas of major life activity:

(I) Self-care;

(II) Receptive and expressive language;

(III) Learning;

(IV) Mobility;

(V) Self-direction;

(VI) Capacity for independent living; and

(VII) Economic self-sufficiency; and

(d) Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services and supports which are of lifelong or extended duration and are individually planned and coordinated; except that such term when applied to infants and young children means individuals from birth to age nine years,

inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services or supports are not provided.

(2) “State plan” means the state plan for developmental disabilities established pursuant to the provisions of section 27-10.5-204 and as required by the federal “Developmental Disabilities Services and Facilities Construction Act”, and amendments thereto, including the “Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978”, Pub.L. 95-602.

(3) “State council” means the Colorado developmental disabilities council established pursuant to section 27-10.5-203.

Source: **L. 79:** Entire part added, p. 1117, § 1, effective July 1. **L. 92:** Entire section amended, p. 1386, § 32, effective July 1. **L. 2002:** IP(1), (1)(d), and (3) amended, p. 1025, § 49, effective June 1.

Editor’s note: Pub.L. 95-602 is contained in 29 U.S.C. sec. 720.

27-10.5-203. Establishment of state council. (1) There is hereby created, within the office of the executive director of the department of human services, the Colorado developmental disabilities council. The powers, duties, and functions of the state council are transferred by a **type 1** transfer, as such transfer is defined by the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S., to the department of human services. The state council shall operate in accordance with the federal “Developmental Disabilities Assistance and Bill of Rights Act of 2000”, 42 U.S.C. sec. 15001 et seq.

(2) The state council shall consist of twenty-four members appointed by the governor for three-year terms; except that of the members first appointed, one-third shall be appointed for one-year terms, one-third shall be appointed for two-year terms, and one-third shall be appointed for three-year terms. Vacancies shall be filled by appointment for the unexpired term.

(3) The state council shall at all times include in its membership representatives of the principal state agencies, including the state agency that administers funds provided under the federal “Rehabilitation Act of 1973”, the state agency that administers funds provided under the federal “Individuals with Disabilities Education Act”, the state agency that administers funds provided under the federal “Older Americans Act of 1965”, and the state agency that administers funds provided under Titles V and XIX of the federal “Social Security Act” for persons with developmental disabilities; university centers for excellence in developmental disabilities education, research, and service; nongovernmental agencies; and private nonprofit groups concerned with services and supports for persons with developmental disabilities.

(4) At least one-half of the membership of the state council shall consist of persons who:

- (a) Are persons with developmental disabilities;
- (b) Are parents or guardians of such persons; or
- (c) Are family members or guardians of persons with mentally impairing developmental disabilities, and who are not employees of a state agency which receives funds or provides services and supports under this part 2, and who are not employees implementing programs under the federal “Social Security Act” or of any other entity which receives funds or provides services and supports under this part 2.

(5) Of the members of the state council described in subsection (4) of this section:

- (a) At least one-third shall be persons with developmental disabilities;
- (b) At least one-third shall be individuals described in paragraph (c) of subsection (4) of this section, and at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

(6) Members of the state council shall serve without compensation but shall be entitled to reimbursement for their expenses while attending regular and special meetings of the state council.

(7) The state council shall operate in accordance with bylaws adopted by a quorum of its membership.

(8) For the purposes of holding meetings of the council, a quorum shall be a simple majority of the council membership in attendance.

Source: **L. 79:** Entire part added, p. 1118, § 1, effective July 1. **L. 85:** (2) and (6) amended, p. 1010, § 34, effective July 1. **L. 92:** Entire section R&RE, p. 1387, § 33, effective July 1. **L. 93:** (1) amended, p. 1164, § 138, effective July 1, 1994. **L. 2002:** (1), (2), (3), IP(4), IP(5), (6), and (7) amended, p. 1025, § 50, effective June 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

27-10.5-204. Development of the state plan. The state council shall develop a five-year state plan for developmental disabilities in accordance with the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000", 42 U.S.C. sec. 15024. The state plan shall include establishment of goals and priorities for meeting the needs of persons with developmental disabilities, including recommendations concerning state program operations and funding for a comprehensive system of services and supports to persons with developmental disabilities. The state plan shall be prepared in compliance with federal requirements and shall designate the state agency responsible for administration of the state plan. The state council shall submit the state plan to the governor for approval.

Source: **L. 79:** Entire part added, p. 1118, § 1, effective July 1. **L. 92:** Entire section amended, p. 1389, § 34, effective July 1. **L. 2002:** Entire section amended, p. 1026, § 51, effective June 1.

27-10.5-205. Powers and duties. (1) The state council shall:

(a) Monitor the plans and programs of state agencies established and administered pursuant to the state plan;

(b) Review budgets and other programs and proposals for funding services and supports to persons with developmental disabilities;

(c) Review programs that provide services and supports to persons with developmental disabilities under contracts with state agencies and community centered boards as authorized by the state plan;

(d) Encourage cooperation and coordination of services and supports of public and private agencies including home care services and assist in the elimination of unnecessary and duplicative programs and procedures;

(e) Identify gaps in services and supports to persons with developmental disabilities and monitor programs for deinstitutionalization of such persons;

(f) Serve in an advisory capacity to the governor and the general assembly on matters affecting persons with developmental disabilities;

(g) Meet at least quarterly and as often as necessary to fulfill its duties and responsibilities;

(h) Have all powers necessary to carry out the provisions of this part 2.

Source: **L. 79:** Entire part added, p. 1118, § 1, effective July 1. **L. 85:** (1)(b), (1)(c), (1)(e), and (1)(f) amended, p. 1011, § 35, effective July 1. **L. 92:** Entire section amended, p. 1389, § 35, effective July 1. **L. 2002:** IP(1) amended, p. 1026, § 52, effective June 1.

27-10.5-206. State council employees. Subject to available appropriations, the executive director of the department of human services may employ such personnel as are required by the state council, pursuant to the provisions of section 13 of article XII of the state constitution. The executive director of the department of human services will appoint the staff director to the state council, accepting the recommendations of the council.

Source: **L. 79:** Entire part added, p. 1119, § 1, effective July 1. **L. 93:** Entire section amended, p. 1164, § 139, effective July 1, 1994. **L. 2002:** Entire section amended, p. 1026, § 53, effective June 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

27-10.5-207. Cooperation of departments. The departments of human services, public health and environment, and education shall cooperate with the state council in the development of and implementation of the recommendations made within the state plan. Said departments shall provide documents and other assistance requested by the state council or its representatives which are essential for the state council to meet its federal and state statutory requirements.

Source: **L. 79:** Entire part added, p. 1119, § 1, effective July 1. **L. 92:** Entire section amended, p. 1390, § 36, effective July 1. **L. 93:** Entire section amended, p. 1164, § 140, effective July 1, 1994. **L. 2002:** Entire section amended, p. 1027, § 54, effective June 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 230, Session Laws of Colorado 1993.

27-10.5-208. Service provision system evaluation. (Repealed)

Source: **L. 85:** Entire section added, p. 1011, § 36, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1988. (See L. 85, p. 1011.)

PART 3

REGIONAL CENTERS

Editor's note: Provisions similar to the provisions of this part 3 were found in article 14 of this title prior to its repeal in 1985.

27-10.5-301. Regional centers for persons with developmental disabilities. There are hereby established state regional centers in Wheat Ridge, Pueblo, and Grand Junction. The essential object of such regional centers shall be to provide state operated services and supports to persons with developmental disabilities.

Source: **L. 85:** Entire part added, p. 1011, § 37, effective July 1. **L. 92:** Entire section amended, p. 1390, § 37, effective July 1.

ANNOTATION

Law reviews. For article, "Liability of Counties for Support of Inmates in State Institutions", see 29 Dicta 27 (1952).

128 Colo. 374, 262 P.2d 550 (1953) (decided under former § 27-14-102).

For the object and purpose of the institution, see *People ex rel. Dunbar v. County Court*,

27-10.5-302. Directors. The executive director shall appoint, pursuant to section 13 of article XII of the state constitution, a director for each regional center. Persons appointed must be skilled and trained administrators with experience related to the needs of persons

with developmental disabilities. The director of each regional center shall appoint such other employees in accordance with section 13 of article XII of the state constitution as are necessary to carry out the functions of the regional center.

Source: L. 85: Entire part added, p. 1012, § 37, effective July 1. L. 92: Entire section amended, p. 1390, § 38, effective July 1.

27-10.5-303. Annual reports - publications. The director of each regional center shall report to the executive director at such times and on such matters as the executive director may require. Publications of each regional center circulated in quantity outside the department shall be subject to the approval and control of the executive director.

Source: L. 85: Entire part 3 added, p. 1012, § 37, effective July 1. L. 92: Entire section amended, p. 1391, § 39, effective July 1.

27-10.5-304. Admissions. (1) There may be admitted to any regional center persons with developmental disabilities who have been ordered placed in a regional center pursuant to section 27-10.5-110, if the applicant or legal guardian is a bona fide resident of Colorado.

(2) (Deleted by amendment, L. 92, p. 1391, § 40, effective July 1, 1992.)

Source: L. 85: Entire part added, p. 1012, § 37, effective July 1. L. 92: Entire section amended, p. 1391, § 40, effective July 1.

Cross references: For the interstate compact on mental health, see part 10 of article 60 of title 24.

ANNOTATION

Not all who are committed can be admitted, nor is it desirable that they should be under all circumstances. If it were so, the purpose of the institution might be defeated by over-crowding, resulting in part from the admission of those

who are not fit subjects, and thus making training less effective, if not impossible. People ex rel. Dunbar v. County Court, 128 Colo. 374, 262 P.2d 550 (1953) (decided under former § 27-14-106).

27-10.5-305. Endowment fund. There is hereby authorized the regional center endowment fund. Any parent, person, corporation, or institution may contribute to said endowment fund. The bylaws to be provided by the department of human services shall prescribe the different endowments; but the investments from said endowment fund shall be in state, county, or city bonds or in first mortgages on improved realty for not more than forty percent of the actual value of such realty.

Source: L. 85: Entire part added, p. 1012, § 37, effective July 1. L. 92: Entire section amended, p. 1391, § 41, effective July 1. L. 94: Entire section amended, p. 2712, § 288, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

27-10.5-306. Gifts - receipt and disposition. Each regional center is hereby authorized to receive gifts, legacies, devises, and conveyances of property, real or personal, that may be made, given, or granted to or for such regional center. If the gifts are not prescribed, the director, with approval of the executive director, shall exercise such authority and make such disposition of the gift property as may be for the best interest of said regional center.

Source: L. 85: Entire part added, p. 1012, § 37, effective July 1. L. 92: Entire section amended, p. 1391, § 42, effective July 1.

27-10.5-307. Expenditures. No moneys shall be paid by the state treasurer out of any other appropriation for, or moneys belonging to, a regional center, except upon warrants of the controller upon vouchers in favor of the persons to whom the state is indebted on account of said regional center and certified by the director of said regional center.

Source: L. 85: Entire part added, p. 1013, § 37, effective July 1. L. 92: Entire section amended, p. 1392, § 43, effective July 1.

27-10.5-308. Buildings - Pueblo. (Repealed)

Source: L. 85: Entire part added, p. 1013, § 37, effective July 1. L. 91: Entire section amended, p. 1146, § 17, effective May 18. L. 92: Entire section repealed, p. 1392, § 44, effective July 1.

27-10.5-309. Lease of property at regional center - regional center enterprise fund - creation. (Repealed)

Source: L. 85: Entire part added, p. 1013, § 37, effective July 1. L. 92: Entire section amended, p. 1392, § 45, effective July 1. L. 2008: Entire section repealed, p. 1345, § 3, effective May 27.

PART 4

FAMILY SUPPORT SERVICES

27-10.5-401. Legislative declaration. (1) It is the intent of the general assembly that the service delivery system for individuals with developmental disabilities emphasize community living for persons with developmental disabilities and provide supports to individuals that enable them to enjoy typical lifestyles. One way to accomplish this is to recognize that families are the greatest resource available to individuals who have a developmental disability and that families must be supported in their role as primary care givers. The general assembly finds that supporting families in their effort to care for their family members at home is more efficient, cost-effective, and humane than maintaining people with developmental disabilities in out-of-home residential settings. In recognition of the importance of families, the general assembly states that the following principles should be used as guidelines in developing programs to support families who have children with disabilities:

(a) Families of individuals with developmental disabilities are best able to determine their own needs and should be empowered to make decisions concerning necessary, desirable, and appropriate services and supports;

(b) Families must receive the services and supports necessary to care for their children at home;

(c) Family support must be responsive to the needs of the entire family unit;

(d) Family support must be sensitive to the unique strengths and needs of individual families;

(e) Family support must build on existing social networks and natural sources of support;

(f) Family support is needed throughout the lifespan of the individual who is disabled;

(g) Family support must encourage the inclusion of people with developmental disabilities within the community;

(h) Family support services must be flexible enough to accommodate unique needs of families as they evolve over time;

(i) Family support services must be consistent with the cultural preferences and orientations of individual families;

(j) Family support services should be comprehensive and coordinated across the numerous agencies likely to provide resources, supports, or services to families;

(k) Family support services should be based on the principles of sharing ordinary places, developing meaningful relationships, learning things that are useful, making choices, as well as increasing the status and enhancing the reputation of people served;

(l) Supports should be developed by the state that are necessary, desirable, and appropriate to support families;

(m) Developmental disabilities programs and policies must enhance the development of the individual with a developmental disability and the family;

(n) State programs should provide sufficient services and supports to enable families to keep their family members with developmental disabilities at home;

(o) A comprehensive, coordinated system of supports to families effectively uses existing resources and minimizes gaps in supports to families and individuals in all areas of the state;

(p) Services and supports provided through the family support program shall be closely coordinated with early intervention services and shall foster collaboration and cooperation with all agencies providing services and supports to infants and preschool children; and

(q) Any rights, entitlements, services, or supports created by this part 4 are not to be considered a limitation, modification, or infringement on any existing rights, entitlements, services, or supports, otherwise expressly provided by this article.

(2) In addition, the general assembly recognizes that the department has for several years developed and maintained a family resource service program that provides support services to families of children with developmental disabilities who are at risk of out-of-home placement. Because of the success of this program the general assembly recommends that this valuable program be continued and expanded so that more families in this state are able to receive appropriate services, supports, and assistance needed to stabilize the family unit. In recognition of the basic goal to support families, on an individual family basis, in maintaining a person with a developmental disability at home and in recognition of the principles stated in subsection (1) of this section, the general assembly declares that its purpose in enacting this part 4 is to create, subject to annual appropriation, a comprehensive statewide family support service program.

Source: L. 91: Entire part added, p. 1150, § 1, effective July 1. L. 92: Entire section amended, p. 1392, § 46, effective July 1.

27-10.5-402. Purpose. The purpose of the family support services program created in this part 4 is to provide support to families in their role as primary care givers for a family member with a developmental disability.

Source: L. 91: Entire part added, p. 1152, § 1, effective July 1.

27-10.5-403. Definitions. (Repealed)

Source: L. 91: Entire part added, p. 1152, § 1, effective July 1. L. 92: Entire section repealed, p. 1394, § 47, effective July 1.

27-10.5-404. Administration - duties of department. (1) Subject to annual appropriation by the general assembly, the department shall administer the family support services program and shall coordinate family support services with other existing services provided to families and individuals. Family support services shall be provided in a manner which develops comprehensive, responsive, and flexible support to families in their role as the primary care givers for a family member with a developmental disability.

(2) The department is authorized to contract with community centered boards and other service providers approved by the department to provide family support services in accordance with this part 4. Programs developed shall be flexible in order to address individual family needs.

(3) In administering the family support services program, the department shall have the following duties:

- (a) To design the program;
 - (b) To pursue a family support model 200 waiver for approval by the federal health care financing administration in order to utilize medicaid funds for the provision of family support services, implemented subject to appropriation;
 - (c) To develop and promulgate rules and regulations pursuant to section 27-10.5-407, with consultation from service providers, including representatives of families of persons with developmental disabilities;
 - (d) To allocate funds;
 - (e) To coordinate training and provide technical assistance to community centered boards and service providers;
 - (f) To monitor and evaluate the program;
 - (g) To coordinate contracts, expenditures, and billing of the program; and
 - (h) To recommend changes in the program.
- (4) Subject to annual appropriation by the general assembly, out of the appropriation to the department of human services for community programs in the general appropriation act, the department is authorized to use up to seven percent of such appropriation allocated for family support services to pay for administrative costs within the department and the community centered boards.

Source: **L. 91:** Entire part added, p. 1153, § 1, effective July 1. **L. 92:** (3)(b) and (3)(c) amended, p. 1394, § 48, effective July 1. **L. 94:** (4) amended, p. 2713, § 289, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

27-10.5-405. Family support councils. (1) The department shall assure that each community centered board establishes a family support council in each community centered board designated service area. The family support councils shall consist of professionals, interested citizens, family members of persons with a developmental disability, and persons with a developmental disability with a majority of the council being made up of family members.

- (2) The family support council shall:
- (a) Provide direction and assistance to the community centered board in the development of a family support plan for the designated service area;
 - (b) Make recommendations regarding other family supports or services not specifically listed in this part 4;
 - (c) Monitor the implementation of the supports or services provided pursuant to the plan;
 - (d) Provide a written report to the department of its involvement in the duties specified in this subsection (2).

Source: **L. 91:** Entire part added, p. 1154, § 1, effective July 1. **L. 92:** Entire section amended, p. 1395, § 49, effective July 1.

27-10.5-406. Authorized family support services. (1) The family support services included in this program include, but are not limited to, family support grants, family support services coordination, information and referral, educational materials, emergency and outreach services, and other individual and family centered assistance services such as:

- (a) Medical and dental expenses not covered by medical or health insurance or other programs;
- (b) Insurance expenses;
- (c) Respite, child care, and sitter services;
- (d) Mobility aids; adaptive equipment; assistive technology, including the cost of therapies essential for a child's development, as prescribed by a physician or specialized therapist; and home adaptations;

- (e) Home health services and therapies;
- (f) Family counseling, training, and support groups;
- (g) Recreation and leisure needs;
- (h) Transportation;
- (i) Special diets, clothing, materials, and equipment;
- (j) Homemaker services.

Source: L. 91: Entire part added, p. 1154, § 1, effective July 1.

27-10.5-407. Rules and regulations. (1) The department shall develop rules and regulations concerning:

- (a) Further definition of services and supports to be provided by the family support services program described in this part 4;
- (b) The requirements for eligibility for services and supports;
- (c) The manner of providing services and supports; and
- (d) The size, makeup, and duties of family support councils.

Source: L. 91: Entire part added, p. 1155, § 1, effective July 1. **L. 92:** Entire section amended, p. 1395, § 50, effective July 1.

PART 5

COLORADO FAMILY SUPPORT LOAN FUND

27-10.5-501. Legislative declaration. The general assembly hereby finds and declares that there is a need to establish a Colorado family support loan fund to assist families in obtaining family support services for those families who choose to maintain a dependent family member with a developmental disability in their home setting.

Source: L. 91: Entire part added, p. 1155, § 1, effective July 1.

27-10.5-502. Colorado family support loan fund - creation - loans to families.

(1) There is hereby created in the state treasury a fund to be known as the Colorado family support loan fund, referred to in this part 5 as the “fund”, which shall be administered by the department and which shall consist of moneys appropriated to the fund by the general assembly, interest earned on loans made out of the fund, and any moneys received pursuant to subsection (5) of this section.

(2) Moneys in the fund shall be continuously appropriated to the department for the purposes of this part 5. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(3) The department is authorized to make loans, up to a maximum amount of eight thousand dollars, out of the moneys in the fund to eligible families in order to enable them to obtain family short-term support services or equipment as defined in section 27-10.5-406. For purposes of this section, “families” has the same meaning as defined in section 27-10.5-102 (15). The department shall only approve loans to families who maintain a person or persons with a developmental disability at home. The department may establish whatever terms and conditions it deems appropriate in making such loans. The loan amount and any interest assessed to families shall be paid back to the department. All moneys received from families to pay back loans, including the interest assessed thereon, shall be transmitted to the state treasurer, who shall credit the same to the fund. All moneys in the fund may be used by the department to make loans as provided in this subsection (3).

(4) Subject to annual appropriation by the general assembly, the department of human services is hereby authorized to transfer from the appropriation for community programs in the general appropriation act up to three percent of such appropriation allocated for family

short-term support services or equipment to the Colorado family support loan fund. Any moneys received as a result of this subsection (4) shall be transmitted to the state treasurer and credited to the fund.

(5) The department is hereby authorized to receive contributions, grants, services, in-kind donations, and property from federal agencies, local governments, or private sources for use in carrying out the purposes of this part 5. Any moneys received as a result of this subsection (5) shall be transmitted to the state treasurer and credited to the fund.

Source: L. 91: Entire part added, p. 1155, § 1, effective July 1. **L. 92:** (3) amended, p. 1395, § 51, effective July 1. **L. 94:** (4) amended, p. 2713, § 290, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

27-10.5-503. Duties of the department with regard to the fund. (1) The department has the following duties with regard to the fund:

- (a) To develop rules and regulations and guidelines for the administration of the fund;
- (b) To adopt eligibility requirements for access to the fund;
- (c) To develop application and review criteria for the approval of loans from the fund;
- (d) To establish a low-cost fixed interest rate to be applied to all loans made from the fund;
- (e) To determine effective ways to communicate the availability of the fund to eligible families;
- (f) To account for the expenditures and to develop a system to ensure timely payback of any loans made pursuant to this part 5;
- (g) To perform a yearly audit of the fund; and
- (h) To take other measures as needed to ensure the intent and success of this part 5.

Source: L. 91: Entire part added, p. 1156, § 1, effective July 1.

PART 6

STUDY OF SELF-SUFFICIENCY TRUSTS

27-10.5-601. (Repealed)

Source: L. 96: Entire part repealed, p. 563, § 24, effective April 24.

Editor's note: This part 6 was added in 1991. For amendments to this part 6 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

COORDINATED SYSTEM OF PAYMENT FOR EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS

Editor's note: This part 7 was added in 2007 and was not amended prior to 2008. The substantive provisions of this part 7 were repealed and reenacted in 2008, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this part 7 prior to 2008, consult the 2007 Colorado Revised Statutes. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

27-10.5-701. Legislative declaration. (1) The general assembly hereby finds that:

- (a) There is an urgent and substantial need to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to

recognize the significant brain development that occurs during a child's first three years of life;

(b) The longer a child's developmental delays are not addressed, the more developmental difficulties the child will experience in the future, the less prepared the child will be for school, the more special education needs the child is likely to have, and the more costly those problems will be to address;

(c) The capacity of families to meet the special needs of their infants and toddlers with disabilities needs to be supported and enhanced;

(d) Colorado's system for providing early intervention services to eligible infants and toddlers from birth through two years of age with significant developmental delays and disabilities relies on multiple sources of funding;

(e) The early childhood and school readiness commission, which was the successor of the child care commission, was created in the 2004 legislative session to study, review, and evaluate the development of plans for creating a comprehensive early childhood system;

(f) The early childhood and school readiness commission extensively studied and evaluated issues regarding early intervention services for infants and toddlers who have delays in development and learned that there is no coordinated system of payment for early intervention services, resulting in the provision of disjunctive or interrupted services to eligible children and inadequate reimbursement of early intervention service providers;

(g) The early childhood and school readiness commission was also informed that many eligible children are covered as dependents by their parents' health care plans, but some of the plans may deny benefits for early intervention services, thereby eliminating a source of private funds for the payment of early intervention services;

(h) Pursuant to part C of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., there is an urgent and substantial need to facilitate the coordination of payment for early intervention services from federal, state, local, and private sources, including public medical assistance and private insurance coverage;

(i) Existing levels of local, state, federal, and private funding may be more efficiently used, more children may be served, and a higher quality of services may be provided if the existing early intervention system is modified to create a more coherent and coordinated system of payment for early intervention services;

(j) The involvement of a child's primary health care provider and other health care providers is an essential component of effective planning for the provision of early intervention services; and

(k) The provision of early intervention services is intended only to meet the developmental needs of an infant or toddler and not to replace other needed medical services that are recommended by the child's primary health care provider.

Source: L. 2008: Entire part R&RE, p. 1456, § 11, effective August 5. **L. 2009:** (1)(j) and (1)(k) added, (HB 09-1237), ch. 216, p. 979, § 2, effective May 2.

Editor's note: This section is similar to former § 27-10.5-701 as it existed prior to 2008.

27-10.5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Administrative unit" means a school district, a board of cooperative services, or the state charter school institute that is providing educational services to exceptional children and that is responsible for the local administration of the education of exceptional children pursuant to article 20 of title 22, C.R.S.

(2) "Carrier" shall have the same meaning as set forth in section 10-16-102 (8), C.R.S.

(3) "Certified early intervention service broker" or "broker" means a community centered board or other entity designated by the department to perform the duties and functions specified in section 27-10.5-708 in a particular designated service area. Notwithstanding the provisions of section 27-10.5-104 (4), if the department is unable to designate a community centered board or other entity to serve as the broker for a particular designated service area, the department shall serve as the broker for the designated service area and may contract directly with early intervention service providers to provide early intervention services to eligible children in the designated service area.

(4) “Child find” means the program component of IDEA that requires states to find, identify, locate, evaluate, and serve all children with disabilities, from birth to twenty-one years of age. Child find includes:

(a) Part C child find, which is the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children from birth through two years of age; and

(b) Part B child find, which is the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children from three to twenty-one years of age.

(5) “Coordinated system of payment” means the policies and procedures developed by the department, in cooperation with the departments of education, health care policy and financing, and public health and environment, the division of insurance in the department of regulatory agencies, private health insurance carriers, and certified early intervention service brokers, to ensure that available public and private sources of funds to pay for early intervention services for eligible children are accessed and utilized in an efficient manner.

(6) “Department” means the department of human services.

(7) “Early intervention services” means services as defined by the department in accordance with part C that are authorized through an eligible child’s IFSP and are provided to families at no cost or through the application of a sliding fee schedule. Early intervention services, as specified in an eligible child’s IFSP, shall qualify as meeting the standard for medically necessary services as used by private health insurance and as used by public medical assistance, to the extent allowed pursuant to section 25.5-1-124, C.R.S.

(8) “Early intervention state plan” means the state plan for a comprehensive and coordinated system of early intervention services required pursuant to part C.

(9) “Eligible child” means an infant or toddler, from birth through two years of age, who, as defined by the department in accordance with part C, has significant delays in development or has a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development or who is eligible for services pursuant to section 27-10.5-102 (11) (c).

(10) “Evaluation” means:

(a) For the purposes of part C child find, the procedures used to determine a child’s initial and continuing eligibility for part C child find, including but not limited to:

(I) Determining the status of the child in each of the developmental areas;

(II) Identifying the child’s unique strengths and needs;

(III) Identifying any early intervention services that might serve the child’s needs; and

(IV) Identifying priorities and concerns of the family and any resources to which the family has access.

(b) For the purposes of part B child find, the procedures used under IDEA for children with disabilities to determine whether a child has a disability and the nature and extent of special education and related services that the child will need.

(11) “Individualized family service plan” or “IFSP” means a written plan developed pursuant to 20 U.S.C. sec. 1436 and 34 CFR 303.340 that authorizes the provision of early intervention services to an eligible child and the child’s family. An IFSP shall serve as the individualized plan, pursuant to section 27-10.5-102 (20) (c), for a child from birth through two years of age.

(12) “Multidisciplinary team” means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities defined in 34 CFR 303.322 and development of the child’s IFSP.

(13) “Part B” means the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children with disabilities from three to twenty-one years of age.

(14) “Part C” means the early intervention program for infants and toddlers who are eligible for services under part C of the federal “Individuals with Disabilities Education Act”, 20 U.S.C. sec. 1400 et seq.

(15) “Private health insurance” means a health coverage plan, as defined in section 10-16-102 (22.5), C.R.S., that is purchased by individuals or groups to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, as defined in section 10-16-102 (22), C.R.S., provided to a person entitled to receive benefits or services under the health coverage plan.

(16) “Public medical assistance” means medical services that are provided by the state through the “Colorado Medical Assistance Act”, articles 4 to 6 of title 25.5, C.R.S., or the “Children’s Basic Health Plan Act”, article 8 of title 25.5, C.R.S., or other public medical assistance funding sources to qualifying individuals.

(17) “Qualified early intervention service provider” or “qualified provider” means a person or agency, as defined by the department by rule in accordance with part C, who provides early intervention services and is listed on the registry of early intervention service providers pursuant to section 27-10.5-708 (1) (a).

(18) “Service coordination” means the activities carried out by a service coordinator to assist and enable an eligible child and the eligible child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under the early intervention program.

(19) “State interagency coordinating council” means the council that is established pursuant to part C and appointed by the governor to advise and assist the lead agency designated or established under part C.

Source: L. 2008: Entire part R&RE, p. 1457, § 11, effective August 5.

Editor’s note: This section is similar to former § 27-10.5-702 as it existed prior to 2008.

27-10.5-703. Administration - duties of department - rules. (1) Subject to annual appropriation from the general assembly, the department shall administer early intervention services and shall coordinate early intervention services with existing services provided to eligible infants and toddlers from birth through two years of age and their families.

(2) The department shall promulgate rules, pursuant to section 27-10.5-103, as necessary for the implementation of this section and to ensure that all IDEA timelines and requirements are met, including but not limited to administrative remedies if the timelines and requirements are not met.

(3) In administering early intervention services, the department shall have and perform the following duties:

- (a) To design early intervention services in a manner consistent with part C;
- (b) To develop and promulgate rules after consultation with the state interagency coordinating council;
- (c) To ensure eligibility determination for a child with disabilities from birth through two years of age, based in part on information received concerning the screening and evaluation performed by an administrative unit pursuant to section 22-20-118, C.R.S.;
- (d) To ensure that an individualized family service plan is developed for infants and toddlers from birth through two years of age who are eligible for early intervention services. The IFSP shall be developed in compliance with part C and in coordination with part C child find evaluations where applicable, including the mandatory IFSP meeting at which the family receives information concerning the results of the child find evaluation performed by an administrative unit pursuant to section 22-20-118, C.R.S. The initial IFSP shall be developed in collaboration with a representative from the administrative unit that participated in the child’s screening and evaluation performed pursuant to section 22-20-118, C.R.S. The representative shall participate in the initial meeting for the development of the child’s IFSP.
- (e) To allocate moneys;
- (f) To coordinate training and provide technical assistance to community centered boards, service providers, and other constituents who are involved in the delivery of early intervention services to infants and toddlers from birth through two years of age;
- (g) To monitor and evaluate early intervention services provided through this part 7; and
- (h) To coordinate contracts, expenditures, and billing for early intervention services provided through this part 7.

Source: L. 2008: Entire part R&RE, p. 1460, § 11, effective August 5. **L. 2009:** (2) amended, (SB 09-044), ch. 57, p. 210, § 15, effective March 25.

27-10.5-704. Child find - responsibilities - interagency operating agreements - rules. (1) The department shall have the following responsibilities and duties for children from birth through two years of age who are referred for early intervention services:

(a) To develop and implement, in coordination with community centered boards, service agencies, governmental units, and the departments of education, public health and environment, and health care policy and financing, a statewide plan for public education, outreach, and awareness efforts related to child find and the availability of early intervention services;

(b) To ensure that referrals from the community are accepted and families are assisted in connecting with the appropriate agency for intake and case management services;

(c) To ensure that intake and case management services are provided after a referral has been made by working with community centered boards as the single entry point for a family into the developmental disabilities system, as described in section 27-10.5-102 (3); and

(d) To work with community centered boards, administrative units, and the department of education to assist a child with disabilities as he or she transitions from the developmental disabilities system into the public education system at no later than three years of age as required by IDEA.

(2) To facilitate the implementation of part C child find activities that are the responsibility of the department pursuant to this part 7 and to implement an effective and collaborative system of early intervention services, the department shall enter into any necessary interagency operating agreements at the state level, and community centered boards and other local agencies shall enter into any necessary interagency operating agreements at the local level.

(3) To facilitate the implementation of part C child find and the use of medicaid funds, the department and community centered boards may, when appropriate, share information with the department of education, the department of health care policy and financing, or administrative units that offer child find services pursuant to section 22-20-118, C.R.S., so long as each department or local agency acts in compliance with the federal "Health Insurance Portability and Accountability Act of 1994", 42 U.S.C. sec. 1320d.

Source: L. 2008: Entire part R&RE, p. 1461, § 11, effective August 5.

27-10.5-705. Authorized services - conditions of funding - purchases of services - rules. (1) The department shall promulgate rules as are necessary, in accordance with this part 7 and consistent with section 27-10.5-104.5, to implement the purchase of early intervention services directly or through community centered boards or certified early intervention service brokers.

(2) Community centered boards, certified early intervention service brokers, and service agencies receiving moneys pursuant to section 27-10.5-708 shall comply with all of the provisions of this article and the rules promulgated pursuant to this article.

(3) Community centered boards and certified early intervention service brokers shall obtain or provide early intervention services, subject to available appropriations, including but not limited to:

(a) Service coordination with families of eligible infants and toddlers from birth through two years of age. The purpose of service and support coordination shall be to enable a family to utilize service systems to meet its needs in an effective manner and increase the family's confidence and competence. Service coordination is to be rendered in an inter-agency context that emphasizes interagency collaboration. A family shall have, to the extent possible, a choice as to who shall perform certain facets of service coordination as established in the family's individualized family service plan.

(b) Coordination of early intervention services with local agencies and other community resources at the local level to avoid duplication and fragmentation of early intervention services. A community centered board shall:

(i) Coordinate with the local interagency effort regarding outreach, identification, screening, multidisciplinary assessment, and eligibility determination for families served by the community centered board who requested the services;

(II) Coordinate with the local family support services program; and
(III) Coordinate with other appropriate state agencies providing programs for infants and toddlers.

(4) The department is authorized to use up to three percent of the amount of the appropriation for early intervention services for training and technical assistance to ensure that the latest developments for early intervention services are rapidly integrated into service provision throughout the state.

Source: L. 2008: Entire part R&RE, p. 1462, § 11, effective August 5. L. 2009: (1) amended, (SB 09-044), ch. 57, p. 210, § 16, effective March 25.

27-10.5-706. Coordinated system of payment for early intervention services - duties of departments. (1) In order to implement the provisions of this part 7, the department, as lead agency for part C child find, shall be responsible for the following, subject to available appropriations:

(a) Establishing an early intervention state plan for a statewide, comprehensive system of early intervention services in accordance with part C child find;

(b) Establishing an interagency operating agreement between the department and the departments of education, health care policy and financing, and public health and environment regarding the responsibilities of each department to assist in the development and implementation of a statewide, comprehensive system of early intervention services and a coordinated system of payments for early intervention services;

(c) Developing, in cooperation with the department of education, the department of health care policy and financing, the department of public health and environment, the division of insurance in the department of regulatory agencies, private health insurance carriers, and certified early intervention service brokers, a coordinated system of payment of early intervention services using public and private moneys;

(d) Certifying community centered boards or other entities as determined by the department as early intervention service brokers for early intervention services provided pursuant to this part 7; and

(e) Ensuring an appropriate allocation of payment responsibilities for early intervention services among federal, state, local, and private sources, including public medical assistance and private insurance coverage.

(2) Any additional source of moneys that may become available for the payment of early intervention services on or after July 1, 2008, as a result of the development and implementation of a statewide, comprehensive system of early intervention services and a coordinated system of payments for early intervention services shall not replace or reduce any other federal or state moneys available for the payment of early intervention services on or before July 1, 2008.

(3) Nothing in this part 7 shall be construed to inhibit, encumber, or control the use of local moneys, including county grants, revenues from local mill levies, and private grants and contributions, that a community centered board or county government may elect to allocate for the benefit of eligible children.

(4) In developing a coordinated system of payment, the department shall not directly or indirectly create a new entitlement for early intervention services funded from the state general fund. However, this subsection (4) shall not prohibit any adjustments to public medical assistance required by section 25.5-1-124, C.R.S.

Source: L. 2008: Entire part R&RE, p. 1463, § 11, effective August 5.

Editor's note: This section is similar to former § 27-10.5-703 as it existed prior to 2008.

27-10.5-707. Cooperation among state agencies - implementing coordinated payment system - revisions to rules. (1) The departments of education, health care policy and financing, and public health and environment shall cooperate with the department to implement the provisions of this part 7 and each department shall:

(a) Assign a representative in accordance with part C child find to advise and assist the department in the development and implementation of the early intervention services system;

(b) Participate in the ongoing review of funding practices for early intervention services and develop or revise procedures for a coordinated system of payment for early intervention services;

(c) Use uniform forms and procedures for billing the costs of early intervention services to public medical assistance, as specified in the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., or the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., as appropriate, and private health insurance, as specified in part 1 of article 16 of title 10, C.R.S.;

(d) Coordinate revisions to existing rules that are necessary to implement this part 7; and

(e) Perform other tasks and functions necessary for the implementation of this part 7.

(2) The division of insurance in the department of regulatory agencies shall provide assistance to the department related to the requirements and implementation of section 10-16-104 (1.3), C.R.S., and insurance laws and rules related to billing and claims handling.

Source: L. 2008: Entire part R&RE, p. 1464, § 11, effective August 5.

Editor's note: This section is similar to former § 27-10.5-704 as it existed prior to 2008.

27-10.5-708. Certified early intervention service brokers - duties - payment for early intervention services - fees. (1) For each designated service area in the state, the certified early intervention service broker for the area shall:

(a) Establish a registry of qualified early intervention service providers to provide early intervention services to eligible children in the designated service area. The certified early intervention service broker for a designated service area may provide early intervention services directly or may subcontract the provision of services to other qualified providers on the registry.

(b) Accept and process claims for reimbursement for early intervention services provided under this part 7 by qualified providers;

(c) Negotiate for the payment of early intervention services provided to eligible children in the designated service area by qualified providers, to the extent permissible under federal law; and

(d) Ensure payment to a qualified provider for early intervention services rendered by the qualified provider.

(2) Certified early intervention service brokers shall use procedures and forms determined by the department to document the provision or purchase of early intervention services on behalf of eligible children. Invoices or insurance claims for early intervention services shall be submitted based on the available funding source for each eligible child and the reimbursement rate for the appropriate federal, state, local, or private funding sources, including public medical assistance and private health insurance.

(3) The department shall establish a schedule of fees to be charged by certified early intervention service brokers for providing broker services under this part 7. In developing the fee schedule, the department shall obtain input from certified early intervention service brokers and shall consider the duties of brokers under this part 7, the expenses incurred by brokers, and the relevant market conditions.

(4) Use of a certified early intervention broker is voluntary; except that private health insurance carriers that are included under section 10-16-104 (1.3), C.R.S., shall be required to make payment in trust under section 27-10.5-709. Nothing in this part 7 shall prohibit a qualified provider of early intervention services from directly billing the appropriate program of public medical assistance or a participating provider, as defined in section 10-16-102 (28.5), C.R.S., or from directly billing a private health insurance carrier for services rendered under this part 7 for insurance plans that are not included under section 10-16-104 (1.3), C.R.S.

(5) To the extent requested by the department, certified early intervention service brokers shall participate in ongoing reviews of funding practices for early intervention services and the development or revision of procedures for a coordinated system of payment for early intervention services.

Source: L. 2008: Entire part R&RE, p. 1465, § 11, effective August 5. L. 2009: (4) amended, (HB 09-1237), ch. 216, p. 979, § 3, effective May 2.

Editor's note: This section is similar to former § 27-10.5-705 as it existed prior to 2008.

27-10.5-709. Payment from private health insurance for early intervention services - trust fund. (1) Private health insurance carriers that are required to make payment of benefits for early intervention services for which coverage is required pursuant to section 10-16-104 (1.3), C.R.S., shall pay benefits to the department in trust for payment to a broker or provider for early intervention services provided to an eligible child. Upon notification from the department that a child is eligible, the child's private health insurance carrier shall have thirty days to make payment to the department.

(2) (a) When a private health insurance carrier makes payments of benefits for an eligible child to the department in trust, those moneys shall be deposited in the early intervention services trust fund, which trust fund is hereby created in the state treasury. Except as provided in paragraph (b) of this subsection (2), the principal of the trust fund shall only be used to pay certified early intervention service brokers or qualified early intervention service providers for early intervention services provided to the eligible child for whom the moneys were paid to the department in trust by the private health insurance carrier. Except as provided in paragraph (b) of this subsection (2), the principal of the trust fund shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution, and such moneys shall be deemed custodial funds that are not subject to appropriation by the general assembly.

(b) (1) For the 2008-09 fiscal year and each fiscal year thereafter, the general assembly shall make appropriations to the department from the principal of the early intervention services trust fund for the direct and indirect costs of administering this section. Any moneys appropriated to the department pursuant to this paragraph (b) shall constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(II) All interest derived from the deposit and investment of moneys in the early intervention services trust fund shall be credited to the trust fund, may be appropriated to the department in accordance with this paragraph (b), and shall constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(c) Within ninety days after the department determines that a child is no longer an eligible child for purposes of section 10-16-104 (1.3), C.R.S., the department shall notify the carrier that the child is no longer eligible and that the carrier is no longer required to provide the coverage required by said section for that child. Any moneys deposited in the trust fund on behalf of an eligible child that are not expended on behalf of the child before the child becomes ineligible shall be returned to the carrier that made the payments in trust for the child.

(3) No later than March 1, 2009, and no later than April 1 each year thereafter, the department shall provide a report to each private health insurance carrier that has made payments of benefits for an eligible child to the department in trust. The report shall specify the total amount of benefits paid to brokers or qualified providers for services provided to the eligible child during the prior calendar year, including the amount paid to each broker or qualified provider and the services provided to the eligible child. The report required by this subsection (3) shall be provided at least annually and more often, as determined by the department and the carrier.

Source: L. 2008: Entire part R&RE, p. 1466, § 11, effective August 5. L. 2009: (1), (2)(a), (2)(c), and (3) amended, (HB 09-1237), ch. 216, p. 979, § 4, effective May 2.

Editor's note: This section is similar to former § 27-10.5-706 as it existed prior to 2008.

27-10.5-710. Annual report - cooperation from certified early intervention service brokers and qualified providers. (1) By November 1, 2008, and by November 1 each year thereafter, the department shall submit an annual report to the general assembly regarding the various funding sources used for early intervention services, the number of eligible children served, the average cost of early intervention services, and any other information the department deems appropriate. The department shall submit the report to the joint budget committee as part of the department's annual budget request. The department shall also submit the report to the health and human services committees and the education committees of the senate and house of representatives, or any successor committees.

(2) The department shall request, and certified early intervention service brokers and qualified early intervention service providers shall provide, information regarding early intervention services that the department needs to prepare the annual report required by this section or other required federal or state reports.

Source: L. 2008: Entire part R&RE, p. 1467, § 11, effective August 5.

Editor's note: This section is similar to former § 27-10.5-707 as it existed prior to 2008.

PART 8

OUTCOME-BASED SUPPORTED EMPLOYMENT SYSTEM FOR INTEGRATED EMPLOYMENT SERVICES FOR PERSONS WITH DISABILITIES, INCLUDING DEVELOPMENTAL DISABILITIES

Cross references: For the legislative declaration contained in the 2008 act enacting this part 8, see section 2 of chapter 123, Session Laws of Colorado 2008.

27-10.5-801. Pilot program - creation - goals - implementation - reporting.

(1) (a) There is hereby created a pilot program in the division to implement an outcome-based employment model for persons with developmental disabilities and recommend a payment system for supported employment services in Colorado for persons with developmental disabilities.

(b) The goal of the pilot program shall be to increase the efficiency of statewide employment services for persons with developmental disabilities by connecting funding for employment services to employment outcomes, including but not limited to increased employment opportunities for and long-term success of integrated employment services for persons with developmental disabilities.

(c) The department shall develop the pilot program in consultation with the following individuals and entities:

- (I) Community centered boards;
 - (II) Providers of supported employment services other than community centered boards;
 - (III) Persons currently receiving supported employment services;
 - (IV) The division of vocational rehabilitation;
 - (V) The division for developmental disabilities in the department of human services;
- and
- (VI) Other experts in the field as identified by the department or the participants in this paragraph (c).

(d) On or before March 30, 2009, the department shall implement the pilot program. Prior to implementing the pilot program, the department shall submit a report to the joint budget committee and to the health and human services committees of the house of representatives and the senate on the specific details of the pilot program and how resources of the department will be directed to implement the pilot program. The pilot program shall end on or before March 30, 2011.

(e) On or before April 30, 2011, the department shall submit a report evaluating the pilot program to the joint budget committee and to the health and human services committees of the house of representatives and the senate, or any successor committees, the governor, and the lieutenant governor. The report shall include any costs or savings that were or are projected to be realized as a result of implementing the pilot program or the proposed payment system for supported employment services for persons with developmental disabilities. The report shall also include a summary of the number of jobs obtained for persons with developmental disabilities and the number of jobs retained by those individuals at three months, six months, and nine months following the initial placement.

(2) The department is authorized to implement recommendations of the pilot program within available appropriations.

(3) As used in this part 8, unless the context otherwise requires, "division" means the division of vocational rehabilitation in the department of human services.

Source: L. 2008: Entire part added, p. 378, § 2, effective April 10.

PART 9

STATE EMPLOYMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES

27-10.5-901. Legislative declaration. (1) The general assembly hereby finds that:

(a) Persons with developmental disabilities represent a population that has long been underutilized and often denied employment opportunities within state government, partially due to hiring personnel's perceptions and understanding of the operation and requirements of the state personnel system;

(b) Some state agencies are unaware of the avenues that are available within the state personnel system by which state agencies can hire and provide training and support for persons with developmental disabilities; and

(c) Many persons with developmental disabilities, when provided appropriate training and support, can develop sufficient skills and competencies to more than adequately fulfill job expectations in employment positions in state government.

(2) Therefore, it is the intent of the general assembly to create the state employment program for persons with developmental disabilities to encourage and provide incentives for state agencies to give meaningful employment opportunities to persons with developmental disabilities and to improve the state's practices in employing, supervising, and supporting persons with developmental disabilities.

Source: L. 2008: Entire part added, p. 2182, § 1, effective June 5.

27-10.5-902. State employment program for persons with disabilities - creation - rules. (1) There is hereby created within the department the state employment program for persons with developmental disabilities, referred to in this part 9 as the "program". The department shall design and implement the program to coordinate the hiring of interested persons with developmental disabilities into appropriate and meaningful state employment opportunities. The goal of the program is to identify for persons with developmental disabilities permanent and stable employment opportunities that are integrated within and appropriately meet the service goals of state agencies. The department of human services shall collaborate with the department of personnel in designing the program.

(2) (a) On or before July 1, 2008, the executive directors of the department of human services and the department of personnel shall jointly convene a working group to study and recommend how the state's policies and practices in employing, supervising, and supporting persons with developmental disabilities can be improved in order to effectively and successfully implement the program. The executive directors shall include in the working group persons with expertise in implementing the statutes and rules pertaining to the state personnel system, persons with expertise in interpreting and implementing the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and persons with

experience in employing and placing for employment persons with developmental disabilities.

(b) The working group shall complete its work and make recommendations to the executive directors of the department of human services and the department of personnel by January 1, 2009. The recommendations of the working group may include, but need not be limited to:

(I) Modifications to rules, statutes, or the state constitution to improve the success of persons with developmental disabilities who are employed through the program; and

(II) Identification or clarification of the roles and responsibilities of persons in the department of human services and the department of personnel in implementing the program efficiently and successfully.

(3) (a) If the working group finds that implementation of the program may require statutory or constitutional changes, the department of human services and the department of personnel shall not implement the program until the general assembly has considered and rejected said changes or until after a bill enacting said statutory changes or a referred measure enacting said constitutional changes has become law.

(b) After the conditions specified in paragraph (a) of this subsection (3) are met, or if the working group finds that neither statutory nor constitutional changes are necessary for implementation of the program, the state board of human services and the state personnel board shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as follows:

(I) The state board of human services shall promulgate rules as necessary for implementation of the program within the department of human services; and

(II) The state personnel board shall promulgate rules pertaining to the state personnel system as necessary for implementation of the program.

(4) Following promulgation of rules pursuant to subsection (3) of this section and in accordance with said rules and the provisions of this section, the department of human services, in collaboration with the department of personnel, shall implement the program. A state agency that seeks to employ a person with developmental disabilities through the program shall be responsible for hiring and supervision of the person and payment of the person's salary and benefits. The department, through the program, shall provide guidance to the hiring state agency regarding any additional issues that are pertinent to the person's employment.

(5) Following adoption of the rules specified in subsection (3) of this section, the department shall regularly provide information to state agencies to explain and promote the program. Upon full implementation of the program, each state agency is strongly encouraged to participate in the program by identifying meaningful and appropriate employment positions for persons with developmental disabilities and working with the department to hire persons with developmental disabilities for these positions.

Source: L. 2008: Entire part added, p. 2183, § 1, effective June 5.

PART 10

GENERAL PROVISIONS

27-10.5-1001. (Repealed)

Source: L. 2009: Entire part repealed, (SB 09-206), ch. 7, p. 59, § 1, effective March 2.

Editor's note: This part 10 was added in 2008 and was not amended prior to its repeal in 2009. For the text of this part 10 prior to 2009, consult the 2008 Colorado Revised Statutes.

ARTICLE 11**Community Centers - Mentally Retarded
and Handicapped****27-11-101 to 27-11-106. (Repealed)****Source: L. 85:** Entire article repealed, p. 1016, § 46, effective July 1.

Editor's note: This article was numbered as article 8 of chapter 71 in C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions on community centered boards that provide services for persons with developmental disabilities, see part 1 of article 10.5 of this title.

ARTICLE 12**Charges for Patients****27-12-101 to 27-12-109. (Repealed)**

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 7 of chapter 71, C.R.S. 1963. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to article 92 of this title. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

Institutions**ARTICLE 13****Colorado Mental Health Institute at Pueblo****27-13-101 to 27-13-113. (Repealed)**

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 3 of chapter 71, C.R.S. 1963. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to article 93 of this title. For the location of specific provisions, see the editor's notes following each section in said article and the comparative tables located in the back of the index.

ARTICLE 14**Homes for Mental Defectives****27-14-101 to 27-14-116. (Repealed)**

Source: L. 85: Entire article repealed, p. 1016, § 46, effective July 1.

Editor's note: This article was numbered as article 4 of chapter 71 in C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions on regional centers, see part 3 of article 10.5 of this title.

ARTICLE 15

Colorado Mental Health Institute at Fort Logan

27-15-101 to 27-15-105. (Repealed)

Source: L. 2010: Entire article repealed, (SB 10-175), ch. 188, p. 675, § 1, effective April 29.

Editor's note: This article was numbered as article 5 of chapter 71, C.R.S. 1963. For amendments to this article prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to article 94 of this title. For the location of specific provisions, see the editor's notes following each section of said article and the comparative tables located in the back of the index.

ARTICLE 16

Western Regional Mental Health Center

27-16-101 to 27-16-105. (Repealed)

Source: L. 77: Entire article repealed, p. 293, § 7, effective May 26.

Editor's note: This article was numbered as article 9 of chapter 71 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

CORRECTIONS

ARTICLE 20

Penitentiary

27-20-101 to 27-20-203. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions of part 1 concerning the state penitentiary and the provisions of part 2, enacted by L. 77, p. 1377, § 1, concerning minimum security facilities, are under the department of corrections. (See articles 20 and 25 of title 17.)

(2) This article was numbered as article 4 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 21

Women's Correctional Institution

27-21-101 and 27-21-102. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: This article was numbered as articles 3 and 4 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 22

Reformatory

27-22-101 to 27-22-110. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: This article was numbered as article 3 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 23

Mentally Ill or Retarded Convicts - Transfer

27-23-101 to 27-23-103. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning the transfer of mentally ill or developmentally disabled inmates are under the department of corrections. (See article 23 of title 17.)

(2) This article was numbered as article 2 of chapter 71 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 24

Convict Labor and Goods

27-24-101 to 27-24-124. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: This article was numbered as article 5 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 25

Correctional Industries

27-25-101 to 27-25-203. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning correctional industries are under the department of corrections. (See article 24 of title 17.)

(2) This article was numbered as article 8 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 26

Jails

27-26-101 to 27-26-129. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning jails are under the department of corrections. (See article 26 of title 17.)

(2) This article was numbered as article 7 of chapter 105 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 27

Community Correctional Facilities and Programs

27-27-101 to 27-27-112. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning community correctional facilities and programs are under the department of corrections. (See article 27 of title 17.)

(2) This article was added in 1974. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 28

Restitution to Victims of Crime

27-28-101 and 27-28-102. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning restitution to victims of crime are under the department of corrections. (See article 28 of title 17.)

(2) This article was added in 1976 and was not amended prior to its repeal in 1977. For the text of this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

OTHER INSTITUTIONS

ARTICLE 35

School for the Deaf and the Blind

27-35-101 to 27-35-116. (Repealed)

Source: L. 77: Entire article repealed, p. 1095, § 5, effective July 1.

Editor's note: (1) The provisions concerning the school for the deaf and the blind have been transferred to article 80 of title 22. (See L. 77, pp. 1090-1095.)

(2) This article was numbered as article 1 of chapter 16 in C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

COLORADO DIAGNOSTIC PROGRAM

ARTICLE 40

Colorado Diagnostic Program

27-40-101 to 27-40-107. (Repealed)

Source: L. 77: Entire article repealed, p. 955, § 37, effective August 1.

Editor's note: (1) The provisions concerning the Colorado diagnostic program, are under the department of corrections. (See article 40 of title 17.)

(2) This article was added in 1974. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

BEHAVIORAL HEALTH

ARTICLE 60

General Provisions

27-60-101. Mental health crisis response system - legislative declaration - report by department.

27-60-101. Mental health crisis response system - legislative declaration - report by department. (1) (a) The general assembly hereby finds and declares that:

(I) There are people in Colorado communities who are experiencing mental health or substance abuse crises and need professional crisis care or urgent psychiatric care from skilled mental health clinicians and medical professionals who excel at providing compassionate crisis intervention and stabilization;

(II) Mental health or substance abuse crisis can happen any hour of the day and any day of the week;

(III) Persons in crisis frequently come in contact with community first responders who are often unable to provide necessary mental health interventions or who must transport these persons in crisis to emergency rooms for services, or, in cases where a crime is alleged, to jail;

(IV) Colorado ranks fiftieth in the nation in the number of inpatient psychiatric beds;

(V) Fewer than one-half of the persons who are in crisis and are taken to an emergency room are admitted for inpatient hospitalization, meaning that thousands of people each year return to community streets with little, if any, mental health or substance abuse crisis intervention or treatment; and

(VI) Significant time and resources are required of community first responders in addressing persons in mental health or substance abuse crisis and, in many cases, this community response is neither timely nor safe for the person in crisis nor cost-efficient for the state.

(b) The general assembly therefore finds that:

(I) A coordinated crisis response system provides for early intervention and effective treatment of persons in mental health or substance abuse crisis;

- (II) A coordinated crisis response system should involve first responders and include information technology systems to integrate available crisis responses;
- (III) A coordinated crisis response system should be available in all communities statewide; and
- (IV) A coordinated crisis response system may include community-based crisis centers where persons in mental health or substance abuse crisis may be stabilized and receive short-term treatment.
- (2) (a) The department of human services shall review the current behavioral health crisis response in Colorado and shall formulate a plan to address the lack of coordinated crisis response in the state. The plan shall include an analysis of the best use of existing resources, including but not limited to managed service organizations, behavioral health organizations, mental health centers, crisis intervention trained officers, metro crisis services, hospitals, and other entities impacting behavioral health crisis response. The department of human services shall complete the review, formulate the plan, and prepare the report required in paragraph (b) of this subsection (2) within existing appropriations and shall design the plan to be implemented within existing appropriations.
- (b) On or before January 30, 2013, the department of human services shall present to a joint meeting of the health and human services committees of the house of representatives and the senate, or any successor committees, a report concerning coordinated behavioral health crisis response in Colorado. The report, at a minimum, shall include the plan prepared pursuant to paragraph (a) of this subsection (2).

Source: L. 2010: Entire article added, (HB 10-1032), ch. 316, p. 1475, § 1, effective May 27.

Editor’s note: This section was added by section 1 of ch. 316, Session Laws of Colorado 2010, as § 27-1-210 but was renumbered on revision for ease of location since article 1 of this title was repealed by Senate Bill 10-175.

ARTICLE 61

Behavioral Health Transformation Council

Editor’s note: This article was numbered as article 64 in Senate Bill 10-153 but has been renumbered on revision for ease of location.

27-61-101.	Legislative declaration.	27-61-102.	Behavioral health transformation council - creation - duties - sunset review - repeal.
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- 27-61-101. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:
- (a) There is an urgent need to address the economic, social, and personal costs to the state of Colorado and its citizens of untreated mental health and substance use disorders;
- (b) Behavioral health disorders, including mental health and substance use disorders, are treatable conditions not unlike other chronic health issues that require a combination of behavioral change and medication or other treatment. When individuals receive appropriate prevention, early intervention, treatment, and recovery services, they can live full, productive lives.
- (c) Untreated behavioral health disorders place individuals at high risk for poor health outcomes and significantly impact virtually all aspects of local and state government by reducing family stability, student achievement, workforce productivity, and public safety;
- (d) Currently, there is no single behavioral health care system in Colorado. Instead, consumers of all ages with behavioral health disorders receive services from a number of different systems, including the health care, behavioral health care, child welfare, juvenile and criminal justice, education, and higher education systems.
- (e) Adult and youth consumers and their families need quality behavioral health care

that is individualized and coordinated to meet their changing needs through a comprehensive and integrated system;

(f) Timely access through multiple points of entry to a full continuum of culturally responsive services, including prevention, early intervention, crisis response, treatment, and recovery, is necessary for an effective integrated system;

(g) Evidence-based and promising practices result in favorable outcomes for Colorado's adult and youth consumers, their families, and the communities in which they live;

(h) Lack of public awareness regarding behavioral health issues creates a need for public education that emphasizes the importance of behavioral health as part of overall health and wellness and creates the desire to invest in and support an integrated behavioral health system in Colorado;

(i) To reduce the economic and social costs of untreated behavioral health disorders, Colorado needs a systemic transformation of the behavioral health system through which transformation the state strives to achieve critical goals to address mental health and substance use disorders; and

(j) The overarching goal of this behavioral health system transformation shall be to make the behavioral health system's administrative processes, service delivery, and funding more effective and efficient to improve outcomes for Colorado citizens.

(2) The general assembly further finds and declares that, to improve the quality of life for the citizens of Colorado, strengthen the economy, and continue the responsible management of the state's resources, the leadership of the three branches of Colorado's state government and the stakeholders most affected by mental health and substance use disorders must collaborate to build on the progress of past efforts and to sustain a focus on the improvement of behavioral health services.

Source: L. 2010: Entire article added, (SB 10-153), ch. 295, p. 1368, § 1, effective May 26.

27-61-102. Behavioral health transformation council - creation - duties - sunset review - repeal. (1) The governor shall designate a group of his or her cabinet members including, but not limited to, the commissioner of education, the executive director or chief medical officer of the department of public health and environment, and the executive directors of the departments of corrections, health care policy and financing, human services, labor and employment, local affairs, and public safety to oversee the systemic transformation of the behavioral health system.

(2) (a) On or before August 1, 2010, the governor shall create a behavioral health transformation council, referred to in this section as the "council", to advise his or her cabinet on transforming the behavioral health system in Colorado. On or before August 1, 2010, the governor shall designate an executive branch department to serve as the lead department to facilitate the council's work. In consultation with the governor, the lead agency shall determine the appropriate membership, tenure, and operating protocols of the council.

(b) The council membership shall include the following:

(I) Representatives from executive branch agencies that fund or serve clients who use the behavioral health system, including but not limited to the departments of corrections, education, health care policy and financing, human services, labor and employment, local affairs, public health and environment, and public safety;

(II) At least two representatives from the judicial branch, appointed by the chief justice of the Colorado supreme court;

(III) Two representatives from the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader, with preference given to members familiar with recent audit issues regarding behavioral health services;

(IV) Two representatives from the senate, one appointed by the president of the senate and one appointed by the minority leader;

(V) One representative from the governor's office of information technology; and

(VI) At least ten representatives, recommended by the lead agency in consultation with the council, from any group or committee that actively participated in the behavioral health transformation grant in 2009-2010, and which shall include consumers or entities representing consumers of behavioral health services.

(c) On or before January 30, 2011, and on or before January 30 each year thereafter, the lead agency shall brief the health and human services committees of the house of representatives and the senate, or any successor committees, and the state court administrator's office on the activities and progress of the council toward achieving the goals of a transformation of Colorado's behavioral health system.

(3) The council shall have the following duties and functions:

(a) To develop a strategic prioritization, planning, and implementation process to advise the governor's cabinet on transforming Colorado's behavioral health system. The council shall work toward the following goals associated with a comprehensive, efficient, effective, and integrated behavioral health system:

(I) Developing shared outcomes across key systems to enable joint accountability, improve services, and increase recovery, self-sufficiency, and economic opportunity;

(II) Aligning service areas across systems to promote equitable and timely access to a full continuum of services throughout Colorado, to the extent feasible;

(III) Establishing joint monitoring across systems to ensure accountability for common outcomes and to reduce the administrative burden associated with service provision;

(IV) Creating integrated behavioral health policies and rules to align with integrated service delivery;

(V) Financing reform to maximize and efficiently utilize funds;

(VI) Utilizing electronic health records or other technology, shared screening tools, assessments, and evaluations in compliance with federal and state confidentiality and privacy laws;

(VII) Adopting consistent cross-system standards for cultural congruence and for youth, adult, and family involvement;

(VIII) Promoting and utilizing evidence-based and promising practices to the extent possible;

(IX) Creating workforce-development strategies required for an integrated behavioral health system; and

(X) Developing a comprehensive behavioral health service system that includes services to persons with mental illness, addictions, disabilities, and co-occurring issues;

(b) To make recommendations to the cabinet that encourage and promote collaboration, partnerships, and innovation across governmental agencies and other agencies in the budgeting, planning, administration, and provision of behavioral health services associated with the goals above; and

(c) To coordinate and consolidate the council's efforts with the efforts of other groups that are working on behavioral health issues to increase the effectiveness and efficiency of these efforts.

(4) This section is repealed, effective July 1, 2020. Prior to such repeal, the council shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 2010: Entire article added, (SB 10-153), ch. 295, p. 1369, § 1, effective May 26.

MENTAL HEALTH

ARTICLE 65

Care and Treatment of Persons with Mental Illness

Editor's note: This article was added with relocations in 2010 containing provisions of article 10 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For provisions concerning home- and community-based services for persons with developmental disabilities, see part 4 of article 6 of title 25.5; for liability of mental health care providers, see § 13-21-117.

Law reviews: For article, “Expanded Medical Screening for Public Sector Psychiatric Patients”, see 13 Colo. Law. 1651 (1984); for article “Medina: Incompetence and the Right to Refuse Medication”, see 14 Colo. Law. 1998 (1985); for article, “A Critique of the Model State Law on Civil Commitment of the Mentally Ill”, see 14 Colo. Law. 1206 (1985); for article, “Colorado Guardianship and Conservatorship Law: A Status Report”, see 16 Colo. Law. 421 (1987); for article, “The Continuing Crisis in Mental Health Care”, see 18 Colo. Law. 1533 (1989); for article, “When Worlds Collide: Mentally Ill Criminal Defendants—Part II”, see 29 Colo. Law. 101 (July 2000); for article, “Guidance for Attorneys When Children’s Mental Health Concerns are Implicated”, see 31 Colo. Law. 33 (October 2002).

27-65-101.	Legislative declaration.	27-65-118.	Administration or monitoring of medications to persons receiving care.
27-65-102.	Definitions.	27-65-119.	Employment of persons in a facility - rules.
27-65-103.	Voluntary applications for mental health services.	27-65-120.	Voting in public elections.
27-65-104.	Rights of respondents.	27-65-121.	Records.
27-65-105.	Emergency procedure.	27-65-122.	Request for release of information - procedures - review of a decision concerning release of information.
27-65-106.	Court-ordered evaluation for persons with mental illness.	27-65-123.	Treatment in federal facilities.
27-65-107.	Certification for short-term treatment.	27-65-124.	Transfer of persons into and out of Colorado - reciprocal agreements.
27-65-108.	Extension of short-term treatment.	27-65-125.	Criminal proceedings.
27-65-109.	Long-term care and treatment of persons with mental illness.	27-65-126.	Application of this article.
27-65-110.	Termination of short-term and long-term treatment - escape.	27-65-127.	Imposition of legal disability - deprivation of legal right - restoration.
27-65-111.	Hearing procedures - jurisdiction.	27-65-128.	Administration - rules.
27-65-112.	Appeals.	27-65-129.	Payment for counsel.
27-65-113.	Habeas corpus.	27-65-130.	Mental health service standards for health care facilities.
27-65-114.	Restoration of rights.	27-65-131.	Advisory board - service standards and rules.
27-65-115.	Discrimination.		
27-65-116.	Right to treatment.		
27-65-117.	Rights of persons receiving evaluation, care, or treatment.		

27-65-101. Legislative declaration. (1) The general assembly hereby declares that, subject to available appropriations, the purposes of this article are:

- (a) To secure for each person who may have a mental illness such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person’s dignity and personal integrity;
- (b) To deprive a person of his or her liberty for purposes of treatment or care only when less restrictive alternatives are unavailable and only when his or her safety or the safety of others is endangered;
- (c) To provide the fullest possible measure of privacy, dignity, and other rights to persons undergoing care and treatment for mental illness;
- (d) To encourage the use of voluntary rather than coercive measures to provide treatment and care for mental illness and to provide such treatment and care in the least restrictive setting;
- (e) To provide appropriate information to family members concerning the location and fact of admission of a person with a mental illness to inpatient or residential care and treatment;
- (f) To encourage the appropriate participation of family members in the care and

treatment of a person with a mental illness and, when appropriate, to provide information to family members in order to facilitate such participation; and

(g) To facilitate the recovery and resiliency of each person who receives care and treatment under this article.

(2) To carry out these purposes, subject to available appropriations, the provisions of this article shall be liberally construed.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 675, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-101 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981).

Annotator's note. Since § 27-65-101 is similar to § 27-10-101 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

The intent of this article is to provide services to all mentally ill persons, as defined, not just to those persons who are so mentally ill as to be gravely disabled or an imminent danger to themselves or others. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

The statutory scheme for the care and treatment of mentally ill persons is calculated (1) to provide care and treatment adequately suited to the needs of patients in a dignified and least restrictive manner and (2) to ensure against premature release of patients when that release would pose a likely risk of serious bodily harm to the patient or others as a result of the patient's mental condition. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989); *People in Interest of Reynes*, 870 P.2d 518 (Colo. App. 1993).

Difference from criminal commitment not violative of equal protection. The differences in the commitment procedures and standards of release for criminal and civil commitments do not violate equal protection of the laws. *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

Entire tenor of this article is to recognize and protect the dignity and legal rights of patients treated pursuant to its provisions. *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979).

Concern of general assembly was to devise system which protects rights of the individual while, at the same time, creating a method to discover the truth of the patient's mental illness and whether this illness causes the individual to be a danger to others or to himself or to be gravely disabled. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

This article applies to both voluntary and involuntary patients. *Goebel v. Colo. Dept. of*

Institutions, 764 P.2d 785 (Colo. 1988); *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Primary purpose of civil commitment is to secure such treatment as is suited to the needs of the person under conditions which are as least restrictive of liberty as practicable. *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

This act applies to those who are mentally ill and seek treatment before they become so mentally ill as to be dangerous or gravely disabled. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Article is to be strictly construed to see that no limit is placed on a person's right to seek voluntary treatment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

The provisions of this article must be strictly construed because of their curtailment of personal liberty. *People in Interest of Bucholz*, 778 P.2d 300 (Colo. App. 1989).

Powers to confine carefully restrained. The state's power to confine persons on the basis of mental illness must be carefully restrained by procedural safeguards, and can be invoked only by conditions great enough to justify such a massive curtailment of liberty. *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978).

Disability sufficient to justify involuntary commitment must arise as result of mental illness; and in keeping with the statutory purpose, it must be so grave that the person's safety is threatened by his inability to take care of his basic personal needs. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Mere disability alone is insufficient to warrant involuntary commitment. Mere disability alone, even if found in conjunction with mental illness, is not enough to warrant involuntary commitment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Duty of a therapist to protect third persons from harm must be measured by the foreseeability of the risk and whether the danger created is sufficiently large to embrace the specific harm. *Brady v. Hopper*, 570 F. Supp. 1333 (D. Colo. 1983) (decided prior to enactment of § 13-21-117).

The therapist-patient relationship is one which under certain circumstances will give rise to a duty on the part of the therapist to protect third persons from harm. *Brady v. Hopper*, 570 F. Supp. 1333 (D. Colo. 1983) (decided prior to enactment of § 13-21-117).

For due process considerations in civil commitment proceedings, see *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

Less restrictive alternatives need not be considered as a condition precedent to certification. Civil commitment constitutes a severe infringement of liberty requiring due process protection. However, the statutory scheme set forth in this article contains a number of procedural safeguards that greatly reduce the inherent risk of erroneous deprivation. Therefore, due process does not require a mandatory hearing at the time of certification since the statute pro-

vides for a hearing on request. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

Psychologist-client privilege. In keeping with the statutory goal of securing care and treatment on an individual basis, former § 27-10-120 is intended as an authorization for a psychologist to testify to observations concerning an involuntarily detained person when the issue before the court is whether the statutory conditions for certification for short-term treatment have been satisfied. *People v. District Court*, 797 P.2d 1259 (Colo. 1990).

Applied in *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979); *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980); *People in Interest of Freeman*, 636 P.2d 1334 (Colo. App. 1981); *People v. White*, 656 P.2d 690 (Colo. 1983).

27-65-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acute treatment unit" means a facility or a distinct part of a facility for short-term psychiatric care, which may include substance abuse treatment, that provides a total, twenty-four-hour, therapeutically planned and professionally staffed environment for persons who do not require inpatient hospitalization but need more intense and individual services than are available on an outpatient basis, such as crisis management and stabilization services.

(2) "Certified peace officer" means any certified peace officer as described in section 16-2.5-102, C.R.S.

(3) "Court" means any district court of the state of Colorado and the probate court in the city and county of Denver.

(4) "Court-ordered evaluation" means an evaluation ordered by a court pursuant to section 27-65-106.

(5) "Department" means the department of human services.

(6) "Executive director" means the executive director of the department of human services.

(7) "Facility" means a public hospital or a licensed private hospital, clinic, community mental health center or clinic, acute treatment unit, institution, sanitarium, or residential child care facility that provides treatment for a person with a mental illness.

(8) "Family member" means a spouse, parent, adult child, or adult sibling of a person with a mental illness.

(9) (a) "Gravely disabled" means a condition in which a person, as a result of a mental illness:

(I) Is in danger of serious physical harm due to his or her inability or failure to provide himself or herself with the essential human needs of food, clothing, shelter, and medical care; or

(II) Lacks judgment in the management of his or her resources and in the conduct of his or her social relations to the extent that his or her health or safety is significantly endangered and lacks the capacity to understand that this is so.

(b) A person who, because of care provided by a family member or by an individual with a similar relationship to the person, is not in danger of serious physical harm or is not significantly endangered in accordance with paragraph (a) of this subsection (9) may be deemed "gravely disabled" if there is notice given that the support given by the family member or other individual who has a similar relationship to the person is to be terminated and the individual with a mental illness:

(I) Is diagnosed by a professional person as suffering from: Schizophrenia; a major affective disorder; a delusional disorder; or another mental disorder with psychotic features; and

(II) Has been certified, pursuant to this article, for treatment of the disorder or has been admitted as an inpatient to a treatment facility for treatment of the disorder at least twice during the last thirty-six months with a period of at least thirty days between certifications or admissions; and

(III) Is exhibiting a deteriorating course leading toward danger to self or others or toward the conditions described in paragraph (a) of this subsection (9) with symptoms and behavior that are substantially similar to those that preceded and were associated with his or her hospital admissions or certifications for treatment; and

(IV) Is not receiving treatment that is essential for his or her health or safety.

(c) A person of any age may be “gravely disabled”, but such term shall not include a person who has a developmental disability by reason of the person’s developmental disability alone.

(d) For purposes of paragraph (b) of this subsection (9), an individual with a relationship to a person that is similar to that of a family member shall not include an employee or agent of a boarding home or treatment facility.

(10) “Hospitalization” means twenty-four-hour out-of-home placement for mental health treatment in a facility.

(11) “Independent professional person” means a professional person, as defined in subsection (17) of this section, who evaluates a minor’s condition as an independent decision-maker and whose recommendations are based on the standard of what is in the best interest of the minor. The professional person may be associated with the admitting mental health facility if he or she is free to independently evaluate the minor’s condition and need for treatment and has the authority to refuse admission to any minor who does not satisfy the statutory standards specified in section 27-65-103 (3).

(12) “Minor” means a person under eighteen years of age; except that the term does not include a person who is fifteen years of age or older who is living separately and apart from his or her parent or legal guardian and is managing his or her financial affairs, regardless of his or her source of income, or who is married and living separately and apart from his or her parent or legal guardian.

(13) “Patient representative” means a person designated by a mental health facility to process patient complaints or grievances or to represent patients who are minors pursuant to section 27-65-103 (5).

(14) “Person with a mental illness” means a person with one or more substantial disorders of the cognitive, volitional, or emotional processes that grossly impairs judgment or capacity to recognize reality or to control behavior. Developmental disability is insufficient to either justify or exclude a finding of mental illness within the provisions of this article.

(15) “Petitioner” means any person who files any petition in any proceeding in the interest of any person who allegedly has a mental illness or is allegedly gravely disabled.

(16) “Physician” means a person licensed to practice medicine in this state.

(17) “Professional person” means a person licensed to practice medicine in this state or a psychologist certified to practice in this state.

(18) “Residential child care facility” means a facility licensed by the state department of human services pursuant to article 6 of title 26, C.R.S., to provide group care and treatment for children as such facility is defined in section 26-6-102 (8), C.R.S. A residential child care facility may be eligible for designation by the executive director of the department of human services pursuant to this article.

(19) “Respondent” means either a person alleged in a petition filed pursuant to this article to have a mental illness or be gravely disabled or a person certified pursuant to the provisions of this article.

(20) “Screening” means a review of all petitions, to consist of an interview with the petitioner and, whenever possible, the respondent, an assessment of the problem, an explanation of the petition to the respondent, and a determination of whether the respondent needs and, if so, will accept, on a voluntary basis, comprehensive evaluation, treatment, referral, and other appropriate services, either on an inpatient or an outpatient basis.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 676, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-102 as it existed prior to 2010.

ANNOTATION

Law reviews. For article on commitment of mental patients, see 13 Rocky Mt. L. Rev. 99 (1941). For article, "Liability of Counties for Support of Inmates in State Institutions", see 29 Dicta 27 (1952). For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For article, "Legal Capacity of Adjudged Incompetents", see 29 Dicta 292 (1952). For article, "Civil Commitment of the Mentally Ill in the Denver Probate Court", see 46 Den. L.J. 496 (1969). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "The Supreme Court Sidesteps the Right to Treatment Question; O'Conner v. Donaldson", see 47 U. Colo. L. Rev. 299 (1976). For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "The Homeless and the Law", see 14 Colo. Law. 405 (1985). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (February 2006).

Annotator's note. Since § 27-65-102 is similar to § 27-10-102 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Definitions in former subsections (5) and (7) are sufficiently clear and definite. The definitions of mental illness and of the condition of being gravely disabled in former subsections (5) and (7) are sufficiently clear and definite to apprise both lay and professional persons of the type of conduct necessary for certification for

short-term treatment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Definition of "gravely disabled" in former subsection (5) refers to an existing rather than a prospective inability to provide for one's "basic personal needs". The determination at a certification hearing as to whether a person is "gravely disabled" must focus on the individual's existing condition, and not on the possibility of future relapse. *People in Interest of Buchholz*, 778 P.2d 300 (Colo. App. 1989).

Phrase "basic personal needs" means those fundamental necessities of human existence, such as food, shelter, clothing, and medical care, which an individual must obtain and maintain in order to live safely. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Statutory definition of mental illness, on its own terms, cannot be read to intend that every idiosyncratic or eccentric person requires involuntary medical intervention. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

It is necessary prerequisite to ordering short-term involuntary psychiatric treatment that the professional treatment and evaluation staff find, after analysis, that the person for whom certification is sought is mentally ill and, as a result of mental illness, is a danger to others or to himself or is gravely disabled. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

For previous definition of "insane person", see *Arridy v. People*, 103 Colo. 29, 82 P.2d 757 (1938); *Browne v. Smith*, 119 Colo. 469, 205 P.2d 239 (1949).

Applied in *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979).

27-65-103. Voluntary applications for mental health services. (1) Nothing in this article shall be construed in any way as limiting the right of any person to make voluntary application at any time to any public or private agency or professional person for mental health services, either by direct application in person or by referral from any other public or private agency or professional person. Subject to section 15-14-316 (4), C.R.S., a ward, as defined in section 15-14-102 (15), C.R.S., may be admitted to hospital or institutional care and treatment for mental illness by consent of the guardian for so long as the ward agrees to such care and treatment. Within ten days of any such admission of the ward for such hospital or institutional care and treatment, the guardian shall notify in writing the court that appointed the guardian of the admission.

(2) Notwithstanding any other provision of law, a minor who is fifteen years of age or older, whether with or without the consent of a parent or legal guardian, may consent to receive mental health services to be rendered by a facility or a professional person. Such consent shall not be subject to disaffirmance because of minority. The professional person rendering mental health services to a minor may, with or without the consent of the minor, advise the parent or legal guardian of the minor of the services given or needed.

(3) A minor who is fifteen years of age or older or a parent or legal guardian of a minor on the minor's behalf may make voluntary application for hospitalization. Application for hospitalization on behalf of a minor who is under fifteen years of age and who is a ward of the department of human services shall not be made unless a guardian ad litem has been appointed for the minor or a petition for the same has been filed with the court by the agency having custody of the minor; except that such an application for hospitalization may be made under emergency circumstances requiring immediate hospitalization, in which case the agency shall file a petition for appointment of a guardian ad litem within seventy-two hours after application for admission is made, and the court shall appoint a guardian ad litem forthwith. Procedures for hospitalization of such minor may proceed pursuant to this section once a petition for appointment of a guardian ad litem has been filed, if necessary. Whenever such application for hospitalization is made, an independent professional person shall interview the minor and conduct a careful investigation into the minor's background, using all available sources, including, but not limited to, the parents or legal guardian and the school and any other social agencies. Prior to admitting a minor for hospitalization, the independent professional person shall make the following findings:

- (a) That the minor has a mental illness and is in need of hospitalization;
- (b) That a less restrictive treatment alternative is inappropriate or unavailable; and
- (c) That hospitalization is likely to be beneficial.

(4) An interview and investigation by an independent professional person shall not be required for a minor who is fifteen years of age or older and who, upon the recommendation of his or her treating professional person, seeks voluntary hospitalization with the consent of his or her parent or legal guardian. In order to assure that the minor's consent to such hospitalization is voluntary, the minor shall be advised, at or before the time of admission, of his or her right to refuse to sign the admission consent form and his or her right to revoke his or her consent at a later date. If a minor admitted pursuant to this subsection (4) subsequently revokes his or her consent after admission, a review of his or her need for hospitalization pursuant to subsection (5) of this section shall be initiated immediately.

(5) (a) The need for continuing hospitalization of all voluntary patients who are minors shall be formally reviewed at least every two months. Review pursuant to this subsection (5) shall fulfill the requirement specified in section 19-1-115 (8), C.R.S., when the minor is fifteen years of age or older and consenting to hospitalization.

(b) The review shall be conducted by an independent professional person who is not a member of the minor's treating team; or, if the minor, his or her physician, and the minor's parent or guardian do not object to the need for continued hospitalization, the review required pursuant to this subsection (5) may be conducted internally by the hospital staff.

(c) The independent professional person shall determine whether the minor continues to meet the criteria specified in subsection (3) of this section and whether continued hospitalization is appropriate and shall at least conduct an investigation pursuant to subsection (3) of this section.

(d) Ten days prior to the review, the patient representative at the mental health facility shall notify the minor of the date of the review and shall assist the minor in articulating to the independent professional person his or her wishes concerning continued hospitalization.

(e) Nothing in this section shall be construed to limit a minor's right to seek release from the facility pursuant to any other provisions under the law.

(6) Every six months the review required pursuant to subsection (5) of this section shall be conducted by an independent professional person who is not a member of the minor's treating team and who has not previously reviewed the child pursuant to subsection (5) of this section.

(7) (a) When a minor does not consent to or objects to continued hospitalization, the need for such continued hospitalization shall, within ten days, be reviewed pursuant to subsection (5) of this section by an independent professional person who is not a member of the minor's treating team and who has not previously reviewed the child pursuant to this subsection (7). The minor shall be informed of the results of such review within three days of completion of such review. If the conclusion reached by such professional person is that the minor no longer meets the standards for hospitalization specified in subsection (3) of this section, the minor shall be discharged.

(b) If, twenty-four hours after being informed of the results of the review specified in paragraph (a) of this subsection (7), a minor continues to affirm the objection to hospitalization, the minor shall be advised by the director of the facility or his or her duly appointed representative that the minor has the right to retain and consult with an attorney at any time and that the director or his or her duly appointed representative shall file, within three days after the request of the minor, a statement requesting an attorney for the minor or, if the minor is under fifteen years of age, a guardian ad litem. The minor, his or her attorney, if any, and his or her parent, legal guardian, or guardian ad litem, if any, shall also be given written notice that a hearing upon the recommendation for continued hospitalization may be had before the court or a jury upon written request directed to the court pursuant to paragraph (d) of this subsection (7).

(c) Whenever the statement requesting an attorney is filed with the court, the court shall ascertain whether the minor has retained counsel, and, if he or she has not, the court shall, within three days, appoint an attorney to represent the minor, or if the minor is under fifteen years of age, a guardian ad litem. Upon receipt of a petition filed by the guardian ad litem, the court shall appoint an attorney to represent the minor under fifteen years of age.

(d) The minor or his or her attorney or guardian ad litem may, at any time after the minor has continued to affirm his or her objection to hospitalization pursuant to paragraph (b) of this subsection (7), file a written request that the recommendation for continued hospitalization be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the minor, his or her attorney, if any, his or her parents or legal guardian, his or her guardian ad litem, if any, the independent professional person, and the minor's treating team of the time and place thereof. The hearing shall be held in accordance with section 27-65-111; except that the court or jury shall determine that the minor is in need of care and treatment if the court or jury makes the following findings: That the minor has a mental illness and is in need of hospitalization; that a less restrictive treatment alternative is inappropriate or unavailable; and that hospitalization is likely to be beneficial. At the conclusion of the hearing, the court may enter an order confirming the recommendation for continued hospitalization, discharge the minor, or enter any other appropriate order.

(e) For purposes of this subsection (7), "objects to hospitalization" means that a minor, with the necessary assistance of hospital staff, has written his or her objections to continued hospitalization and has been given an opportunity to affirm or disaffirm such objections forty-eight hours after the objections are first written.

(f) A minor may not again object to hospitalization pursuant to this subsection (7) until ninety days after conclusion of proceedings pursuant to this subsection (7).

(g) In addition to the rights specified under section 27-65-117 for persons receiving evaluation, care, or treatment, a written notice specifying the rights of minor children under this section shall be given to each minor upon admission to hospitalization.

(8) A minor who no longer meets the standards for hospitalization specified in subsection (3) of this section shall be discharged.

(9) For the purpose of this article, the treatment by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone for healing shall be considered a form of treatment.

(10) The medical and legal status of all voluntary patients receiving treatment for mental illness in inpatient or custodial facilities shall be reviewed at least once every six months.

(11) Voluntary patients shall be afforded all the rights and privileges customarily granted by hospitals to their patients.

(12) If at any time during a seventy-two-hour evaluation of a person who is confined involuntarily the facility staff requests the person to sign in voluntarily and he or she elects to do so, the following advisement shall be given orally and in writing and an appropriate notation shall be made in his or her medical record by the professional person or his or her designated agent:

NOTICE

The decision to sign in voluntarily should be made by you alone and should be free from any force or pressure implied or otherwise. If you do not feel that you are able to make a truly voluntary decision, you may continue to be held at the hospital involuntarily. As an involuntary patient, you will have the right to protest your confinement and request a hearing before a judge.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 679, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-103 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For article, "Legal But Not Fair: Legal Implications of a Mental Illness Medical Model", see 11 Colo. Law. 1234 (1982). For article, "Legislative Update", see 12 Colo. Law. 1251 (1983). For article, "Legislative Update", see 13 Colo. Law. 1419 (1984). For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988). For article, "Nailing Jello to the Wall: Colorado Regulates Psychotherapists", see 19 Colo. Law. 71 (1990).

No limit on right to seek voluntary treatment. This article is to be strictly construed to see that no limit is placed on a person's right to seek voluntary treatment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980) (decided prior to 2010 amendments to this article).

Subsection (3) unconstitutional. Subsection (3) cannot withstand constitutional scrutiny because it contains no admission standard to be applied by the hospital staff when determining whether or not to accept a minor for treatment. *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982) (decided prior to 1983 repeal of subsection (3)).

27-65-104. Rights of respondents. Unless specifically stated in an order by the court, a respondent shall not forfeit any legal right or suffer legal disability by reason of the provisions of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 682, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-104 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Legal Capacity of Adjudged Incompetents", see 29 Dicta 292 (1952). For article, "Legal But Not Fair: Legal Implications of a Mental Illness Medical Model", see 11 Colo. Law. 1234 (1982).

Annotator's note. Since § 27-65-104 is similar to § 27-10-104 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Patient's common-law right to decline medical treatment is among those protected by this section and is preserved intact in the absence of some finding that the patient's illness has so impaired his judgment that he is incapable of participating in decisions affecting his health. *Goedcke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979).

Right of incompetent to decline treatment. The right to decline medical treatment is not lost

to a patient who is mentally incapable of deciding that question for himself. *People in Interest of Medina*, 662 P.2d 184 (Colo. App. 1982), *aff'd*, 705 P.2d 961 (Colo. 1985).

When nonconsensual treatment may be ordered. Treatment with antipsychotic medication should not be ordered unless: (1) The patient is incompetent to effectively participate in the treatment decision; (2) such treatment is necessary to prevent long-term deterioration in the patient's mental condition; (3) a less intrusive treatment is not available; and (4) the patient's need for such treatment overrides any legitimate interest of the patient in refusing treatment. In any event, and the order for involuntary medication cannot exceed six months without further extension. *People v. Medina*, 705 P.2d 961 (Colo. 1985).

The fourth factor dictated in Medina was met when the court reduced dosage of anti-

psychotic medication to minimize side effects suffered by plaintiff. Clear and convincing evidence existed that the need for the drug, as ordered to be administered by the trial court, outweighed all legitimate interests the petitioner had in refusing such treatment. *Donaldson v. District Court for the City and County of Denver*, 847 P.2d 632 (Colo. 1993).

For capacity of incompetent to contract and to execute deeds, see *Rohrer v. Darrow*, 66 Colo. 463, 182 P. 13 (1919); *Davis v. Colo. Kenworth Corp.*, 156 Colo. 98, 396 P.2d 958 (1964).

Applied in *People in Interest of Freeman*, 636 P.2d 1334 (Colo. App. 1981).

27-65-105. Emergency procedure. (1) Emergency procedure may be invoked under either one of the following two conditions:

(a) (I) When any person appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, then a person specified in subparagraph (II) of this paragraph (a), each of whom is referred to in this section as the “intervening professional”, upon probable cause and with such assistance as may be required, may take the person into custody, or cause the person to be taken into custody, and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation.

(II) The following persons may effect a seventy-two-hour hold as provided in subparagraph (I) of this paragraph (a):

(A) A certified peace officer;

(B) A professional person;

(C) A registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing;

(D) A licensed marriage and family therapist, licensed professional counselor, or addiction counselor licensed under part 5, 6, or 8 of article 43 of title 12, C.R.S., who by reason of postgraduate education and additional preparation has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of mental disorders; or

(E) A licensed clinical social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S.

(b) Upon an affidavit sworn to or affirmed before a judge that relates sufficient facts to establish that a person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, the court may order the person described in the affidavit to be taken into custody and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. Whenever in this article a facility is to be designated or approved by the executive director, hospitals, if available, shall be approved or designated in each county before other facilities are approved or designated. Whenever in this article a facility is to be designated or approved by the executive director as a facility for a stated purpose and the facility to be designated or approved is a private facility, the consent of the private facility to the enforcement of standards set by the executive director shall be a prerequisite to the designation or approval.

(2) (a) When a person is taken into custody pursuant to subsection (1) of this section, such person shall not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses; except that such place may be used if no other suitable place of confinement for treatment and evaluation is readily available. In such situation the person shall be detained separately from those persons charged with or convicted of penal offenses and shall be held for a period not to exceed twenty-four hours, excluding Saturdays, Sundays, and holidays, after which time he or she shall be transferred to a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. If the person being detained is a juvenile, as defined in section 19-1-103 (68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders. When a person is taken into custody and confined pursuant to this subsection (2), such person shall be examined at least every twelve hours by a certified peace officer, nurse, or physician or by an appropriate staff professional of the nearest designated or approved mental health treatment facility to

determine if the person is receiving appropriate care consistent with his or her mental condition.

(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (2), related to detaining juveniles may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (2) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with paragraph (a) of this subsection (2).

(3) Such facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the intervening professional and further stating sufficient facts, obtained from the personal observations of the intervening professional or obtained from others whom he or she reasonably believes to be reliable, to establish that the person has a mental illness and, as a result of the mental illness, is an imminent danger to others or to himself or herself or is gravely disabled. The application shall indicate when the person was taken into custody and who brought the person's condition to the attention of the intervening professional. A copy of the application shall be furnished to the person being evaluated, and the application shall be retained in accordance with the provisions of section 27-65-121 (4).

(4) If the seventy-two-hour treatment and evaluation facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment services are not available on those days. For the purposes of this subsection (4), evaluation and treatment services are not deemed to be available merely because a professional person is on call during weekends or holidays. If, in the opinion of the professional person in charge of the evaluation, the person can be properly cared for without being detained, he or she shall be provided services on a voluntary basis.

(5) Each person admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive such treatment and care as his or her condition requires for the full period that he or she is held. The person shall be released before seventy-two hours have elapsed if, in the opinion of the professional person in charge of the evaluation, the person no longer requires evaluation or treatment. Persons who have been detained for seventy-two-hour evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 682, § 2, effective April 29. L. 2011: (1)(a)(II)(D) amended, (SB 11-187), ch. 285, p. 1329, § 75, effective July 1.

Editor's note: This section is similar to former § 27-10-105 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 133 (1961). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "New Legislation Concerning the Mentally Disabled", see 11 Colo. Law. 2131 (1982). For article, "The Clinton Mental Health Case — A Civil Procedure Lesson", see 19 Colo. Law. 1809 (1990).

For article, "Clinton Redux: A Mental Health and Technical Defense Follow-up", see 22 Colo. Law. 2389 (1993).

Annotator's note. Since § 27-65-105 is similar to § 27-10-105 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

For constitutional considerations, see *Barber v. People*, 127 Colo. 90, 254 P.2d 431 (1953).

Due process considerations do not require an in-person evaluation by an intervening

professional prior to placement on an involuntary hold. *Tracz v. Centennial Peaks*, 9 P.3d 1168 (Colo. App. 2000).

Purpose of section. This section was designed to protect the mentally ill person from himself. *Kendall v. People*, 126 Colo. 573, 252 P.2d 91 (1952).

Article necessitates strict compliance. In situations involving involuntary confinement, strict compliance with this article is a necessity. *People in Interest of Henderson*, 44 Colo. App. 102, 610 P.2d 1350 (1980).

For requirement of strict compliance with statutory procedure, see *Okerberg v. People*, 119 Colo. 529, 205 P.2d 224 (1949); *Kendall v. People*, 126 Colo. 573, 252 P.2d 91 (1952); *Barber v. People*, 127 Colo. 90, 254 P.2d 431 (1953); *Rickey v. People*, 129 Colo. 174, 267 P.2d 1021 (1954).

A proceeding under this article is not a criminal action. *Kendall v. People*, 126 Colo. 573, 252 P.2d 91 (1952).

An adverse finding in mental illness may bear grave consequences in that the person may be denied his liberty and incapacitated to contract, and while it does not necessarily bring his name or reputation into disrepute, it is, nevertheless, a blot on his life and those he might have brought into being. *Kendall v. People*, 126 Colo. 573, 252 P.2d 91 (1952).

Procedure provisions of the C.R.C.P. are not applicable to mental illness proceedings. *Hultquist v. People*, 77 Colo. 310, 236 P. 995 (1925).

Use of this emergency procedure is not limited to patients who decline voluntary treatment. *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979).

"Probable cause" should not be measured by yardstick of legal technicality, but by the factual and practical considerations upon which a reasonable physician acts. *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979).

Reversible error occurred under subsection (1)(a) where jury instruction included neither the element of "probable cause" nor a definition of "gravely disabled" even though prosecution relied upon that provision as the basis for taking

defendant into custody. *People v. Marquez-Lopez*, 952 P.2d 788 (Colo. App. 1997).

Emergency medical personnel has no duty to make an independent determination as to whether the intervening professional had probable cause to institute the hold-and-treat procedure. *Tracz v. Centennial Peaks*, 9 P.3d 1168 (Colo. App. 2000).

Subsection (1)(b) does not require prior judicial testing before one who has been a voluntarily committed outpatient can be taken into custody. *People in Interest of Henderson*, 610 P.2d 1350 (Colo. App. 1980).

Contrary to patient's claim, no court hearing or 24-hour notice is required to take mentally ill person into custody under this section. Nor does this section specify that the patient must designate or approve of the treatment facility to which he is committed. *Ketchum v. Cruz*, 775 F. Supp. 1399 (D. Colo. 1991).

Voluntary treatment program not terminated when patient taken into custody and then returned to hospital. Where voluntarily committed outpatient was off the hospital premises and was taken into custody by the police and then returned to the hospital, this did not, as a matter of law, terminate his voluntary treatment program. *People in Interest of Henderson*, 610 P.2d 1350 (Colo. App. 1980).

When a county court judge initiates a 72-hour hold, the result is a defect of process depriving the court of subject matter jurisdiction. *People in Interest of Lloyd-Pellman*, 844 P.2d 1309 (Colo. App. 1992).

A subsequent certification during the 72-hour hold period does not cure the defect. *People in Interest of Lloyd-Pellman*, 844 P.2d 1309 (Colo. App. 1992).

Violation of this section, while relevant to claim for malpractice, cannot, by definition, create a claim based on negligence per se. *Bauer v. Southwest Denver Mental Health Center*, 701 P.2d 114 (Colo. App. 1985).

Applied in *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *People in Interest of Schmidt*, 720 P.2d 629 (Colo. App. 1986); *Asten v. City of Boulder*, 652 F. Supp. 2d 1188 (D. Colo. 2009).

27-65-106. Court-ordered evaluation for persons with mental illness. (1) Any person alleged to have a mental illness and, as a result of the mental illness, to be a danger to others or to himself or herself or to be gravely disabled may be given an evaluation of his or her condition under a court order pursuant to this section.

(2) Any individual may petition the court in the county in which the respondent resides or is physically present alleging that there is a person who appears to have a mental illness and, as a result of the mental illness, appears to be a danger to others or to himself or herself or appears to be gravely disabled and requesting that an evaluation of the person's condition be made.

(3) The petition for a court-ordered evaluation shall contain the following:

(a) The name and address of the petitioner and his or her interest in the case;

(b) The name of the person for whom evaluation is sought, who shall be designated as

the respondent, and, if known to the petitioner, the address, age, sex, marital status, and occupation of the respondent;

(c) Allegations of fact indicating that the respondent may have a mental illness and, as a result of the mental illness, be a danger to others or to himself or herself or be gravely disabled and showing reasonable grounds to warrant an evaluation;

(d) The name and address of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the respondent, if available;

(e) The name, address, and telephone number of the attorney, if any, who has most recently represented the respondent. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the petitioner, the respondent meets the criteria established by the legal aid agency operating in the county or city and county for it to represent a client.

(4) Upon receipt of a petition satisfying the requirements of subsection (3) of this section, the court shall designate a facility, approved by the executive director, or a professional person to provide screening of the respondent to determine whether there is probable cause to believe the allegations.

(5) Following screening, the facility or professional person designated by the court shall file his or her report with the court. The report shall include a recommendation as to whether there is probable cause to believe that the respondent has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled and whether the respondent will voluntarily receive evaluation or treatment. The screening report submitted to the court shall be confidential in accordance with section 27-65-121 and shall be furnished to the respondent or his or her attorney or personal representative.

(6) Whenever it appears, by petition and screening pursuant to this section, to the satisfaction of the court that probable cause exists to believe that the respondent has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled and that efforts have been made to secure the cooperation of the respondent, who has refused or failed to accept evaluation voluntarily, the court shall issue an order for evaluation authorizing a certified peace officer to take the respondent into custody and place him or her in a facility designated by the executive director for seventy-two-hour treatment and evaluation. At the time of taking the respondent into custody, a copy of the petition and the order for evaluation shall be given to the respondent, and promptly thereafter to any one person designated by such respondent and to the person in charge of the seventy-two-hour treatment and evaluation facility named in the order or his or her designee.

(7) The respondent shall be evaluated as promptly as possible and shall in no event be detained longer than seventy-two hours under the court order, excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days. Within that time, the respondent shall be released, referred for further care and treatment on a voluntary basis, or certified for short-term treatment.

(8) At the time the respondent is taken into custody for evaluation or within a reasonable time thereafter, unless a responsible relative is in possession of the respondent's personal property, the certified peace officer taking him or her into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the respondent.

(9) When a person is involuntarily admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this section or section 27-65-105, the person shall be advised by the facility director or his or her duly appointed representative that the person is going to be examined with regard to his or her mental condition.

(10) Whenever a person is involuntarily admitted to a seventy-two-hour treatment and evaluation facility, he or she shall be advised by the facility director or his or her duly appointed representative of his or her right to retain and consult with any attorney at any time and that, if he or she cannot afford to pay an attorney, upon proof of indigency, one will be appointed by the court without cost.

Editor's note: This section is similar to former § 27-10-106 as it existed prior to 2010.

Cross references: For rights of person under arrest, see part 4 of article 3 of title 16.

ANNOTATION

Law reviews. For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For article, "The Clinton Mental Health Case — A Civil Procedure Lesson", see 19 Colo. Law. 1809 (1990).

Annotator's note. Since § 27-65-106 is similar to § 27-10-106 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

For constitutional considerations, see Barber v. People, 127 Colo. 90, 254 P.2d 431 (1953).

Proceeding has nonadversarial nature. An inquiry into the mental capacity of a person is a statutory proceeding of a nonadversary nature. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Findings of screening facility or professional person are not binding upon the court.

In re People in Interest of Hill, 118 Colo. 571, 198 P.2d 450 (1948).

For requirement of strict compliance with statutory procedure, see Hultquist v. People, 77 Colo. 310, 236 P. 995 (1925); Okerberg v. People, 119 Colo. 529, 205 P.2d 224 (1949); Kendall v. People, 126 Colo. 573, 252 P.2d 91 (1952); Barber v. People, 127 Colo. 90, 254 P.2d 431 (1953); Rickey v. People, 129 Colo. 174, 267 P.2d 1021 (1954).

For specificity of required report, see Kendall v. People, 126 Colo. 573, 252 P.2d 91 (1952).

Applied in People v. Lane, 196 Colo. 42, 581 P.2d 719 (1978); People in Interest of Paiz, 43 Colo. App. 352, 603 P.2d 976 (1979); People v. Chavez, 629 P.2d 1040 (Colo. 1981).

27-65-107. Certification for short-term treatment. (1) If a person detained for seventy-two hours under the provisions of section 27-65-105 or a respondent under court order for evaluation pursuant to section 27-65-106 has received an evaluation, he or she may be certified for not more than three months of short-term treatment under the following conditions:

(a) The professional staff of the agency or facility providing seventy-two-hour treatment and evaluation has analyzed the person's condition and has found the person has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled.

(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, his or her acceptance of voluntary treatment shall not preclude certification.

(c) The facility which will provide short-term treatment has been designated or approved by the executive director to provide such treatment.

(2) The notice of certification must be signed by a professional person on the staff of the evaluation facility who participated in the evaluation and shall state facts sufficient to establish reasonable grounds to believe that the person has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled. The certification shall be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, of the date of certification. The certification shall be filed with the court in the county in which the respondent resided or was physically present immediately prior to his or her being taken into custody.

(3) Within twenty-four hours of certification, copies of the certification shall be personally delivered to the respondent, and a copy shall be kept by the evaluation facility as part of the person's record. The respondent shall also be asked to designate one other person whom he or she wishes informed regarding certification. If he or she is incapable of making such a designation at the time the certification is delivered, he or she shall be asked to designate such person as soon as he or she is capable. In addition to the copy of the certification, the respondent shall be given a written notice that a hearing upon his or her certification for short-term treatment may be had before the court or a jury upon written request directed to the court pursuant to subsection (6) of this section.

(4) Upon certification of the respondent, the facility designated for short-term treatment shall have custody of the respondent.

(5) Whenever a certification is filed with the court, the court, if it has not already done so under section 27-65-106 (10), shall forthwith appoint an attorney to represent the respondent. The court shall determine whether the respondent is able to afford an attorney. If the respondent cannot afford counsel, the court shall appoint either counsel from the legal services program operating in that jurisdiction or private counsel to represent the respondent. The attorney representing the respondent shall be provided with a copy of the certification immediately upon his or her appointment. Waiver of counsel must be knowingly and intelligently made in writing and filed with the court by the respondent. In the event that a respondent who is able to afford an attorney fails to pay the appointed counsel, such counsel, upon application to the court and after appropriate notice and hearing, may obtain a judgment for reasonable attorney fees against the respondent or person making request for such counsel or both the respondent and such person.

(6) The respondent for short-term treatment or his or her attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and his or her attorney and the certifying and treating professional person of the time and place thereof. The hearing shall be held in accordance with section 27-65-111. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order, subject to available appropriations.

(7) Records and papers in proceedings under this section and section 27-65-108 shall be maintained separately by the clerks of the several courts. Upon the release of any respondent in accordance with the provisions of section 27-65-110, the facility shall notify the clerk of the court within five days of the release, and the clerk shall forthwith seal the record in the case and omit the name of the respondent from the index of cases in such court until and unless the respondent becomes subject to an order of long-term care and treatment pursuant to section 27-65-109 or until and unless the court orders them opened for good cause shown. In the event a petition is filed pursuant to section 27-65-109, such certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.

(8) Whenever it appears to the court, by reason of a report by the treating professional person or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a sheriff, the court may issue an order directing the sheriff or his or her designee to deliver the respondent to the designated facility.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 686, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-107 as it existed prior to 2010.

ANNOTATION

- I. General Consideration.
- II. Procedural Requirements.
- III. Findings Necessary.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Procedures for Involuntary Commitment on the Basis of Alleged Mental Illness", see 42 U. Colo. L. Rev. 231 (1970). For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to

Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "New Legislation Concerning the Mentally Disabled", see 11 Colo. Law. 2131 (1982). For article, "Pre-trial Technical Defenses to Mental Health Certification", see 17 Colo. Law. 1327 (1988). For article, "Perreira v. Colorado — A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989). For article, "The Clinton Mental Health Case — A Civil Procedure Lesson", see 19 Colo. Law. 1809 (1990). For article, "Clinton

Redux: A Mental Health and Technical Defense Follow-up", see 22 Colo. Law. 2389 (1993).

Annotator's note. Since § 27-65-107 is similar to § 27-10-107 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Constitutionality. Failure of this section to require a mandatory state-initiated hearing before the involuntary commitment of an individual for up to 90 days does not render the statute unconstitutional. *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *Curnow v. Yarbrough*, 676 P.2d 1177 (Colo. 1984).

The term "danger" in subsection (1) (a) does not offend due process as long as the state proves by clear and convincing evidence that there is a reasonable basis to believe that the individual's mental illness results in a present danger to herself or others or renders her gravely disabled. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

Less restrictive alternatives need not be considered as a condition precedent to certification. Civil commitment constitutes a severe infringement of liberty requiring due process protection. However, the statutory scheme set forth in this article contains a number of procedural safeguards that greatly reduce the inherent risk of erroneous deprivation. Therefore, due process does not require a mandatory hearing at the time of certification since the statute provides for a hearing on request. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

Subsequent certification proceedings are not rendered invalid as a result of the certification for short-term treatment being set aside. *People in Interest of Dveirin*, 755 P.2d 1207 (Colo. 1988).

State's interest in certifying individual for short-term treatment is to provide care to one whose mental condition poses a threat to society or to the person himself. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Civil commitment statute must be liberally construed to promote the legislative purpose of encouraging the "use of voluntary rather than coercive measures to secure treatment and care for mental illness". *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

This article is to be strictly construed to see that no limit is placed on a person's right to seek voluntary treatment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Statutory definition of mental illness, on its own terms, cannot be read to intend that every idiosyncratic or eccentric person requires involuntary medical intervention. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Voluntary treatment program not terminated. Where voluntarily committed outpatient was off the hospital premises and was taken into custody by the police and then returned to the

hospital, this did not, as a matter of law, terminate his voluntary treatment program. *People in Interest of Henderson*, 44 Colo. App. 102, 610 P.2d 1350 (1980).

Standard for liability of medical professionals. In determining whether to release an involuntarily committed mental patient, the psychiatrist has a legal duty to exercise due care, consistent with the knowledge and skill ordinarily possessed by psychiatric practitioners under similar circumstances, to determine whether the patient has a propensity for violence and would present an unreasonable risk of serious bodily harm to others. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

In discharging his duty, a psychiatrist may be required to take reasonable precautions to protect the public from the danger created by the release giving due consideration to extending the term of the patient's commitment or placing appropriate conditions and restrictions on such release. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

Standard for liability of medical professionals. No duty exists to prevent a third person from harming another unless a special relation exists between the actor and the wrongdoer or between the actor and the victim. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

Medical professionals involved in the care and treatment of a mentally ill patient have a legal duty under the "special relation" rule to prevent the patient from harming himself or others only if the patient in their care constitutes a danger to himself or to the safety of others. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

This danger may be shown by evidence of injurious acts, attempts, or threats by the patient. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

A psychotherapist treating a mental patient as an outpatient may fall under the special relation rule. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979); *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979); *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982); *People v. Medina*, 705 P.2d 961 (Colo. 1985).

II. PROCEDURAL REQUIREMENTS.

Involuntary commitment to mental hospital is deprivation of liberty which the state cannot accomplish without procedural safeguards. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

This section sets out certain procedures which the general assembly and our courts have determined are adequate to protect a respondent's due process rights. These procedures include: (1) a professional decision to initiate

the 72-hour evaluation; (2) professional medical evaluation at the time of involuntary short-term commitment; (3) notice concerning certification within 24 hours to the person committed; (4) notice concerning certification to one other person the respondent designates; (5) prompt appointment of an attorney; (6) a hearing within 10 days if requested (7) the burden of proof by clear and convincing evidence upon the petitioner; and (8) optional court appointment of an independent professional person to examine the respondent. *Curnow v. Yarbrough*, 676 P.2d 1177 (Colo. 1984); *People in Interest of Reynes*, 870 P.2d 518 (Colo. App. 1993).

Strict adherence to procedural requirements of this section is required because of the curtailment of personal liberty which results from certification for treatment of mental illness. *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

In situations involving involuntary confinement, strict compliance with this article is a necessity. *People in Interest of Henderson*, 44 Colo. App. 102, 610 P.2d 1350 (1980).

Procedural prerequisites to obtaining certification must be met for court to have subject matter jurisdiction, so review of such issues is by court not jury. *People in Interest of Bailey*, 745 P.2d 280 (Colo. App. 1987).

Right to a mental health certification review hearing within 10 days of the filing of a petition for certification is for protection of certified person and may be waived by such person without vitiating jurisdiction of court. *People in Interest of Lynch*, 783 P.2d 848 (Colo. 1989).

When the procedural provisions of former § 27-10-105 are not followed, even a credible certification cannot cure the jurisdictional defect. *People in Interest of Lloyd-Pellman*, 844 P.2d 1309 (Colo. App. 1992).

Failure to convene hearing within 10 days after request is made as mandated by this section deprives court of subject matter jurisdiction to certify person for short-term treatment regardless of person's purported waiver. *People in Interest of Lynch*, 757 P.2d 145 (Colo. App. 1988), *rev'd*, 783 P.2d 848 (Colo. 1989).

The statutorily defined procedures for civil commitment proceedings have been applied to hearings involving the issue of nonconsensual treatment with antipsychotic medication. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

Because a committed patient's right to counsel during civil commitment proceedings is derived from the civil commitment statutes, any defect in respondent's waiver of counsel is analyzed under the standard applicable to statutory defects in civil commitment proceedings. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

Where respondent seeks reversal of civil commitment order based on the failure to comply strictly with statutory requirements, and where the defect, if any, does not implicate the jurisdiction of the trial court to grant the order, the appeals court's inquiry is whether the defect concerns a failure to comply with essential statutory provisions grave enough to undermine confidence in the fairness and outcome of the certification proceedings. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

This inquiry includes: (1) the evaluation of the gravity of the deviation from statutory provisions, including a consideration of due process concerns; and (2) a determination of any prejudice to respondent caused by the deviation. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

Patient to be advised of available, voluntary treatments. A trial court exceeds its jurisdiction in affirming a petitioner's short-term certification, in light of the uncontroverted jury finding that the petitioner had not been properly advised of the availability of voluntary treatment for mental illness, as required by this section. *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

Privilege against self-incrimination is inapplicable to civil commitment proceedings. Due process does not require that the fifth amendment privilege against self-incrimination be extended to this state's civil commitment proceedings. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Nor does privilege against self-incrimination apply to hearings on the forcible administration of medication, which occur during the civil commitment process. *People ex rel. Strodman*, ___ P.3d ___ (Colo. App. 2011).

Former §§ 27-10-111 (1) and 27-10-107 (3), read together, clearly and unambiguously grant a right to a jury hearing to a person being certified for short-term treatment. *People in Interest of Hoylman*, 865 P.2d 918 (Colo. App. 1993).

Failure to abide by statutory requirement of forthwith appointment of counsel in mental health certification proceeding did not constitute personal jurisdiction defect, as requirement for appointment of counsel did not affect the nature of notice to be given to mentally ill person or statutory requirements for acquisition of jurisdiction over person. *People in Interest of Clinton*, 762 P.2d 1381 (Colo. 1988).

Reversible error where trial court failed to comply with essential statutory provision requiring respondent's waiver of counsel to be made knowingly, intelligently, and in writing in a hearing involving a petition for involuntary administration of medication. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

III. FINDINGS NECESSARY.

If it is shown that person is mentally ill, short-term involuntary commitment cannot be justified unless it is shown that, as a result of such illness, the person is: (1) a danger to others; (2) a danger to himself; (3) "gravely disabled" because of an inability to take care of basic personal needs; or (4) "gravely disabled" because the person is "making irrational or grossly irresponsible decisions concerning his person and lacks the capacity to understand this is so". People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Section requires that causal nexus be established between a person's mental illness and the condition of being a danger to others or to himself or gravely disabled. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Disability sufficient to justify involuntary commitment must arise as result of mental illness; and in keeping with the statutory purpose, it must be so grave that the person's safety is threatened by his inability to take care of his basic personal needs. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Mere disability alone is insufficient to warrant involuntary commitment. Mere disability alone, even if found in conjunction with mental illness, is not enough to warrant involuntary commitment. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Dangerousness to others may be shown by evidence of injurious acts, attempts, or threats. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Dangerousness to oneself may be shown by similar evidence, where the individual's injurious behavior is directed toward himself. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Passive injury to oneself, because of an inability to take care of one's most basic personal needs, may be as dangerous or damaging to the individual as the active threat posed by suicide. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Standard of proof necessary to commit for short-term involuntary psychiatric treatment, "clear and convincing evidence", adopted by the general assembly for treatment, strikes a fair balance between the interest of the individual and the interest of the state. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Standard of proof met. Where three medical experts testified at appellant's certification hearing that she was dangerous or potentially dangerous to herself or to others there was clear and convincing evidence that there was a reasonable basis to believe that appellant's mental illness resulted in a present danger to herself or others, thereby satisfying the prerequisite conditions for short-term certification. People v. Stevens, 761 P.2d 768 (Colo. 1988).

27-65-108. Extension of short-term treatment. If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary for treatment of the respondent, he or she shall file with the court an extended certification. No extended certification for treatment shall be for a period of more than three months. The respondent shall be entitled to a hearing on the extended certification under the same conditions as in an original certification. The attorney initially representing the respondent shall continue to represent that person, unless the court appoints another attorney.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 688, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-108 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981).

Annotator's note. Since § 27-65-108 is similar to § 27-10-108 as it existed prior to the 2010 amendments to this article, relevant cases

construing that provision have been included in the annotations to this section.

Applied in People v. Lane, 196 Colo. 42, 581 P.2d 719 (1978); People in Interest of Paiz, 43 Colo. App. 352, 603 P.2d 976 (1979); In re P.F. v. Walsh, 648 P.2d 1067 (Colo. 1982); Brown v. Jensen, 572 F. Supp. 193 (D. Colo. 1983).

27-65-109. Long-term care and treatment of persons with mental illness. (1) Whenever a respondent has received short-term treatment for five consecutive months under the provisions of sections 27-65-107 and 27-65-108, the professional person in charge of the evaluation and treatment may file a petition with the court for long-term care and treatment of the respondent under the following conditions:

(a) The professional staff of the agency or facility providing short-term treatment has

analyzed the respondent's condition and has found that the respondent has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled.

(b) The respondent has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the respondent will not remain in a voluntary treatment program, his or her acceptance of voluntary treatment shall not preclude an order pursuant to this section.

(c) The facility that will provide long-term care and treatment has been designated or approved by the executive director to provide the care and treatment.

(2) Every petition for long-term care and treatment shall include a request for a hearing before the court prior to the expiration of six months from the date of original certification. A copy of the petition shall be delivered personally to the respondent for whom long-term care and treatment is sought and mailed to his or her attorney of record simultaneously with the filing thereof.

(3) Within ten days after receipt of the petition, the respondent or his or her attorney may request a jury trial by filing a written request therefor with the court.

(4) The court or jury shall determine whether the conditions of subsection (1) of this section are met and whether the respondent has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled. The court shall thereupon issue an order of long-term care and treatment for a term not to exceed six months, or it shall discharge the respondent for whom long-term care and treatment was sought, or it shall enter any other appropriate order, subject to available appropriations. An order for long-term care and treatment shall grant custody of the respondent to the department for placement with an agency or facility designated by the executive director to provide long-term care and treatment. When a petition contains a request that a specific legal disability be imposed or that a specific legal right be deprived, the court may order the disability imposed or the right deprived if it or a jury has determined that the respondent has a mental illness or is gravely disabled and that, by reason thereof, the person is unable to competently exercise said right or perform the function as to which the disability is sought to be imposed. Any interested person may ask leave of the court to intervene as a copetitioner for the purpose of seeking the imposition of a legal disability or the deprivation of a legal right.

(5) An original order of long-term care and treatment or any extension of such order shall expire upon the date specified therein, unless further extended as provided in this subsection (5). If an extension is being sought, the professional person in charge of the evaluation and treatment shall certify to the court at least thirty days prior to the expiration date of the order in force that an extension of the order is necessary for the care and treatment of the respondent subject to the order in force, and a copy of the certification shall be delivered to the respondent and simultaneously mailed to his or her attorney of record. At least twenty days before the expiration of the order, the court shall give written notice to the respondent and his or her attorney of record that a hearing upon the extension may be had before the court or a jury upon written request to the court within ten days after receipt of the notice. If no hearing is requested by the respondent within such time, the court may proceed ex parte. If a hearing is timely requested, it shall be held before the expiration date of the order in force. If the court or jury finds that the conditions of subsection (1) of this section continue to be met and that the respondent has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled, the court shall issue an extension of the order. Any extension shall be for a period of not more than six months, but there may be as many extensions as the court orders pursuant to this section.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 688, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-109 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "Legal But Not Fair: Legal Implications of a Mental Illness Medical Model", see 11 Colo. Law. 1234 (1982). For article, "Pre-trial Technical Defenses to Mental Health Certification", see 17 Colo. Law. 1327 (1988).

Annotator's note. Since § 27-65-109 is similar to § 27-10-109 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

The term "danger" in subsection (1)(a) does not offend due process as long as the state proves by clear and convincing evidence that there is a reasonable basis to believe that the individual's mental illness results in a present danger to herself or others or renders her gravely disabled. *People v. Stevens*, 761 P. 2d 768 (Colo. 1988).

Less restrictive alternatives need not be considered as a condition precedent to certification. Civil commitment constitutes a severe infringement of liberty requiring due process protection. However, the statutory scheme set forth in this article contains a number of procedural safeguards that greatly reduce the inherent risk of erroneous deprivation. Therefore, due process does not require a mandatory hearing at the time of certification since the statute provides for a hearing on request. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

These statutory requirements are mandatory and must be strictly carried out. *Watkins v. People*, 140 Colo. 228, 344 P.2d 682 (1959).

Thus, the failure to deliver personally to a respondent in a mental health proceeding a copy of the petition for long-term care and treatment, as required by subsection (2), deprives the court of personal jurisdiction over the respondent to proceed on the petition and does not toll the relevant time limits for a hearing on the petition. *Gilford v. People*, 2 P.3d 120 (Colo. 2000).

But only statutory deviations that are considered serious enough to undermine the confidence in the fairness and outcome of judicial proceedings will justify a dismissal of an order that was not made in strict compliance with procedural aspects of the civil commitment statutes. Hearing for extension of long-term care and treatment and for administration of involuntary medications that took place six days after expiration of respondent's certification was held not to undermine the confidence in the fairness and outcome of the certification proceedings when respondent received a full hearing and had previously declined to have the hearing before the expiration date of the certi-

cation. *People in Interest of Gilford*, 983 P.2d 156 (Colo. App. 1999), cert. denied, No. 99SC404 (Colo. Aug. 23, 1999).

Key inquiry in determining whether a failure to follow the civil commitment statute was a violation of an individual's due process rights is whether the failure violates an "essential condition" of the statute. Such determination is made by evaluating the gravity of the deviation from the statutory procedures and requires consideration of any due process concerns and any prejudice to the respondent. *People in Interest of Gilford*, 983 P.2d 156 (Colo. App. 1999), cert. denied, No. 99SC404 (Colo. Aug. 23, 1999).

Special statutory proceeding. An action in the district court to inquire into the mental health of a party can best be described as a special statutory proceeding; it is neither a criminal case nor a civil action. *Sabon v. People*, 142 Colo. 323, 350 P.2d 576 (1960).

Request for jury trial must be honored. Where the respondent or his attorney requests a jury trial, the court is required to honor the request. *Young v. Brofman*, 139 Colo. 296, 338 P.2d 286 (1959).

Defendant held to have been wrongfully deprived of opportunity to demand a jury trial. *Hultquist v. People*, 77 Colo. 310, 236 P. 995 (1925).

Court may enter judgment notwithstanding the verdict on jury's factual finding under this section as a matter of law when the evidence is undisputed. *People in Interest of Lees*, 745 P.2d 281 (Colo. App. 1987).

The determination at a certification hearing as to whether a person is "gravely disabled" must focus on the individual's existing condition and not on the possibility of future relapse. *People in Interest of Bucholz*, 778 P.2d 300 (Colo. App. 1989).

Underlying propensity for dangerousness, even though related to future conduct, is sufficient to meet the test of presenting a danger to one's self and others. *People in Interest of King*, 795 P.2d 273 (Colo. App. 1990).

Review of commitment order based on erroneous diagnosis. Where an order of commitment is based on an erroneous diagnosis, that order can be reviewed on appeal. *Zimmerman v. Angele*, 137 Colo. 129, 321 P.2d 1105 (1958).

Subsection (5) extension runs from expiration of previous order. The period of extension allowed by subsection (5) is to run from the date the previous order expires, and not from the date the extension order is entered. *People in Interest of Archuleta*, 653 P.2d 93 (Colo. App. 1982).

Person confined only to extent necessary to protect society. A person who is found to be mentally ill is treated and confined only to the extent necessary for the protection of society.

Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972).

Medication not to be given over incompetent's objection absent court order. Absent an emergency situation calling for immediate action (in which event the least intrusive means should be used by the physician to meet the emergency), antipsychotic medication shall not be administered to a mentally incompetent institutionalized patient who has not given his consent to this medication unless ordered by a court following a proper hearing. *People in Interest of Medina*, 662 P.2d 184 (Colo. App. 1982), *aff'd*, 705 P.2d 961 (Colo. 1985).

Order for involuntary medication must not extend beyond expiration date of the order of long-term care and treatment. *Hopkins v. People*, 772 P.2d 624 (Colo. App. 1988).

Applied in *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978); *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979); *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *People in Interest of Kleinfeldt*, 680 P.2d 864 (Colo. App. 1984).

27-65-110. Termination of short-term and long-term treatment - escape. (1) An original certification for short-term treatment under section 27-65-107, or an extended certification under section 27-65-108, or an order for long-term care and treatment or any extension thereof shall terminate as soon as, in the opinion of the professional person in charge of treatment of the respondent, the respondent has received sufficient benefit from such treatment for him or her to leave. Whenever a certification or extended certification is terminated under this section, the professional person in charge of providing treatment shall so notify the court in writing within five days of such termination. Such professional person may also prescribe day care, night care, or any other similar mode of treatment prior to termination.

(2) Before termination, an escaped respondent may be returned to the facility by order of the court without a hearing or by the superintendent or director of such facility without order of court. After termination, a respondent may be returned to the institution only in accordance with the provisions of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 689, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-110 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "Perreira v. Colorado — A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989).

Annotator's note. Since § 27-65-110 is similar to § 27-10-110 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Superintendent may release inmate only upon restoration to reason. The only ground upon which the superintendent of the Colorado state hospital can legally release an inmate therefrom is restoration to reason. *People ex rel. Best v. County Court*, 110 Colo. 249, 132 P.2d 799 (1942).

When person is no longer insane he is restored to reason, and, consequently, when the court found respondent not mentally ill as charged in the complaint, the court had a duty to order her discharged, and in failing to do so, it

committed error. In re *People in Interest of Hill*, 118 Colo. 571, 198 P.2d 450 (1948).

Standard of care for determining release. In determining whether to release an involuntarily committed mental patient, the psychiatrist has a legal duty to exercise due care, consistent with the knowledge and skill ordinarily possessed by psychiatric practitioners under similar circumstances to determine whether the patient has a propensity for violence and would present an unreasonable risk of serious bodily harm to others. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

In discharging his duty, a psychiatrist may be required to take reasonable precautions to protect the public from the danger created by the release giving due consideration to extending the term of the patient's commitment or placing appropriate conditions and restrictions on such release. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

Order remanding inmate to asylum without new trial by jury held proper. Where it

appeared to the district court that an inmate of the state insane asylum, having received a probationary discharge, was not restored to reason, an order remanding him to the asylum without a new trial by jury was held proper. *Metaxos v. People*, 76 Colo. 264, 230 P. 608 (1924).

Distinction permitted from escape by person committed by criminal insanity adjudication. Given the state's obvious interest in protecting the public from those who previously have engaged in overt criminal conduct but have been relieved of criminal responsibility by reason of legal insanity, there is no difficulty in

finding a rational basis for legislation that proscribes as criminal a knowing escape by a person committed to an institution as a result of an insanity adjudication in a criminal case, but does not impose a similar sanction upon a person who escapes from a facility to which he has been civilly committed. *People v. Giles*, 662 P.2d 1073 (Colo. 1983).

For continuing jurisdiction of district court, see *Zimmerman v. Angele*, 137 Colo. 129, 321 P.2d 1105 (1958).

Applied in *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

27-65-111. Hearing procedures - jurisdiction. (1) Hearings before the court under section 27-65-107, 27-65-108, or 27-65-109 shall be conducted in the same manner as other civil proceedings before the court. The burden of proof shall be upon the person or facility seeking to detain the respondent. The court or jury shall determine that the respondent is in need of care and treatment only if the court or jury finds by clear and convincing evidence that the person has a mental illness and, as a result of the mental illness, is a danger to others or to himself or herself or is gravely disabled.

(2) The court, after consultation with respondent's counsel to obtain counsel's recommendations, may appoint a professional person to examine the respondent for whom short-term treatment or long-term care and treatment is sought and to testify at the hearing before the court as to the results of his or her examination. The court-appointed professional person shall act solely in an advisory capacity, and no presumption shall attach to his or her findings.

(3) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his or her right to appeal the order by the court at the conclusion of any hearing as a result of which such an order may be entered.

(4) The court in which the petition is filed under section 27-65-106 or the certification is filed under section 27-65-107 shall be the court of original jurisdiction and of continuing jurisdiction for any further proceedings under this article. When the convenience of the parties and the ends of justice would be promoted by a change in the court having jurisdiction, the court may order a transfer of the proceeding to another county. Until further order of the transferee court, if any, it shall be the court of continuing jurisdiction.

(5) (a) In the event that a respondent or a person found not guilty by reason of impaired mental condition pursuant to section 16-8-103.5 (5), C.R.S., or by reason of insanity pursuant to section 16-8-105 (4) or 16-8-105.5, C.R.S., refuses to accept medication, the court having jurisdiction of the action pursuant to subsection (4) of this section, the court committing the person or defendant to the custody of the department pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, C.R.S., or the court of the jurisdiction in which the designated facility treating the respondent or person is located shall have jurisdiction and venue to accept a petition by a treating physician and to enter an order requiring that the respondent or person accept such treatment or, in the alternative, that the medication be forcibly administered to him or her. The court of the jurisdiction in which the designated facility is located shall not exercise its jurisdiction without the permission of the court that committed the person to the custody of the department. Upon the filing of such a petition, the court shall appoint an attorney, if one has not been appointed, to represent the respondent or person and hear the matter within ten days.

(b) In any case brought under paragraph (a) of this subsection (5) in a court for the county in which the treating facility is located, the county where the proceeding was initiated pursuant to subsection (4) of this section or the court committing the person to the custody of the department pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, C.R.S., shall either reimburse the county in which the proceeding pursuant to this subsection (5) was filed and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

(c) In the case of a defendant who is found incompetent to proceed pursuant to section 16-8.5-103, C.R.S., and who refuses to accept medication, the jurisdiction for the petition for involuntary treatment procedures shall be as set forth in section 16-8.5-112, C.R.S.

(6) All proceedings under this article, including proceedings to impose a legal disability pursuant to section 27-65-127, shall be conducted by the district attorney of the county where the proceeding is held or by a qualified attorney acting for the district attorney appointed by the district court for that purpose; except that, in any county or in any city and county having a population exceeding fifty thousand persons, the proceedings shall be conducted by the county attorney or by a qualified attorney acting for the county attorney appointed by the district court. In any case in which there has been a change of venue to a county other than the county of residence of the respondent or the county in which the certification proceeding was commenced, the county from which the proceeding was transferred shall either reimburse the county to which the proceeding was transferred and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be. Upon request of a guardian appointed pursuant to article 14 of title 15, C.R.S., the guardian may intervene in any proceeding under this article concerning his or her ward and, through counsel, may present evidence and represent to the court the views of the guardian concerning the appropriate disposition of the case.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 690, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-111 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For article, "New Legislation Concerning the Mentally Disabled", see 11 Colo. Law. 2131 (1982). For article, "Respect for the Values and Preferences of Mental Patients: The Medina Trilogy", see 11 Colo. Law. 3014 (1982). For article, "The Clinton Mental Health Case — A Civil Procedure Lesson", see 19 Colo. Law. 1809 (1990).

Annotator's note. Since § 27-65-111 is similar to § 27-10-111 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Involuntary commitment to mental hospital is deprivation of liberty which the state cannot accomplish without procedural safeguards. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Privilege against self-incrimination inapplicable to civil commitment proceedings. Due process does not require that the fifth amendment privilege against self-incrimination be extended to Colorado's civil commitment proceedings. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Former §§ 27-10-111 (1) and 27-10-107 (3), read together, clearly and unambiguously grant a right to a jury hearing to a person being certified for short-term treatment. *People*

in Interest of Hoylman, 865 P.2d 918 (Colo. App. 1993).

The term "danger" in subsection (1) does not offend due process as long as the state proves by clear and convincing evidence that there is a reasonable basis to believe that the individual's mental illness results in a present danger to herself or others or renders her gravely disabled. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

Standard of proof meets minimum standards of procedural due process. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Less restrictive alternatives need not be considered as a condition precedent to certification. Civil commitment constitutes a severe infringement of liberty requiring due process protection. However, the statutory scheme set forth in this article contains a number of procedural safeguards that greatly reduce the inherent risk of erroneous deprivation. Therefore, due process does not require a mandatory hearing at the time of certification since the statute provides for a hearing on request. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

"Clear and convincing evidence", required by subsection (1), is evidence which is stronger than a preponderance of the evidence, and which is unmistakable and free from serious or substantial doubt. *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978).

Where three medical experts testified at the certification hearing that appellant was potentially dangerous to herself or to others, there was clear and convincing evidence that there was a reasonable basis to believe that appellant's mental illness resulted in a present danger to herself or others, thereby satisfying the prerequisite conditions for short-term certification pursuant to former § 27-10-107. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

The need for electroconvulsive therapy for a person involuntarily committed must be established by clear and convincing evidence. *People in Interest of M.K.M.*, 765 P.2d 1075 (Colo. App. 1988).

If it is shown that person is mentally ill, short-term involuntary commitment cannot be justified unless it is shown that, as a result of such illness, the person is: (1) a danger to others; (2) a danger to himself; (3) "gravely disabled" because of an inability to take care of basic personal needs; or (4) "gravely disabled" because the person is "making irrational or grossly irresponsible decisions concerning his person and lacks the capacity to understand this is so". *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Mere disability alone is insufficient to warrant involuntary commitment. Mere disability alone, even if found in conjunction with mental illness, is not enough to warrant involuntary commitment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Dangerousness to others may be shown by evidence of injurious acts, attempts, or threats. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Dangerousness to oneself may be shown by similar evidence, where the individual's injurious behavior is directed toward himself. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Passive injury to oneself, because of an inability to take care of one's most basic personal needs, may be as dangerous or damaging to the individual as the active threat posed by suicide. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Former § 27-10-107 requires that a causal nexus be established between a person's mental illness and the condition of being a danger to others or to himself or gravely disabled. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Uncorroborated psychiatric opinion sufficient. In some cases, a psychiatric opinion, not corroborated by evidence of recent dangerous conduct, may constitute "clear and convincing evidence" of dangerousness, and therefore may

be sufficient to sustain a commitment based on dangerousness. *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978).

Right of indigent appellant to transcript at state expense. An indigent appellant in a mental health proceeding for involuntary confinement and treatment has a right under the due process guarantees of the United States and Colorado constitutions to a transcript at state expense. *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979).

Stringent release standards reasonably related to public safety. The more stringent standards of release applicable to the criminally committed defendant reflect the increased risk to the public associated with the release decision, and, as in the case of automatic commitment, they are reasonably related to the state's interest in public safety. *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

Court order required for administering medication to incompetent absent his consent. Absent an emergency situation calling for immediate action (in which event the least intrusive means should be used by the physician to meet the emergency), antipsychotic medication shall not be administered to a mentally incompetent institutionalized patient who has not given his consent to this medication unless ordered by a court following a proper hearing. *People in Interest of Medina*, 662 P.2d 184 (Colo. App. 1982), *aff'd*, 705 P.2d 961 (Colo. 1985); *People v. Pflugbeil*, 834 P.2d 843 (Colo. App. 1992).

For presence of respondent at hearing, see *Isham v. People*, 82 Colo. 550, 262 P. 89 (1927).

For reopening of proceedings under earlier provisions, see *Wood v. Throckmorton*, 26 Colo. 248, 57 P. 699 (1899); *Ex parte Rainbolt*, 64 Colo. 581, 172 P. 1068 (1918); *People ex rel. Best v. County Court*, 110 Colo. 249, 132 P.2d 799 (1942); *In re People in Interest of Hill*, 118 Colo. 571, 198 P.2d 450 (1948).

Assistant county attorney is absolutely immune from suit concerning her actions and omissions related to the fulfillment of her statutory obligation pursuant to former subsection (5) to conduct commitment proceedings once the petition for a 72-hour evaluation has been submitted. *Scott v. Hern*, 216 F.3d 897 (10th Cir. 2000).

Applied in *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980); *In re A.W.*, 637 P.2d 366 (Colo. 1981); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982).

27-65-112. Appeals. Appellate review of any order of short-term treatment or long-term care and treatment may be had as provided in the Colorado appellate rules. Such appeal shall be advanced upon the calendar of the appellate court and shall be decided at the earliest practicable time. Pending disposition by the appellate court, it may make such order as it may consider proper in the premises relating to the care and custody of the respondent.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 691, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-112 as it existed prior to 2010.

ANNOTATION

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979) (decided prior to 2010 amendments to this article).

27-65-113. Habeas corpus. Any person detained pursuant to this article shall be entitled to an order in the nature of habeas corpus upon proper petition to any court generally empowered to issue orders in the nature of habeas corpus.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 691, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-113 as it existed prior to 2010.

ANNOTATION

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979) (decided prior to 2010 amendments to this article).

27-65-114. Restoration of rights. Any person who, by reason of a judicial decree entered by a court of this state prior to July 1, 1975, is adjudicated as a person with a mental illness shall be deemed to have been restored to legal capacity and competency.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 691, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-114 as it existed prior to 2010.

ANNOTATION

Annotator's note. Since § 27-65-114 is similar to § 27-10-111 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

For the unconstitutionality of this section as it existed prior to the 1977 amendment, see

Estate of Phillips v. People, 192 Colo. 273, 558 P.2d 438 (1976).

Applied in *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978).

27-65-115. Discrimination. No person who has received evaluation or treatment under any provisions of this article shall be discriminated against because of such status. For purposes of this section, "discrimination" means giving any undue weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. Any person who suffers injury by reason of a violation of this section shall have a civil cause of action.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 692, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-115 as it existed prior to 2010.

ANNOTATION

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979) (decided prior to 2010 amendments to this article).

27-65-116. Right to treatment. (1) (a) Any person receiving evaluation or treatment under any of the provisions of this article is entitled to medical and psychiatric care and treatment, with regard to services listed in section 27-66-101 and services listed in rules authorized by section 27-66-102, suited to meet his or her individual needs, delivered in such a way as to keep him or her in the least restrictive environment, and delivered in such a way as to include the opportunity for participation of family members in his or her program of care and treatment when appropriate, all subject to available appropriations. Nothing in this paragraph (a) shall create any right with respect to any person other than the person receiving evaluation, care, or treatment. The professional person and the agency or facility providing evaluation, care, or treatment shall keep records detailing all care and treatment received by such person, and such records shall be made available, upon that person's written authorization, to his or her attorney or his or her personal physician. Such records shall be permanent records and retained in accordance with the provisions of section 27-65-121 (4).

(b) Any person receiving evaluation or treatment under any of the provisions of this article is entitled to petition the court pursuant to the provisions of section 13-45-102, C.R.S., subject to available appropriations, for release to a less restrictive setting within or without a treating facility or release from a treating facility when adequate medical and psychiatric care and treatment is not administered.

(2) The department shall adopt regulations to assure that each agency or facility providing evaluation, care, or treatment shall require the following:

(a) Consent for specific therapies and major medical treatment in the nature of surgery. The nature of the consent, by whom it is given, and under what conditions, shall be determined by rules of the department.

(b) The order of a physician for any treatment or specific therapy based on appropriate medical examinations;

(c) Notation in the patient's treatment record of periodic examinations, evaluations, orders for treatment, and specific therapies signed by personnel involved;

(d) Conduct according to the guidelines contained in the regulations of the federal government and the department with regard to clinical investigations, research, experimentation, and testing of any kind; and

(e) Documentation of the findings, conclusions, and decisions in any administrative review of a decision to release or withhold the information requested by a family member pursuant to section 27-65-121 (1) (g) or (1) (h) and documentation of any information given to a family member.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 692, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-116 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "Legal But Not Fair: Legal Implications of a Mental Illness Medical Model", see 11 Colo. Law. 1234 (1982). For article, "Status Report: The 'Con-

fidentiality Law'", see 19 Colo. Law. 441 (1990).

Annotator's note. Since § 27-65-116 is similar to § 27-10-116 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Availability of records. Section 25-1-801 can be read consistently with subsection (1)(a) as a specific exception to a general policy of broad disclosure. *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983).

Whether respondent is entitled to treatment in least restrictive possible environment is a matter for court, not jury, to decide under habeas corpus proceeding. *People in Interest of Bailey*, 745 P.2d 280 (Colo. App. 1987); *People in Interest of Lees*, 745 P.2d 281 (Colo. App. 1987).

Voluntary patients as well as involuntary patients are entitled to the rights granted by this section. *Goebel v. State Dept. of Insts.*, 764 P.2d 785 (Colo. 1988); *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

This section applies to those who voluntarily receive mental health services and could not be voluntarily committed. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Person need not be so mentally ill as to be gravely disabled or a danger to himself or others for purposes of this section. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Person need not have been previously hospitalized to be entitled to mental health services. A person who has received either evaluation or treatment services under the Act is entitled to mental health services specified in this section. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Under the language of this section, chronically mentally ill persons who have received treatment, but who are not gravely disabled or a danger to themselves or others, have a right to treatment if they received evaluation or treatment under any provisions of this article. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

A person need not have had prior hospitalization before such person is entitled to treatment under this section. Such person need only have received either evaluation or treatment services under this act to be eligible for treatment under this section. *Goebel v. Colo. Dept. of Institutions*, 830 P.2d 1036 (Colo. 1992).

Applied in *Romero v. Schauer*, 386 F. Supp. 851 (D. Colo. 1974); *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979).

27-65-117. Rights of persons receiving evaluation, care, or treatment. (1) Each person receiving evaluation, care, or treatment under any provision of this article has the following rights and shall be advised of such rights by the facility:

(a) To receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the facility.

(b) To have access to letter-writing materials, including postage, and to have staff members of the facility assist him or her if unable to write, prepare, and mail correspondence;

(c) To have ready access to telephones, both to make and to receive calls in privacy;

(d) To have frequent and convenient opportunities to meet with visitors. Each person may see his or her attorney, clergyman, or physician at any time.

(e) To wear his or her own clothes, keep and use his or her own personal possessions, and keep and be allowed to spend a reasonable sum of his or her own money.

(2) A person's rights under subsection (1) of this section may be denied for good cause only by the professional person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available, upon request, to the person or his or her attorney.

(3) No person admitted to or in a facility shall be fingerprinted unless required by other provisions of law.

(4) A person may be photographed upon admission for identification and the administrative purposes of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.

(5) Any person receiving evaluation or treatment under any of the provisions of this article is entitled to a written copy of all his or her rights enumerated in this section, and a minor child shall receive written notice of his or her rights as provided in section 27-65-103 (7) (g). A list of such rights shall be prominently posted in all evaluation and treatment facilities.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 693, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-117 as it existed prior to 2010.

Cross references: For rights of persons in custody upon criminal charges, see part 4 of article 3 of title 16.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "Legislative Update", see 13 Colo. Law. 1419 (1984). For article, "In re Romero: Sterilization and Competency", see 68 Den. U. L. Rev. 105 (1991).

Annotator's note. Since § 27-65-117 is similar to § 27-10-117 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Treatment to be as minimally restrictive as practicable. The primary purpose of a civil commitment is to secure such treatment as is suited to the needs of the person under conditions which are as least restrictive of liberty as practicable. *People v. Chavez*, 629 P.2d 1040 (Colo. 1981).

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979).

27-65-118. Administration or monitoring of medications to persons receiving care. The executive director has the power to direct the administration or monitoring of medications in conformity with part 3 of article 1.5 of title 25, C.R.S., to persons receiving treatment in facilities created pursuant to this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 693, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-117.5 as it existed prior to 2010.

27-65-119. Employment of persons in a facility - rules. The department shall adopt rules governing the employment and compensation therefor of persons receiving care or treatment under any provision of this article. The department shall establish standards for reasonable compensation for such employment.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 694, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-118 as it existed prior to 2010.

27-65-120. Voting in public elections. Any person receiving evaluation, care, or treatment under any provision of this article shall be given the opportunity to exercise his or her right to register and to vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist such persons, upon their request, to obtain voter registration forms, applications for mail-in ballots, and mail-in ballots and to comply with any other prerequisite for voting.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 694, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-119 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally

Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981).

Applied in *Goedecke v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979) (decided prior to 2010 amendments to this article).

27-65-121. Records. (1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services under this article to individuals under any provision of this article shall be confidential and privileged matter. The information and records may be disclosed only:

(a) In communications between qualified professional personnel in the provision of services or appropriate referrals;

(b) When the recipient of services designates persons to whom information or records may be released; but, if a recipient of services is a ward or conservatee and his or her guardian or conservator designates, in writing, persons to whom records or information may be disclosed, the designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional personnel to reveal information that has been given to him or her in confidence by members of a patient's family or other informants;

(c) To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he or she may be entitled;

(d) If the department has promulgated rules for the conduct of research. Such rules shall include, but not be limited to, the requirement that all researchers must sign an oath of confidentiality. All identifying information concerning individual patients, including names, addresses, telephone numbers, and social security numbers, shall not be disclosed for research purposes.

(e) To the courts, as necessary to the administration of the provisions of this article;

(f) To persons authorized by an order of court after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the Colorado rules of civil procedure;

(g) To adult family members upon admission of a person with a mental illness for inpatient or residential care and treatment. The only information released pursuant to this paragraph (g) shall be the location and fact of admission of the person with a mental illness who is receiving care and treatment. The disclosure of location is governed by the procedures in section 27-65-122 and is subject to review under section 27-65-122.

(h) To adult family members actively participating in the care and treatment of a person with a mental illness regardless of the length of the participation. The information released pursuant to this paragraph (h) shall be limited to one or more of the following: The diagnosis, the prognosis, the need for hospitalization and anticipated length of stay, the discharge plan, the medication administered and side effects of the medication, and the short-term and long-term treatment goals. The disclosure is governed by the procedures in section 27-65-122 (2) and is subject to review under section 27-65-122.

(i) In accordance with state and federal law to the agency designated pursuant to the federal "Protection and Advocacy for Mentally Ill Individuals Act", 42 U.S.C. sec. 10801, et seq., as the governor's protection and advocacy system for Colorado.

(2) Nothing in paragraph (g) or (h) of subsection (1) of this section shall be deemed to preclude the release of information to a parent concerning his or her minor child.

(3) (a) Nothing in this article shall be construed as rendering privileged or confidential any information, except written medical records and information that is privileged under section 13-90-107, C.R.S., concerning observed behavior that constitutes a criminal offense committed upon the premises of any facility providing services under this article or any criminal offense committed against any person while performing or receiving services under this article.

(b) The provisions of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6, C.R.S.

(4) (a) All facilities shall maintain and retain permanent records, including all applications as required pursuant to section 27-65-105 (3).

(b) Outpatient or ambulatory care facilities shall retain all records for a minimum of seven years after discharge from the facility for persons who were eighteen years of age or older when admitted to the facility, or until twenty-five years of age for persons who were under eighteen years of age when admitted to the facility.

(c) Inpatient or hospital care facilities shall retain all records for a minimum of ten years after discharge from the facility for persons who were eighteen years of age or older when admitted to the facility, or until twenty-eight years of age for persons who were under eighteen years of age when admitted to the facility.

(5) Nothing in this section shall be construed to prohibit or limit the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141, C.R.S.

Source: **L. 2010:** Entire article added with relocations, (SB 10-175), ch. 188, p. 694, § 2, effective April 29. **L. 2011:** (5) added, (HB 11-1169), ch. 119, p. 374, § 3, effective April 20.

Editor's note: This section is similar to former § 27-10-120 as it existed prior to 2010.

Cross references: For privilege of communication of physicians generally, see §§ 13-90-107 (1)(d) and 13-90-108.

ANNOTATION

Law reviews. For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "Status Report: The 'Confidentiality Law'", see 19 Colo. Law. 441 (1990).

Annotator's note. Since § 27-65-121 is similar to § 27-10-120 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Use of information in criminal proceeding limited. No information produced at a hearing on involuntary short-term certification for psychiatric treatment can be used to incriminate the person sought to be committed in future criminal proceedings, unless it is available to the prosecution from other sources. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

In a federal criminal prosecution and investigation, federal privilege law preempts this more protective Colorado privilege stat-

ute. In *Re Grand Jury No. 91-1*, 795 F. Supp. 1057 (D. Colo. 1992).

Because of the curtailment of personal liberty that results from certification of mental illness, strict adherence to the procedural requirements in civil commitment statutes is required. *People in Interest of Dveirin*, 755 P.2d 1207 (Colo. 1988); *People in Interest of Reynes*, 870 P.2d 518 (Colo. App. 1993).

Psychologist-client privilege. In keeping with the statutory goal of securing care and treatment on an individual basis, this section is intended as an authorization for a psychologist to testify to observations concerning an involuntarily detained person when the issue before the court is whether the statutory conditions for certification for short-term treatment have been satisfied. *People v. District Court*, 797 P.2d 1259 (Colo. 1990); *People v. Hynes*, 917 P.2d 328 (Colo. App. 1996).

Applied in *Brady v. Hopper*, 570 F. Supp. 1333 (D. Colo. 1983).

27-65-122. Request for release of information - procedures - review of a decision concerning release of information. (1) When a family member requests the location and fact of admission of a person with a mental illness pursuant to section 27-65-121 (1) (g), the treating professional person or his or her designee, who shall be a professional person, shall decide whether to release or withhold such information. The location shall be released unless the treating professional person or his or her designee determines, after an interview with the person with a mental illness, that release of the information to a particular family member would not be in the best interests of the person with a mental illness. Any decision to withhold information requested pursuant to section 27-65-121 (1) (g) is subject to administrative review pursuant to this section upon request of a family member or the person with a mental illness. The treating facility shall make a record of the information given to a family member pursuant to this subsection (1). For the purposes of this subsection (1), an adult person having a similar relationship to a person with a mental illness as a

spouse, parent, child, or sibling of a person with a mental illness may also request the location and fact of admission concerning a person with a mental illness.

(2) (a) When a family member requests information pursuant to section 27-65-121 (1) (h) concerning a person with a mental illness, the treating professional person or his or her designee shall determine whether the person with a mental illness is capable of making a rational decision in weighing his or her confidentiality interests and the care and treatment interests implicated by the release of information. The treating professional person or his or her designee shall then determine whether the person with a mental illness consents or objects to such release. Information shall be released or withheld in the following circumstances:

(I) If the treating professional person or his or her designee makes a finding that the person with a mental illness is capable of making a rational decision concerning his or her interests and the person with a mental illness consents to the release of information, the treating professional person or his or her designee shall order the release of the information unless he or she determines that the release would not be in the best interests of the person with a mental illness.

(II) If the treating professional person or his or her designee makes a finding that the person with a mental illness is capable of making a rational decision concerning his or her interests and the person with a mental illness objects to the release of information, the treating professional person or his or her designee shall not order the release of the information.

(III) If the treating professional person or his or her designee makes a finding that the person with a mental illness is not capable of making a rational decision concerning his or her interests, the treating professional person or his or her designee may order the release of the information if he or she determines that the release would be in the best interests of the person with a mental illness.

(IV) Any determination as to capacity under this paragraph (a) shall be used only for the limited purpose of this paragraph (a).

(b) A decision by a treating professional person or his or her designee concerning the capability of a person with a mental illness under subparagraph (III) of paragraph (a) of this subsection (2) is subject to administrative review upon the request of the person with a mental illness. A decision by a treating professional person or his or her designee to order the release or withholding of information under subparagraph (III) of paragraph (a) of this subsection (2) is subject to administrative review upon the request of either a family member or the person with a mental illness.

(c) The director of the treating facility shall make a record of any information given to a family member pursuant to paragraph (a) of this subsection (2) and section 27-65-121 (1) (h).

(3) When administrative review is requested either under subsection (1) or paragraph (b) of subsection (2) of this section, the director of the facility providing care and treatment to the person with a mental illness shall cause an objective and impartial review of the decision to withhold or release information. The review shall be conducted by the director of the facility, if he or she is a professional person, or by a professional person whom he or she designates if the director is not available or if the director cannot provide an objective and impartial review. The review shall include, but need not be limited to, an interview with the person with a mental illness. The facility providing care and treatment shall document the review of the decision.

(4) If a person with a mental illness objects to the release or withholding of information, the person with a mental illness and his or her attorney, if any, shall be provided with information concerning the procedures for administrative review of a decision to release or withhold information. The person with a mental illness shall be informed of any information proposed to be withheld or released and to whom and shall be given a reasonable opportunity to initiate the administrative review process before information concerning his or her care and treatment is released.

(5) A family member whose request for information is denied shall be provided with information concerning the procedures for administrative review of a decision to release or withhold information.

(6) A person with a mental illness may file a written request for review by the court of a decision made upon administrative review to release information to a family member requested under section 27-65-121 (1) (h) and proposed to be released pursuant to subsection (2) of this section. If judicial review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the person with a mental illness and his or her attorney, the treating professional person, and the person who made the decision upon administrative review of the time and place thereof. The hearing shall be conducted in the same manner as other civil proceedings before the court.

(7) In order to allow a person with a mental illness an opportunity to seek judicial review, the treating facility or the treating professional person or his or her designee shall not release information requested pursuant to section 27-65-121 (1) (h) until five days after the determination upon administrative review of the director or his or her designee is received by the person with a mental illness, and, once judicial review is requested, information shall not be released except by court order. However, if the person with a mental illness indicates an intention not to appeal a determination upon administrative review that is adverse to him or her concerning the release of information, the information may be released less than five days after the determination upon review is received by the person with a mental illness.

(8) This section provides for the release of information only and shall not be deemed to authorize the release of the written medical record without authorization by the patient or as otherwise provided by law.

(9) For purposes of this section, the treating professional person's designee shall be a professional person.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 695, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-120.5 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Status Report: The "Confidentiality Law"", see 19 Colo. Law. 441 (1990).

27-65-123. Treatment in federal facilities. (1) If a person is certified under the provisions of this article and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from said agency, showing that facilities are available and that the person is eligible for care or treatment therein, is received, the court may order him or her to be placed in the custody of the agency for hospitalization. When any person is admitted pursuant to an order of court to any hospital or institution operated by any agency of the United States within or without this state, the person shall be subject to the rules and regulations of the agency. The chief officer of any hospital or institution operated by an agency and in which the person is so hospitalized shall, with respect to the person, be vested with the same powers as the chief officer of the Colorado mental health institute at Pueblo with respect to detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized and to determine the necessity for continuance of their hospitalization.

(2) An order of a court of competent jurisdiction of another state, territory, or the District of Columbia, authorizing hospitalization of a person to any agency of the United States, shall have the same effect as to said person while in this state as in the jurisdiction in which the court entering the order is situated; the courts of the state or district issuing the order shall be deemed to have retained jurisdiction of the person so hospitalized for the purpose of inquiring into his or her mental condition and of determining the necessity for continuance of his or her hospitalization. Consent is hereby given to the application of the law of the state or district in which the court issuing the order for hospitalization is located,

with respect to the authority of the chief officer of any hospital or institution operated in this state by any agency of the United States to retain custody, to transfer, to conditionally release, or to discharge the person hospitalized.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 698, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-121 as it existed prior to 2010.

27-65-124. Transfer of persons into and out of Colorado - reciprocal agreements. The transfer of persons hospitalized voluntarily under the provisions of this article out of Colorado or under the laws of another jurisdiction into Colorado shall be governed by the provisions of the interstate compact on mental health.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 698, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-122 as it existed prior to 2010.

Cross references: For the interstate compact on mental health, see part 10 of article 60 of title 24.

27-65-125. Criminal proceedings. Proceedings under section 27-65-105, 27-65-106, or 27-65-107 shall not be initiated or carried out involving a person charged with a criminal offense unless or until the criminal offense has been tried or dismissed; except that the judge of the court wherein the criminal action is pending may request the district or probate court to authorize and permit such proceedings.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 698, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-123 as it existed prior to 2010.

27-65-126. Application of this article. The provisions of this article do not apply to or govern any proceedings commenced or concluded prior to July 1, 1975, with the exception of section 27-65-114. Any proceeding commenced prior to July 1, 1975, shall be administered and disposed of according to the provisions of law existing prior to July 1, 1975, in the same manner as if this article had not been enacted.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 699, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-124 as it existed prior to 2010.

27-65-127. Imposition of legal disability - deprivation of legal right - restoration. (1) (a) When an interested person wishes to obtain a determination as to the imposition of a legal disability or the deprivation of a legal right for a person who has a mental illness and who is a danger to himself or herself or others, is gravely disabled, or is insane, as defined in section 16-8-101, C.R.S., and who is not then subject to proceedings under this article or part 3 or part 4 of article 14 of title 15, C.R.S., the interested person may petition the court for a specific finding as to the legal disability or deprivation of a legal right. Actions commenced pursuant to this subsection (1) may include but shall not be limited to actions to determine contractual rights and rights with regard to the operation of motor vehicles.

(b) The petition shall set forth the disability to be imposed or the legal right to be deprived and the reasons therefor.

(2) The court may impose a legal disability or may deprive a person of a legal right only upon finding both of the following:

(a) That the respondent is a person with a mental illness and is a danger to himself or herself or others, gravely disabled, or insane, as defined in section 16-8-101, C.R.S.;

(b) That the requested disability or deprivation is both necessary and desirable.

(3) To have a legal disability removed or a legal right restored, any interested person may file a petition with the court which made the original finding. No legal disability shall be imposed nor a legal right be deprived for a period of more than six months without a review hearing by the court at the end of six months at which the findings specified in subsection (2) of this section shall be reaffirmed to justify continuance of the disability or deprivation. A copy of the petition shall be served on the person who filed the original petition, on the person whose rights are affected if he or she is not the petitioner, and upon the facility where the person whose rights are affected resides, if any.

(4) Whenever any proceedings are instituted or conducted pursuant to this section, the following procedures shall apply:

(a) Upon the filing of a petition, the court shall appoint an attorney-at-law to represent the respondent. The respondent may replace said attorney with an attorney of the respondent's own selection at any time. Attorney fees for an indigent respondent shall be paid by the court.

(b) The court, upon request of an indigent respondent or his or her attorney, shall appoint, at the court's expense, one or more professional persons of the respondent's selection to assist the respondent in the preparation of his or her case.

(c) Upon demand made at least five days prior to the date of hearing, the respondent shall have the right to a trial of all issues by a jury of six.

(d) At all times the burden shall be upon the person seeking imposition of a disability or deprivation of a legal right or opposing removal of a disability or deprivation to prove all essential elements by clear and convincing evidence.

(e) Pending a hearing, the court may issue an order temporarily imposing a disability or depriving the respondent of a legal right for a period of not more than ten days in conformity with the standards for issuance of ex parte temporary restraining orders in civil cases, but no individual habilitation or rehabilitation plan shall be required prior to the issuance of such order.

(f) Except as otherwise provided in this subsection (4), all proceedings shall be held in conformance with the Colorado rules of civil procedure, but no costs shall be assessed against the respondent.

(5) Any person who, by reason of a judicial decree or order entered by a court of this state prior to July 1, 1979, is under the imposition of a legal disability or has been deprived of a legal right pursuant to this section as it existed prior to July 1, 1979, shall be released from such decree or order on December 31, 1979.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 699, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-125 as it existed prior to 2010.

ANNOTATION

Annotator's note. Since § 27-65-127 is similar to § 27-10-125 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Equal protection not violated. There is a rational basis for distinguishing between this section and former § 27-10-107; the sections address parties who are not similarly situated. *Curnow v. Yarbrough*, 676 P.2d 1177 (Colo. 1984).

Court may issue order depriving involuntarily committed person of the legal right to possess weapons pursuant to this section. *People v. Pflugbeil*, 834 P.2d 843 (Colo. App. 1992).

Subsection (1)(a)'s plain meaning provides that an interested person may initiate a court proceeding when (1) the subject is insane, as defined in § 16-8-101, and (2) the person is not then subject to proceedings under this article. The statute presupposes that a not guilty by reason of insanity adjudicated patient could be

subject to provisions under this article. The statute also presupposes that not every not guilty by reason of insanity patient is subject to this article. *Neiberger v. Hawkins*, 239 F. Supp. 2d 1140 (D. Colo. 2002).

Applied in *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983).

27-65-128. Administration - rules. The department shall make such rules as will consistently enforce the provisions of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 700, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-126 as it existed prior to 2010.

27-65-129. Payment for counsel. In order to provide legal representation to persons eligible therefor as provided in this article, the judicial department is authorized to pay, out of appropriations made therefor by the general assembly, sums directly to appointed counsel on a case-by-case basis or, on behalf of the state, to make lump-sum grants to and contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 700, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-127 as it existed prior to 2010.

27-65-130. Mental health service standards for health care facilities. The advisory board created by section 27-65-131 shall be responsible for recommending standards and rules relevant to the provisions of this article for the programs of mental health services to those patients in any health care facility that has either separate facilities for the care, treatment, and rehabilitation of persons with mental health problems or those health care facilities that have as their only purpose the treatment and care of such persons.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 700, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10-128 as it existed prior to 2010.

27-65-131. Advisory board - service standards and rules. There is hereby established an advisory board to the department for the purpose of assisting and advising the executive director in accordance with section 27-65-130 in the development of service standards and rules. The board shall consist of not less than eleven nor more than fifteen members appointed by the governor and shall include one representative each from the unit in the department that administers behavioral health programs and services, including those related to mental health and substance abuse, the department of human services, the department of public health and environment, the university of Colorado health sciences center, and a leading professional association of psychiatrists in this state; at least one member representing proprietary skilled health care facilities; one member representing nonprofit health care facilities; one member representing the Colorado bar association; one member representing consumers of mental health services; one member representing families of persons with mental illness; one member representing children's health care facilities; and other persons from both the private and the public sectors who are recognized or known to be interested and informed in the area of the board's purpose and function. In making appointments to the board, the governor is encouraged to include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2),

C.R.S., a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this section are met.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 701, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-10-129 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, “Patients’ Rights Ill to Refuse Treatment in Colorado”, see 58 vs. Patients’ Needs: The Right of the Mentally Den. L.J. 567 (1981).

ARTICLE 66

Community Mental Health Services - Purchase

Editor’s note: This article was added with relocations in 2010 containing provisions of part 2 of article 1 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-66-101.	Definitions.	27-66-107.	Purchase of services by
27-66-102.	Administration - rules.		courts, counties, municipali-
27-66-103.	Community mental health		ties, school districts, and
	services - purchase program.		other political subdivisions.
27-66-104.	Types of services purchased -	27-66-108.	Institutes and training pro-
	limitation on payments -		grams.
	offender mental health ser-	27-66-109.	Family mental health services
	vices fund.		grant program - rural areas -
27-66-105.	Standards for approval.		creation - administration -
27-66-106.	Federal grants-in-aid - admin-		report - repeal. (Repealed)
	istration.		

27-66-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Acute treatment unit” means a facility or a distinct part of a facility for short-term psychiatric care, which may include substance abuse treatment, that provides a total, twenty-four-hour, therapeutically planned and professionally staffed environment for persons who do not require inpatient hospitalization but need more intense and individual services than are available on an outpatient basis, such as crisis management and stabilization services.

(2) “Community mental health center” means either a physical plant or a group of services under unified administration or affiliated with one another, and including at least the following services provided for the prevention and treatment of mental illness in persons residing in a particular community in or near the facility so situated:

- (a) Inpatient services;
- (b) Outpatient services;
- (c) Partial hospitalization;
- (d) Emergency services;
- (e) Consultative and educational services.

(3) “Community mental health clinic” means a health institution planned, organized, operated, and maintained to provide basic community services for the prevention, diagnosis, and treatment of emotional or mental disorders, such services being rendered primarily on an outpatient and consultative basis.

(4) “Department” means the department of human services created in section 26-1-105, C.R.S.

(5) “Executive director” means the executive director of the department of human services.

(6) “Unit” means the unit in the department that administers behavioral health programs and services, including those related to mental health and substance abuse.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 701, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-201 as it existed prior to 2010.

27-66-102. Administration - rules. (1) The executive director has the power and duty to administer and enforce the provisions of this article.

(2) The department may adopt reasonable and proper rules to implement this article in accordance with the provisions of section 24-4-103, C.R.S., and consistent with sections 27-90-102 and 27-90-103.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 702, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-202 as it existed prior to 2010.

27-66-103. Community mental health services - purchase program. In order to encourage the development of preventive, treatment, and rehabilitative services through new community mental health programs, the improvement and expansion of existing community mental health services, and the integration of community with state mental health services, there is established a program to purchase community mental health services by the department.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 702, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-203 as it existed prior to 2010.

Cross references: For provisions on community centered boards that provide services for persons with developmental disabilities, see part 1 of article 10.5 of this title.

ANNOTATION

This program does not provide substantive rights to community treatment for chronically ill persons. *Goebel v. State Dept. of Insts.*, 764

P.2d 785 (Colo. 1988) (decided prior to 2010 amendments to this article).

27-66-104. Types of services purchased - limitation on payments - offender mental health services fund. (1) Community mental health services may be purchased from clinics, community mental health centers, local general or psychiatric hospitals, and other agencies that have been approved by the executive director.

(2) (a) Each year the general assembly shall appropriate funds for the purchase of mental health services from:

(I) Community mental health centers;

(II) Agencies that provide specialized clinic-type services but do not serve a specific designated service area; and

(III) Acute treatment units.

(b) The funds appropriated for the purposes of this subsection (2) shall be distributed by the executive director to approved community mental health centers and other agencies on the basis of need and in accordance with the services provided.

(3) Each year the general assembly may appropriate funds in addition to those appropriated for purposes of subsection (2) of this section, which funds may be used by the executive director to assist community mental health clinics and centers in instituting

innovative programs, in providing mental health services to impoverished areas, and in dealing with crisis situations. The executive director shall require that any innovative or crisis programs for which funds are allocated under this subsection (3) be clearly defined in terms of services to be rendered, program objectives, scope and duration of the program, and the maximum amount of funds to be provided.

(4) The offender mental health services fund, referred to in this subsection (4) as the “fund”, is hereby created in the state treasury. The principal of the fund shall consist of tobacco litigation settlement moneys transferred by the state treasurer to the fund in accordance with section 24-75-1104.5 (1.5) (a) (II), C.R.S., for the purchase of mental health services for juvenile and adult offenders who have mental health problems and are involved in the criminal justice system. The unit, subject to annual appropriation by the general assembly, shall distribute the principal of the fund to the community mental health centers; except that, at the end of the 2011-12 fiscal year and at the end of each fiscal year thereafter, all unexpended and unencumbered principal of the fund shall be transferred to the general fund, in accordance with section 24-75-1104.5 (1.5) (b), C.R.S.

(b) Notwithstanding any provision of paragraph (a) of this subsection (4) to the contrary, on April 20, 2009, the state treasurer shall deduct two hundred forty-six thousand three hundred fifty dollars from the fund and transfer such sum to the general fund.

(5) If there is a reduction in the financial support of local governmental bodies for community mental health services, the executive director is authorized to reduce state payments for services in an amount proportional to the reduction in such local financial support.

(6) For purposes of entering into a cooperative purchasing agreement pursuant to section 24-110-201, C.R.S., a nonprofit community mental health center or a nonprofit community mental health clinic may be certified as a local public procurement unit as provided in section 24-110-207.5, C.R.S.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 702, § 2, effective April 29. **L. 2011:** (4)(a) amended, (SB 11-225), ch. 189, p. 731, § 5, effective May 19. **L. 2012:** (4)(a) amended, (HB 12-1247), ch. 53, p. 197, § 8, effective March 22.

Editor’s note: This section is similar to former § 27-1-204 as it existed prior to 2010.

27-66-105. Standards for approval. (1) In approving or rejecting community mental health clinics for the purchase of mental health services, the executive director shall:

(a) Consider the adequacy of mental health services provided by such clinics, taking into consideration such factors as geographic location, local economic conditions, and availability of manpower;

(b) Require that overall responsibility for the administration of a community mental health clinic be vested in a director who is a physician or a member of one of the mental health professions;

(c) Require that the treatment programs of the clinic be under the overall direction of a psychiatrist who is a physician licensed to practice medicine in the state of Colorado;

(d) Require that the clinic staff include, wherever feasible, other professional staff workers, such as psychologists, social workers, educational consultants, and nurses, with such qualifications, responsibilities, and time on the job as correspond with the size and capacity of the clinic. The clinic staff may include, with the approval of the executive director, such other nonprofessional persons as may be deemed necessary by the clinic board for the proper discharge of its functions.

(e) Require that each clinic from which services may be purchased be under the control and direction of a county or community board of health, a board of directors or trustees of a corporation, for profit or not for profit, a regional mental health and mental retardation board, or a political subdivision of the state;

(f) Consider the existence of facilities that provide an emphasis on the care and treatment of persons recently released from mental hospitals or institutions directed toward assisting said persons in their adjustment to and functioning within society as a whole.

(2) In approving or rejecting local general or psychiatric hospitals, community mental health centers, acute treatment units, and other agencies for the purchase of services not provided by local mental health clinics, including, but not limited to, twenty-four-hour and partial hospitalization, the executive director shall consider the following factors:

- (a) The general quality of care provided to patients by such agencies;
- (b) The organization of the medical staff to provide for the integration and coordination of the psychiatric treatment program;
- (c) The provisions for the availability of nursing, psychological, and social services and the existence of an organized program of activities under the direction of an occupational therapist or of another qualified person;
- (d) The licensure by the department of public health and environment or another state agency where applicable;
- (e) The methods by which the agency coordinates its services with those rendered by other agencies to ensure an uninterrupted continuum of care to persons with mental illness; and
- (f) The availability of such services to the general public.

(3) In the purchase of services from community mental health centers, the executive director shall specify levels and types of inpatient, outpatient, consultation, education, and training services and expenditures and shall establish minimum standards for other programs of such centers that are to be supported with state funds.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 704, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-205 as it existed prior to 2010.

ANNOTATION

Subsection (1)(b) does not impose individual liability upon the director of a mental health center for acts or omissions of the center's staff.

Bauer v. Southwest Denver Mental Health Center, 701 P.2d 114 (Colo. App. 1985) (decided prior to 2010 amendments to this article).

27-66-106. Federal grants-in-aid - administration. The department is designated the official mental health and mental retardation authority, and is authorized to receive grants-in-aid from the federal government under the provisions of 42 U.S.C. sec. 246, and shall administer said grants in accordance therewith.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 705, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-206 as it existed prior to 2010.

27-66-107. Purchase of services by courts, counties, municipalities, school districts, and other political subdivisions. Any county, municipality, school district, health service district, or other political subdivision of the state or any county, district, or juvenile court is authorized to purchase mental health services from community mental health clinics and such other community agencies as are approved for purchases by the executive director. For the purchase of mental health services by counties or city and counties as authorized by this section, the board of county commissioners of any county or the city council of any city and county may levy a tax not to exceed two mills upon real property within the county or city and county if the board first submits the question of such levy to a vote of the qualified electors at a general election and receives their approval of such levy.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 705, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-207 as it existed prior to 2010.

27-66-108. Institutes and training programs. The department may, from time to time during each year, provide consultation and conduct institutes and training programs on a state, regional, district, county, or community level as necessary to coordinate, inform, and assist in the training of staff members of the various approved community mental health programs of the state. The department may reimburse staff members for reasonable and necessary expenses incurred in attending the institutes and training programs.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 705, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-208 as it existed prior to 2010.

27-66-109. Family mental health services grant program - rural areas - creation - administration - report - repeal. (Repealed)

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 705, § 2, effective April 29.

Editor’s note: (1) (a) Subsection (5) provided for the repeal of this section, effective July 1, 2010. (See L. 2010, p. 705.)
(b) For the text of this section in effect from April 29, 2010, to July 1, 2010, see L. 2010, p. 705.
(2) This section was similar to former § 27-1-209 as it existed prior to 2010.

ARTICLE 67

Child Mental Health Treatment Act

Editor’s note: This article was added with relocations in 2010 containing provisions of article 10.3 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, “Guidance for Attorneys When Children’s Mental Health Concerns are Implicated”, see 31 Colo. Law. 33 (October 2002).

27-67-101.	Short title.	27-67-105.	Monitoring - report.
27-67-102.	Legislative declaration.	27-67-106.	Funding - rules.
27-67-103.	Definitions.	27-67-107.	Dispute resolution - rules.
27-67-104.	Provision of mental health treatment services for youth.	27-67-108.	Repeal of article.

27-67-101. Short title. This article shall be known and may be cited as the “Child Mental Health Treatment Act”.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 708, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-10.3-101 as it existed prior to 2010.

27-67-102. Legislative declaration. (1) The general assembly finds that many parents in Colorado have experienced challenging circumstances because their children have significant mental health needs. Many times, the parents are loving, caring parents who have become increasingly frustrated in their attempts to navigate the various governmental systems including child welfare, mental health, law enforcement, juvenile justice, education, and youth corrections in an attempt to find help for their children. Frequently in these situations an action in dependency or neglect under article 3 of title 19, C.R.S., is neither appropriate nor warranted.
(2) The general assembly finds that it is desirable to assist children with mental health needs and their families. The general assembly further finds that it is desirable to make

mental health services more available to families who want treatment for their children. The general assembly finds that, although the mental health agencies are responsible for providing the full range of mental health treatment services, including residential care, for those children who have been found to be categorically eligible for medicaid, there remains a population of children in need of mental health services who are not categorically eligible for medicaid. Accordingly, the general assembly determines that it is appropriate to adopt a program pursuant to which a continuum of services would be provided to these children.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 708, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-102 as it existed prior to 2010.

27-67-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Behavioral health organization" shall have the same meaning as provided in section 25.5-5-403 (1), C.R.S.
- (2) "Child at risk of out-of-home placement" means a child who, although not otherwise categorically eligible for medicaid, meets the following criteria:
 - (a) Has been diagnosed as having a mental illness, as defined in section 27-65-102 (14);
 - (b) Requires a level of care that is provided in a residential child care facility pursuant to section 25.5-5-306, C.R.S., or that is provided through in-home or community-based programs and who, without such care, is at risk of out-of-home placement;
 - (c) If determined to be in need of placement in a residential child care facility, is determined to be eligible for supplemental security income; and
 - (d) For whom it is inappropriate or unwarranted to file an action in dependency or neglect pursuant to article 3 of title 19, C.R.S.
- (3) "Community mental health center" means either a physical plant or a group of services under unified administration or affiliated with one another and includes at least the following services provided for the prevention and treatment of mental illness in persons residing in a particular community in or near the facility or group so situated:
 - (a) Inpatient services;
 - (b) Outpatient services;
 - (c) Partial hospitalization;
 - (d) Emergency services; and
 - (e) Consultative and educational services.
- (4) "County department" means the county or district department of social services.
- (5) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.
- (6) "Mental health agency" means the community mental health center serving children in a particular geographic area or the behavioral health organization serving children in a particular geographic area who are receiving medicaid.
- (7) "State department" means the state department of human services.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 708, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-103 as it existed prior to 2010.

27-67-104. Provision of mental health treatment services for youth. (1) (a) A parent or guardian may apply to a mental health agency on behalf of his or her minor child

for mental health treatment services for the child pursuant to this section, whether the child is categorically eligible for medicaid under the capitated mental health system described in section 25.5-5-411, C.R.S., or whether the parent believes his or her child is a child at risk of out-of-home placement. In such circumstances, it shall be the responsibility of the mental health agency to evaluate the child and to clinically assess the child's need for mental health services and, when warranted, to provide treatment services as necessary and in the best interests of the child and the child's family. Subject to available state appropriations, the mental health agency shall be responsible for the provision of the treatment services and care management, including any in-home family mental health treatment, other family preservation services, residential treatment, or any post-residential follow-up services that may be appropriate for the child's or family's needs. For the purposes of this section, the term "care management" includes, but is not limited to, consideration of the continuity of care and array of services necessary for appropriately treating the child and the decision-making authority regarding a child's placement in and discharge from mental health services. A dependency or neglect action pursuant to article 3 of title 19, C.R.S., shall not be required in order to allow a family access to residential mental health treatment services for a child.

(b) At the time of the assessment by the mental health agency, if residential services are denied, or at the time when the mental health agency has recommended that the child be discharged from services, the mental health agency shall advise the family, both orally and in writing, of the appeal process available to them. The mental health agency shall have two working days within which to complete any internal appeal process. Within five working days after the mental health agency's final denial or recommendation for discharge, a parent or guardian may request an objective third party at the state department who is a professional person, as that term is defined in section 27-65-102 (17), to review the action of the mental health agency. The review shall occur within three working days of the parent's or guardian's request.

(2) If at any time the mental health agency determines pursuant to section 19-3-304, C.R.S., that there is reasonable cause to know or suspect that a child has been subjected to abuse or neglect, then the mental health agency shall immediately contact the appropriate county department. Within ten days after the referral to the county department, the mental health agency shall meet with the county department and the family. Upon referral to the county department, the county department shall proceed with an assessment to determine whether there is a sufficient basis to believe that physical or sexual abuse or neglect or some other form of abuse or neglect of a child's physical well-being has occurred, warranting a dependency or neglect action.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 709, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-104 as it existed prior to 2010.

27-67-105. Monitoring - report. (1) On or before September 1, 2009, and by September 1 of each year thereafter, each community mental health center shall report to the state department the following information, and each behavioral health organization, for those children eligible to receive medicaid benefits whose parent or legal guardian requests residential treatment, shall report to the department of health care policy and financing the following information:

(a) The number of children, both those children who are categorically eligible for medicaid under the capitated mental health system described in section 25.5-5-411, C.R.S., and those children who are at risk of out-of-home placement, to whom the following services were provided:

- (I) An assessment pursuant to section 27-67-104 (1) (a);
- (II) In-home family mental health treatment;
- (III) Community-based treatment, including but not limited to therapeutic foster care services;
- (IV) Family preservation services;

- (V) Residential treatment; and
 - (VI) Post-residential follow-up services;
 - (b) The number of children, both those children who are categorically eligible for medicaid under the capitated mental health system described in section 25.5-5-411, C.R.S., and those children who are at risk of out-of-home placement, referred to the county department for a dependency or neglect investigation pursuant to section 27-67-104 (2), and the reasons therefor;
 - (c) The number of children for whom either:
 - (I) An assessment was requested but not performed, and the reasons that the assessment was not performed; or
 - (II) An assessment was performed but the mental health agency did not provide services under this article, and the reasons that services were not provided, including whether the family refused the services offered;
 - (d) The costs associated with the provision of the mental health treatment services;
 - (e) The profiles of the children and families served;
 - (f) The outcomes of treatment for the children served, as determined by the state department in consultation with mental health agencies, service providers, and families;
 - (g) If residential services were provided, the length of stay; and
 - (h) The aggregate number of complaints submitted pursuant to the dispute resolution process described in section 27-67-107, the nature of the complaints, and the general disposition of the cases.
- (2) On or before October 1, 2009, and on or before October 1 of each year thereafter, the department of health care policy and financing shall provide to the state department the information received from behavioral health organizations pursuant to subsection (1) of this section.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 710, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-105 as it existed prior to 2010.

27-67-106. Funding - rules. (1) In order to make mental health treatment available, it is the intent of the general assembly that mental health treatment provided pursuant to this article to each child described in section 27-67-103 (2) be provided by mental health agencies.

(2) (a) If neither the family's private insurance nor federal medicaid funding cover all of the costs associated with the services provided to a child at risk of out-of-home placement pursuant to this article, then the family shall be responsible for paying that portion that is not covered by private insurance or federal medicaid funding on a sliding scale basis as set forth in subsection (3) of this section. Any remaining portion of the services not covered by private insurance, federal medicaid funding, or the family's share, shall be paid for from moneys appropriated for such purpose pursuant to paragraph (b) of this subsection (2) or from general fund moneys, subject to available appropriations.

(b) Pursuant to section 24-75-1104.5 (1) (k), C.R.S., beginning in the 2004-05 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the general assembly shall appropriate to the state department to fund the remaining portion of services not covered by private insurance, federal medicaid funding, or the family's share, as described in paragraph (a) of this subsection (2), three hundred thousand dollars from the moneys received by the state in accordance with the master settlement agreement for the preceding fiscal year. The general assembly shall appropriate the amount specified in this paragraph (b) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(3) The state board of human services, in consultation with the department of health care policy and financing, shall promulgate rules implementing a sliding scale for the payment of services, including mental health treatment and room and board, that are not covered by private insurance or federal medicaid funding. It is the intent of the general assembly that the portion of such expenses paid from general fund moneys shall not exceed

the general fund appropriations made for such purpose in any given fiscal year. It is the further intent of the general assembly that subsidies provided by the state through general fund moneys shall be used to assist the lowest income families to ensure the maximum use of appropriate least restrictive treatment services and to provide access to the greatest number of children.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 712, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-106 as it existed prior to 2010.

27-67-107. Dispute resolution - rules. (1) The state department shall utilize, when appropriate, established grievance and dispute resolution processes in order to assure that parents have access to mental health services on behalf of their children.

(2) The state board of human services shall promulgate rules to assure that a grievance process is available to parents concerning the provision of mental health services and to assure that a dispute resolution process is available for disputes between the county departments and mental health agencies.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 712, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-107 as it existed prior to 2010.

27-67-108. Repeal of article. This article is repealed, effective July 1, 2019.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 712, § 2, effective April 29.

Editor's note: This section is similar to former § 27-10.3-108 as it existed prior to 2010.

ARTICLE 68

Mental Health Services Pilot Program for Families of Discharged Veterans of Operation Enduring Freedom and Operation Iraqi Freedom

27-68-101 to 27-68-106. (Repealed)

Editor's note: (1) This article was added with relocations in 2010 containing provisions of part 3 of article 1 of this title and was subsequently repealed in 2010. This article was not amended prior to its repeal in 2010. For a detailed comparison of this article, see the comparative tables located in the back of the index.

(2) (a) Section 27-68-106 provided for the repeal of this article, effective July 1, 2010. (See L. 2010, p. 715.)

(b) For the text of this article in effect from April 29, 2010, to July 1, 2010, see L. 2010, p. 713.

ARTICLE 69

Family Advocacy Mental Health Juvenile Justice Programs

Editor's note: This article was added with relocations in 2010 containing provisions of article 22 of title 26. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-69-101.	Legislative declaration.	27-69-104.	Program scope - rules.
27-69-102.	Definitions.	27-69-105.	Evaluation and reporting.
27-69-103.	Programs established.	27-69-106.	Repeal of article.

27-69-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado families and youth have difficulties navigating the mental health, physical health, substance abuse, developmental disabilities, education, juvenile justice, child welfare, and other state and local systems that are compounded when the youth has a mental illness or co-occurring disorder;

(b) Preliminary research demonstrates that family advocates and family systems navigators increase family and youth satisfaction, improve family participation, and improve services to help youth and families succeed and achieve positive outcomes. One preliminary study in Colorado found that the wide array of useful characteristics and valued roles performed by family advocates and family systems navigators, regardless of where they are located institutionally, provided evidence for continuing and expanding the use of family advocates and family systems navigators in systems of care.

(c) Input from families, youth, and state and local community agency representatives in Colorado demonstrates that family advocates and family systems navigators help families get the services and support they need and want, help families to better navigate complex state and local systems, improve family and youth outcomes, and help disengaged families and youth to become engaged families and youth;

(d) State and local agencies and systems need to develop more strengths-based, family-centered, individualized, culturally competent, and collaborative approaches that better meet the needs of families and youth;

(e) A family advocate or a family systems navigator helps state and local agencies and systems adopt more strengths-based-targeted programs, policies, and services to better meet the needs of families and their youth with mental illness or co-occurring disorders and improve outcomes for all, including families, youth, and the agencies they utilize;

(f) The use of family advocates or family systems navigators as full partners in systems of care is a relatively new approach to helping meet the needs of families and youth in the state. It is essential that communities have the support to implement and sustain programs in a manner that best meets the needs of youth, families, and communities.

(2) It is therefore in the state's best interest to develop rules and standards and provide technical assistance and coordination for the family advocacy mental health juvenile justice programs for system-of-care family advocates and family systems navigators for mental health juvenile justice populations who navigate across mental health, physical health, substance abuse, developmental disabilities, juvenile justice, education, child welfare, and other state and local systems to ensure sustained and thoughtful family participation in the planning processes of the care for their children and youth.

Source: **L. 2010:** (1)(b), (1)(c), (1)(e), (1)(f), and (2) amended, (SB 10-014), ch. 59, p. 212, § 1, effective March 31; entire article added with relocations, (SB 10-175), ch. 188, p. 715, § 2, effective April 29. **L. 2011:** (1)(f) and (2) amended, (HB 11-1193), ch. 71, p. 193, § 1, effective March 29.

Editor's note: (1) This section is similar to former § 26-22-101 as it existed prior to 2010.

(2) Subsections (1)(b), (1)(c), (1)(e), (1)(f), and (2) were numbered as § 26-22-101 (1)(b), (1)(c), (1)(e), (1)(f), and (2), respectively, in Senate Bill 10-014 (see L. 2010, p. 212) but were relocated as amended due to their harmonization with this section as it was added by Senate Bill 10-175.

27-69-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Co-occurring disorders" means disorders that commonly coincide with mental illness and may include, but are not limited to, substance abuse, developmental disabilities, fetal alcohol syndrome, and traumatic brain injury.

(2) and (3) Repealed.

(4) “Family advocacy coalition” means a coalition of family advocates, family systems navigators, or family advocacy organizations working to help families and youth with mental health problems, substance abuse, developmental disabilities, and other co-occurring disorders to improve services and outcomes for youth and families and to work with and enhance state and local systems.

(5) “Family advocate” means a parent or primary care giver who:

(a) Has been trained in a system-of-care approach to assist families in accessing and receiving services and supports;

(b) Has raised or cared for a child or adolescent with a mental health or co-occurring disorder; and

(c) Has worked with multiple agencies and providers, such as mental health, physical health, substance abuse, juvenile justice, developmental disabilities, education, and other state and local service systems.

(5.5) “Family systems navigator” means an individual who:

(a) Has been trained in a system-of-care approach to assist families in accessing and receiving services and supports;

(b) Has the skills, experience, and knowledge to work with children and youth with mental health or co-occurring disorders; and

(c) Has worked with multiple agencies and providers, including mental health, physical health, substance abuse, juvenile justice, developmental disabilities, education, and other state and local service systems.

(6) Repealed.

(7) “Partnership” means a relationship between a family advocacy organization and another entity whereby the family advocacy organization works directly with another entity for oversight and management of the family advocate or family systems navigator and family advocacy demonstration program, and the family advocacy organization employs, supervises, mentors, and provides training to the family advocate or family systems navigator.

(8) “System of care” means an integrated network of community-based services and support that is organized to meet the challenges of youth with complex needs, including, but not limited to, the need for substantial services to address areas of developmental, physical, and mental health, substance abuse, child welfare, and education and involvement in or being at risk of involvement with the juvenile justice system. In a system of care, families and youth work in partnership with public and private organizations to build on the strengths of individuals and to address each person’s cultural and linguistic needs so services and support are effective.

(9) Repealed.

(10) “Unit” means the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse.

Source: L. 2010: (2), (4), (5), and (7) amended and (5.5) added, (SB 10-014), ch. 59, p. 213, § 2, effective March 31; entire article added with relocations, (SB 10-175), ch. 188, p. 716, § 2, effective April 29. L. 2011: (2), (3), (6), and (9) repealed, (HB 11-1193), ch. 71, p. 194, § 2, effective March 29.

Editor’s note: (1) This section is similar to former § 26-22-102 as it existed prior to 2010.

(2) Subsections (2), (4), (5), (5.5), and (7) were numbered as § 26-22-102 (2), (5), (6), (6.5), and (8), respectively, in Senate Bill 10-014 (see L. 2010, p. 213) but were relocated as amended due to their harmonization with this section as it was added by Senate Bill 10-175.

27-69-103. Programs established. There are hereby established family advocacy mental health juvenile justice programs for system-of-care family advocates and family systems navigators for mental health juvenile justice populations that shall be implemented and monitored by the unit, with input, cooperation, and support from the division of criminal justice, created in section 24-33.5-502, C.R.S., the task force, created in section 18-1.9-104, C.R.S., and family advocacy coalitions.

Source: **L. 2010:** Entire section amended, (SB 10-014), ch. 59, p. 214, § 3, effective March 31; entire section added with relocations, (SB 10-175), ch. 188, p. 717, § 2, effective April 29. **L. 2011:** Entire section amended, (HB 11-1193), ch. 71, p. 194, § 3, effective March 29; entire section amended, (HB 11-1303), ch. 264, p. 1171, § 80, effective August 10.

Editor's note: (1) This section is similar to former § 26-22-103 as it existed prior to 2010.

(2) This section was numbered as § 26-22-103 in Senate Bill 10-014 (see L. 2010, p. 214) but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175; except that the change from division of mental health to division of behavioral health in Senate Bill 10-014 was superseded by Senate Bill 10-175 and is currently referred to as the unit.

(3) Amendments to this section by House Bill 11-1193 and House Bill 11-1303 were harmonized.

27-69-104. Program scope - rules. (1) The unit shall promulgate rules and standards, after consultation with family advocacy coalitions and other stakeholders, for family advocacy mental health juvenile justice programs for system-of-care family advocates and family systems navigators for mental health juvenile justice populations. The programs shall:

(a) Focus on youth with mental illness or co-occurring disorders who are involved in or at risk of involvement with the juvenile justice system and be based upon the families' and youths' strengths; and

(b) Provide navigation, crisis response, integrated planning, transition services, and diversion from the juvenile justice system for youth with mental illness or co-occurring disorders.

(2) The unit shall provide technical assistance and coordination of family advocacy mental health juvenile justice programs throughout the state that provide system-of-care family advocates and family systems navigators for mental health juvenile justice populations with support to implement and sustain programs that best meet the needs of youth, families, and communities.

(3) Key components of the family advocacy mental health juvenile justice programs for system-of-care family advocates and family systems navigators for mental health juvenile justice populations shall include:

(a) Coordination with the key stakeholders involved in the local community to ensure consistent and effective collaboration. This collaboration may include, but need not be limited to, a family advocacy organization, representatives of the juvenile court, the probation department, the district attorney's office, the public defender's office, a school district, the division of youth corrections within the department of human services, a county department of social or human services, a local community mental health center, and a regional behavioral health organization and may include representatives of a local law enforcement agency, a county public health department, a substance abuse program, a community centered board, a local juvenile services planning committee, and other community partners;

(b) Services to youth with mental illness or co-occurring disorders who are involved in or at risk of involvement with the juvenile justice system and other state and local systems;

(c) Policies concerning the work of family advocates or family systems navigators that include:

(I) Experience and hiring requirements;

(II) The provision of appropriate training; and

(III) A definition of roles and responsibilities; and

(d) Services provided by system-of-care family advocates or family systems navigators for mental health juvenile justice populations, which services shall include:

(I) Strengths, needs, and cultural assessment;

(II) Navigation and support services;

(III) Education programs related to mental illness, co-occurring disorders, youth and family involvement in the system of care, the juvenile justice system, and other relevant systems;

(IV) Cooperative training programs for family advocates or family systems navigators and for staff, where applicable, of mental health, physical health, substance abuse, developmental disabilities, education, child welfare, juvenile justice, and other state and local systems related to the role and partnership between the family advocates or family systems navigators and the systems that affect youth and their family;

(V) Integrated crisis response services and crisis and transition planning;

(VI) Access to diversion and other services to improve outcomes for youth and their families;

(VII) Other services as determined by the local community; and

(VIII) Coordination with the local community mental health center.

(e) and (f) (Deleted by amendment, L. 2011, (HB 11-1193), ch. 71, p. 194, § 4, effective March 29, 2011.)

(4) to (6) (Deleted by amendment, L. 2011, (HB 11-1193), ch. 71, p. 194, § 4, effective March 29, 2011.)

Source: L. 2010: (1)(b), IP(3)(c), IP(3)(d), (3)(d)(IV), (3)(d)(V), and (4)(a) amended, (SB 10-014), ch. 59, p. 214, § 4, effective March 31; entire section added with relocations, (SB 10-175), ch. 188, p. 717, § 2, effective April 29. **L. 2011:** Entire section amended, (HB 11-1193), ch. 71, p. 194, § 4, effective March 29.

Editor's note: (1) This section is similar to former § 26-22-104 as it existed prior to 2010.

(2) Subsections (1)(b), (3)(d)(IV), (3)(d)(V), and (4)(a) and the introductory portions to subsections (3)(c) and (3)(d) were numbered as § 26-22-104 (1)(b), (3)(d)(IV), (3)(d)(V), and (4)(a) and the introductory portions to § 26-22-104 (3)(c) and (3)(d), respectively, in Senate Bill 10-014 (see L. 2010, p. 214) but were relocated due to their harmonization with this section as it was added by Senate Bill 10-175.

27-69-105. Evaluation and reporting.

(1) and (2) (Deleted by amendment, L. 2011, (HB 11-1193), ch. 71, p. 197, § 5, effective March 29, 2011.)

(3) As determined by the unit, in consultation with family advocacy programs, each integrated system-of-care family advocacy program for mental health juvenile justice populations shall forward data to the unit, including:

(a) System utilization outcomes, including, but not limited to, available data on services provided related to mental health, physical health, juvenile justice, developmental disabilities, substance abuse, child welfare, traumatic brain injuries, school services, and co-occurring disorders;

(b) Youth and family outcomes, related to, but not limited to, mental health, substance abuse, developmental disabilities, juvenile justice, and traumatic brain injury issues;

(c) Family and youth satisfaction and assessment of family advocates or family systems navigators;

(d) Process and leadership outcomes, including, but not limited to, measures of partnerships, service processes and practices among partnering agencies, leadership indicators, and shared responses to resources and outcomes; and

(e) Other outcomes, including, but not limited to, identification of the cost avoidance or cost savings, if any, achieved by the demonstration program, the applicable outcomes achieved, the transition services provided, and the service utilization time frames.

(4) to (7) (Deleted by amendment, L. 2011, (HB 11-1193), ch. 71, p. 197, § 5, effective March 29, 2011.)

Source: L. 2010: (3)(c) amended, (SB 10-014), ch. 59, p. 215, § 5, effective March 31; entire section added with relocations, (SB 10-175), ch. 188, p. 720, § 2, effective April 29; (5) and (6) amended, (SB 10-213), ch. 375, p. 1763, § 9, effective June 7. **L. 2011:** Entire section amended, (HB 11-1193), ch. 71, p. 197, § 5, effective March 29.

Editor's note: (1) This section is similar to former § 26-22-105 as it existed prior to 2010.

(2) Subsection (3)(c) was numbered as § 26-22-105 (3)(c) in Senate Bill 10-014 (see L. 2010, p. 215) but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175.

(3) Subsections (5) and (6) were numbered as § 26-22-105 (5) and (6), respectively, in Senate Bill 10-213 (see L. 2010, p. 1763) but were relocated due to their harmonization with this section as it was added by Senate Bill 10-175.

27-69-106. Repeal of article. This article is repealed, effective July 1, 2021.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 721, § 2, effective April 29. L. 2011: Entire section amended, (HB 11-1193), ch. 71, p. 198, § 6, effective March 29.

Editor's note: This section is similar to former § 26-22-106 as it existed prior to 2010.

ALCOHOL AND DRUG ABUSE

ARTICLE 80

Alcohol and Drug Abuse

PART 1

PROGRAMS AND SERVICES

- 27-80-101. Definitions.
- 27-80-102. Duties of the unit.
- 27-80-103. Grants for public programs.
- 27-80-104. Cancellation of grants.
- 27-80-105. Annual distribution of funds.
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PART 2

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PART 1

PROGRAMS AND SERVICES

Editor's note: This part 1 was added with relocations in 2010 containing provisions of part 2 of article 1 of title 25. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 1, see the comparative tables located in the back of the index.

27-80-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Department" means the department of human services created in section 26-1-105, C.R.S.
- (2) "Designated service area" means the geographical substate planning area specified by the director of the unit to be served by a designated managed service organization, as described in section 27-80-107.
- (3) "Executive director" means the executive director of the department of human services.
- (4) "Fetal alcohol spectrum disorder" or "FASD" means a continuum of permanent birth defects caused by maternal consumption of alcohol during pregnancy. "FASD" includes, but is not limited to, fetal alcohol syndrome.
- (5) "Public program" means a program concerning the problems of alcohol or drug abuse sponsored by a county, district, or municipal public health agency, county department of social services, court, probation department, law enforcement agency, school, school system, board of cooperative services, Indian tribal reservation, or state agency. "Public program" includes any alcohol or drug abuse treatment program required as a condition of probation under part 2 of article 11 of title 16, C.R.S., any alcohol or drug abuse program administered by the division of adult parole under article 2 of title 17, C.R.S., any community correctional facility or program administered under article 27 of title 17, C.R.S., and any alcohol or drug abuse treatment program administered by the division of youth corrections under title 19, C.R.S.
- (6) "Unit" means the unit in the department that administers behavioral health programs and services, including those related to mental health and substance abuse.
- (7) Repealed.

Source: **L. 2010:** Entire article added with relocations, (SB 10-175), ch. 188, p. 721, § 2, effective April 29; (5) amended, (HB 10-1422), ch. 419, p. 2091, § 85, effective August 11. **L. 2011:** (7) repealed, (HB 11-1144), ch. 65, p. 173, § 3, effective August 10.

Editor's note: (1) This section is similar to former § 25-1-201 as it existed prior to 2010.

(2) Subsection (5) was numbered as § 25-1-201 (4) in House Bill 10-1422 (see L. 2010, p. 2091) but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175.

Cross references: For the legislative declaration in the 2011 act repealing subsection (7), see section 1 of chapter 65, Session Laws of Colorado 2011.

27-80-102. Duties of the unit. (1) The unit shall formulate a comprehensive state plan for alcohol and drug abuse programs. The state plan shall be submitted to the governor and, upon his or her approval, shall be submitted to the appropriate United States agency for review and approval. The state plan shall include, but not be limited to:

- (a) A survey of the need for the prevention and treatment of alcohol and drug abuse, including a survey of the health facilities needed to provide services and a plan for the development and distribution of facilities and programs throughout the state;
- (b) A plan for programs to educate the public in the problems of alcohol and drug abuse;
- (c) A survey of the need for trained teachers, health professionals, and others involved in the prevention and treatment of alcohol and drug abuse and the rehabilitation of abusers, and a plan to provide the necessary training for such persons;

(d) Provisions for the periodic review and updating of the state plan, which shall take place at least annually.

(2) The department, acting by and through the unit, is designated as the sole state agency for the supervision of the administration of the state plan.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 722, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-202 as it existed prior to 2010.

27-80-103. Grants for public programs. (1) The unit may make grants, from funds appropriated by the general assembly for purposes of this section or available from any other governmental or private source, to approved public programs.

(2) A public program may provide, but need not be limited to, any of the following:

(a) Acute medical services, including emergency services and detoxification;

(b) Case finding, diagnosis, treatment, counseling, individual or group psychotherapy, after-care treatment, and other rehabilitation services;

(c) Education and counseling regarding the use and abuse of alcohol and drugs;

(d) Programs for prevention of alcohol and drug abuse;

(e) Training of teachers, health professionals, and others in the field of alcohol and drug abuse and addiction counseling;

(f) Coordination of existing services and the development of other needed services through demonstration and evaluation projects; or

(g) Services to pregnant women who are alcohol and drug dependent through demonstration and evaluation projects.

(3) In approving any public program, the unit shall take into consideration the following:

(a) The community need for the public program;

(b) The range of services to be provided;

(c) The integration of the public program with, and the participation of, other public and nongovernmental agencies, organizations, institutions, and individuals, and their services and facilities, if any, that are available to assist the public program;

(d) The adequacy of the public program to accomplish its purposes; and

(e) Such other information as the unit deems necessary.

(4) Applications for grants made under subsection (1) of this section shall be made to the unit, on forms furnished by the unit, and shall contain such information as the unit may require. Wherever possible, the unit shall give priority to those public programs which are community-based and include services to children and juveniles as well as adults, that provide a comprehensive range of services, and that evidence a high degree of community support, either financial or in the furnishing of services and facilities, or both.

(5) Whenever any department or agency of the state has moneys available from any source for public programs, such department or agency is authorized to distribute the moneys in accordance with the state plan and to make reasonable rules for the administration of such public programs.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 722, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-203 as it existed prior to 2010.

27-80-104. Cancellation of grants. (1) The unit may cancel any grant for any public program for any of the following reasons:

(a) There is no longer a need for the public program.

(b) Funds for the public program are not available.

(c) The public program does not meet the standards or requirements adopted by the department or does not conform to the comprehensive state plan for alcohol and drug abuse programs.

(2) Before canceling a grant for the reasons set forth in paragraph (c) of subsection (1) of this section, the unit shall notify the person or agency in charge of the public program of the deficiency in the program, and such person or agency shall be given a reasonable amount of time within which to correct the deficiency.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 723, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-204 as it existed prior to 2010.

27-80-105. Annual distribution of funds. Funds for public programs shall be distributed annually, if available.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 724, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-205 as it existed prior to 2010.

27-80-106. Purchase of prevention and treatment services. (1) Using funds appropriated for purposes of this section or available from any other governmental or private source, the unit may purchase services for prevention or for treatment of alcohol and drug abuse or both types of services on a contract basis from any tribal nation or any public or private agency, organization, or institution approved by the unit. The services purchased may be any of those which may be provided through a public program, as set forth in section 27-80-103 (2). In contracting for services, the unit shall attempt to obtain services that are in addition to, and not a duplication of, existing available services or services that are of a pilot or demonstration nature. Any agency operating a public program may also purchase such services on a contract basis.

(2) (a) In addition to the services purchased pursuant to subsection (1) of this section, using funds appropriated for purposes of this section or available from any other governmental or private source, the unit may purchase services for the treatment of alcohol and drug abuse on a contract basis from a designated managed service organization for a designated service area as set forth in section 27-80-107. A public or private agency, organization, or institution approved by the unit through the process set forth in section 27-80-107 may be designated as a designated managed service organization.

(b) Designated managed service organizations receiving funds pursuant to this subsection (2) shall comply with all relevant provisions of this article and the rules promulgated thereunder.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 724, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-206 as it existed prior to 2010.

27-80-107. Designation of managed service organizations - purchase of services - revocation of designation. (1) The director of the unit shall establish designated service areas for the provision of treatment services for alcohol and drug abuse in a particular geographical region of the state.

(2) In order to be selected as a designated managed service organization to provide services in a particular designated service area, a private corporation, for profit or not for profit, or a public agency, organization, or institution shall apply to the unit for such designation in the form and manner specified by the executive director or the executive director's designee. Such designation process shall be in lieu of a competitive bid process

under the “Procurement Code”, articles 101 to 112 of title 24, C.R.S. The director of the unit shall make the designation based on factors established by the executive director or the executive director’s designee. The factors for designation established by the executive director or the executive director’s designee shall include, but shall not be limited to, the following:

(a) Whether the managed service organization has experience working with public treatment agencies and collaborating with other public agencies;

(b) Whether the managed service organization has experience working with publicly funded clients, including expertise in treating priority populations designated by the unit;

(c) Whether the managed service organization has offices in and provides services in the substate planning area or is willing to relocate to the substate planning area;

(d) Whether the managed service organization has experience using the cost-share principles used by the unit in its contracts with providers and is willing to cost-share;

(e) Whether the managed service organization has developed an effective, integrated information and fiscal reporting system and has experience working with and is able to comply with state and federal reporting requirements;

(f) Whether the managed service organization has experience engaging in a clinical quality improvement process; and

(g) Whether the managed service organization has experience with public funding requirements and state contracting requirements.

(3) The designation of a managed service organization by the director of the unit as described in subsection (2) of this section shall be considered an initial decision of the department which may be reviewed by the executive director in accordance with the provisions of section 24-4-105, C.R.S. Review by the executive director in accordance with section 24-4-105, C.R.S., shall constitute final agency action for purposes of judicial review.

(4) The terms and conditions for providing treatment services shall be specified in the contract entered into between the unit and the designated managed service organization.

(5) The contract may include a provisional designation for ninety days. At the conclusion of the ninety-day provisional period, the director of the unit may choose to revoke the contract or, subject to meeting the terms and conditions specified in the contract, may choose to extend the contract for a stated time period.

(6) A managed service organization that is designated to serve a designated service area may subcontract with a network of service providers to provide treatment services for alcohol and drug abuse within the particular designated service area.

(7) (a) The director of the unit may revoke the designation of a designated managed service organization upon a finding that the managed service organization is in violation of the performance of the provisions of this article or the rules promulgated thereunder. Such revocation shall conform to the provisions and procedures specified in article 4 of title 24, C.R.S., and shall be made only after notice and an opportunity for a hearing is provided as specified in that article. A hearing to revoke a designation as a designated managed service organization shall constitute final agency action for purposes of judicial review.

(b) Once a designation has been revoked pursuant to paragraph (a) of this subsection (7), the director of the unit may designate one or more service providers to provide the treatment services pending designation of a new designated managed service organization or may enter into contracts with subcontractors to provide the treatment services.

(c) From time to time, the director of the unit may solicit applications from applicants for managed service organization designation to provide treatment services for a specified planning area or areas.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 724, § 2, effective April 29.

Editor’s note: This section is similar to former § 25-1-206.5 as it existed prior to 2010.

27-80-108. Rules. (1) The state board of human services, created in section 26-1-107, C.R.S., has the power to promulgate rules governing the provisions of this article. Such rules may include, but shall not be limited to:

- (a) Requirements to be met in the operation of a public program, including record keeping and data compilation;
- (b) Conditions that may be imposed on a public program in order for the program to maintain eligibility for a grant;
- (c) Requirements for public and private agencies, organizations, and institutions from which the unit may purchase services under section 27-80-106 (1);
- (d) Requirements for managed service organizations that are designated by the director of the unit to provide services in a designated service area under section 27-80-106 (2);
- (e) Standards that must be met by addiction counselors to participate in public programs or to provide purchased services and certification requirements necessary to be certified by the director of the division of professions and occupations, pursuant to part 8 of article 43 of title 12, C.R.S.;
- (f) Any rules that are necessary to carry out the purposes of the treatment program for high-risk pregnant women that is created pursuant to section 27-80-112.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 726, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-207 as it existed prior to 2010.

27-80-109. Coordination of state and federal funds and programs. (1) All requests for state appropriations for alcohol and drug abuse programs shall be submitted to the unit and the office of state planning and budgeting on dates specified by the unit consistent with requirements and procedures of the office of state planning and budgeting. After studying each request, the unit shall make a report thereon, with its comments and recommendations, including priorities for appropriations and a statement as to whether the requested appropriation would be consistent with the comprehensive state plan for alcohol and drug abuse programs. The reports of the unit shall be submitted to the governor, the office of state planning and budgeting, and the joint budget committee, together with all pertinent material on which the recommendations of the unit are based.

(2) The unit shall also review applications for federal grants for alcohol and drug abuse programs submitted by any department or agency of state government, by any political subdivision of the state, by any Indian tribal reservation, or by any other public or private agency, organization, or institution. The unit shall transmit to the division of planning and to the appropriate United States agency its comments and recommendations, together with a statement as to whether the grant would be consistent with the comprehensive state plan for alcohol and drug abuse programs.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 727, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-209 as it existed prior to 2010.

27-80-110. Reports. The unit shall submit a report not later than November 1 of each year to the health and human services committees of the senate and house of representatives, or any successor committees, on the costs and effectiveness of alcohol and drug abuse programs in this state and on recommended legislation in the field of alcohol and drug abuse.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 727, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-210 as it existed prior to 2010.

27-80-111. Counselor training - fund created. (1) The executive director shall establish by rule fees to be charged for addiction counselor training. The amount assessed

shall be sufficient to cover a portion of the costs of administering such training, and the moneys collected therefor shall be deposited in the addiction counselor training fund. Additional funding may be obtained from general, cash, or federal funds otherwise appropriated to the unit.

(2) There is hereby created in the office of the state treasurer the addiction counselor training fund. Moneys collected pursuant to subsection (1) of this section shall be deposited in the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for allocation to the unit for the administration of addiction counselor training requirements established by rules of the state board of human services pursuant to section 27-80-108 (1) (e). Moneys in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 727, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-211 as it existed prior to 2010.

27-80-112. Legislative declaration - treatment program for high-risk pregnant women - creation. (1) The general assembly hereby finds and declares that the health and well-being of the women of Colorado is at risk; that such women are at risk of poor birth outcomes or physical and other disabilities due to substance abuse, which is the abuse of alcohol and drugs, during the prenatal period; that early identification of such high-risk pregnant women and substance abuse treatment greatly reduce the occurrence of poor birth outcomes; and that the citizens of Colorado will greatly benefit from a program to reduce poor birth outcomes and subsequent problems resulting from such poor birth outcomes in cases involving high-risk pregnant women through the cost savings envisioned by the prevention and early treatment of such problems.

(2) In recognition of such problems, there is hereby created a treatment program for high-risk pregnant women.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 728, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-212 as it existed prior to 2010.

27-80-113. Alcohol and drug and addiction counseling and treatment - necessary components. Any entity that qualifies to provide services pursuant to section 25.5-5-202 (1) (r), C.R.S., in regard to the treatment program for high-risk pregnant women, shall make available, in addition to alcohol and drug and addiction counseling and treatment: Risk assessment services; care coordination; nutrition assessment; psychosocial counseling; intensive health education, including but not limited to parenting education and education on risk factors and appropriate health behaviors; home visits; transportation services; and other services deemed necessary by the unit and the department of health care policy and financing.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 728, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-213 as it existed prior to 2010.

27-80-114. Treatment program for high-risk pregnant women - cooperation with private entities. The department of health care policy and financing shall cooperate with any private entities that desire to assist the department of health care policy and financing in the provision of services connected with the treatment program for high-risk pregnant women. Private entities may provide services that are not provided to persons pursuant to the treatment program for high-risk pregnant women, article 2 of title 26, C.R.S., and

articles 4, 5, and 6 of title 25.5, C.R.S., which may include, but shall not be limited to, needs assessment services, preventive services, rehabilitative services, care coordination, nutrition assessment, psychosocial counseling, intensive health education, home visits, transportation, development of provider training, child care, and other necessary components of residential or outpatient treatment or care.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 728, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-214 as it existed prior to 2010.

27-80-115. Treatment program for high-risk pregnant women - data collection. The department of health care policy and financing shall create a data collection mechanism regarding persons receiving services pursuant to the treatment program for high-risk pregnant women, which shall include the collection of data on cost-effectiveness, success of the program, and other data the department of health care policy and financing deems appropriate.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 728, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-215 as it existed prior to 2010.

27-80-116. Fetal alcohol spectrum disorders - legislative declaration - health warning signs - commission - repeal. (1) The general assembly hereby finds and declares that:

(a) Fetal alcohol exposure is the leading known cause of preventable intellectual and developmental disabilities and birth defects in the children of this state;

(b) Individuals with undiagnosed fetal alcohol spectrum disorders suffer substantially from secondary issues such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability;

(b.5) Compared to individuals diagnosed before age twelve, individuals with undiagnosed FASD are two to four times more likely to suffer from inappropriate sexual behavior, disrupted school experiences, trouble with the law, drug and alcohol problems, or confinement in a jail, mental hospital, or drug and alcohol treatment facility;

(c) These secondary disabilities come at a high cost to individuals, their families, and society;

(d) A survey performed in 2006 by the Colorado pregnancy risk assessment system estimated that eleven and two-tenths percent of women in Colorado said that they drank alcohol during the last three months of their pregnancy; and

(e) The commission should evaluate the current use and distribution of written and electronic informational materials designed to increase awareness of the consequences of drinking alcohol while pregnant and should investigate additional means by which such written and electronic materials might best be used.

(2) The general assembly therefore declares that fetal alcohol exposure and its related problems can be reduced substantially by a greater awareness of the consequences of drinking alcohol while pregnant and by early diagnosis and receipt of appropriate and effective intervention.

(3) Each person licensed pursuant to section 12-47-401 (1) (h) to (1) (t), C.R.S., to sell malt, vinous, and spirituous liquors or licensed pursuant to section 12-46-104 (1) (c), C.R.S., to sell fermented malt beverages is hereby encouraged to post a health warning sign pursuant to paragraph (c) of subsection (4) of this section, informing patrons that the consumption of alcohol during pregnancy may cause birth defects, including fetal alcohol spectrum disorders.

(4) (a) There is hereby created the fetal alcohol spectrum disorders commission, referred to in this section as the “commission”. The commission is created as a temporary commission under section 22 of article IV of the state constitution. The commission shall be composed of no more than twelve members. On or before August 30, 2009, the executive director, in consultation with a nonprofit organization that works with FASD issues, shall appoint the commission members with the goal of selecting a broad representation of individuals working in the field of FASD. The commission shall include representation from the following areas and groups in any combination the executive director deems appropriate:

- (I) Pediatrics;
- (II) Family physicians;
- (III) Child development programs that work with special needs children;
- (IV) The department of public health and environment;
- (V) The juvenile justice system;
- (VI) Preschool, elementary, secondary, and higher education;
- (VII) Parents, foster parents, or legal guardians of children or adults affected by FASD;
- (VIII) The developmentally disabled community;
- (IX) Speech, language, and occupational therapy;
- (X) The department of education; and
- (XI) A representative of a trade association that represents licensed beverage retailers in Colorado.

(b) The commission shall meet at least once on or before September 30, 2009. At its first meeting, the commission shall elect by a majority vote a chairperson from among the commission members who shall act as the presiding officer of the commission, determine a meeting schedule, and develop a list of priorities. Commission members shall serve without compensation or reimbursement of expenses.

(c) The commission shall develop a health warning sign and other informational materials for use by persons licensed pursuant to section 12-47-401 (1) (h) to (1) (t), C.R.S., to sell malt, vinous, and spirituous liquors or licensed pursuant to section 12-46-104 (1) (c), C.R.S., to sell fermented malt beverages and a plan for making the sign and other informational materials available on-line to such licensed persons and other interested parties. At a minimum, the health warning sign shall read as follows:

HEALTH WARNING

DRINKING ANY ALCOHOLIC BEVERAGE DURING
PREGNANCY MAY CAUSE BIRTH DEFECTS.

(d) On or before December 1, 2009, and as needed thereafter, the commission shall make recommendations to the unit and to the health and human services committees of the senate and the house of representatives, or any successor committees. The commission’s recommendations shall address the prevention of and education about FASD and any other FASD-related issues. The commission shall evaluate the use of the health warning signs developed pursuant to paragraph (c) of this subsection (4), the response by licensed persons, as described in paragraph (c) of this subsection (4), to the signs, and the response by women and patrons to the signs. The commission shall make recommendations to the unit and to the health and human services committees of the senate and the house of representatives, or any successor committees, on the most effective use of the warning signs and shall also recommend the most effective use of other written and electronic informational materials in the future.

(e) This subsection (4) is repealed, effective June 30, 2015.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 728, § 2, effective April 29. **L. 2011:** Entire section amended, (HB 11-1144), ch. 65, p. 170, § 2, effective August 10.

Editor's note: This section is similar to former § 25-1-216 as it existed prior to 2010.

Cross references: For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 65, Session Laws of Colorado 2011.

27-80-117. Rural alcohol and substance abuse prevention and treatment program - creation - administration - definitions - cash fund - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Program" means the rural alcohol and substance abuse prevention and treatment program created pursuant to subsection (2) of this section that shall consist of the rural youth alcohol and substance abuse prevention and treatment project and the rural detoxification project.

(b) "Rural area" means a county with a population of less than thirty thousand people, according to the most recently available population statistics of the United States bureau of the census.

(c) "Youth" means an individual who is at least eight years of age but who is less than eighteen years of age.

(2) (a) (I) There is hereby created the rural alcohol and substance abuse prevention and treatment program within the unit to provide:

(A) Prevention and treatment services to youth in rural areas, which services may include but need not be limited to providing alternative activities for youth through the rural youth alcohol and substance abuse prevention and treatment project; and

(B) Treatment services to persons addicted to alcohol or drugs through the rural detoxification project.

(II) The unit shall administer the program pursuant to rules adopted by the state board of human services as of January 1, 2010, or as amended by the state board thereafter.

(b) The unit shall incorporate provisions to implement the program into its regular contracting mechanism for the purchase of prevention and treatment services pursuant to section 27-80-106, including but not limited to detoxification programs. The unit shall develop a method to equitably distribute and provide additional moneys through contracts to provide for prevention services for and treatment of persons in rural areas.

(c) Notwithstanding any provision of this section to the contrary, the unit shall implement the program on or after January 1, 2011, subject to the availability of sufficient moneys to operate an effective program, as determined by the unit.

(3) (a) There is hereby created in the state treasury the rural alcohol and substance abuse cash fund, referred to in this section as the "fund", that shall consist of the rural youth alcohol and substance abuse prevention and treatment account, referred to in this section as the "youth account", and the rural detoxification account, referred to in this section as the "detoxification account". The fund shall be comprised of moneys collected from surcharges assessed pursuant to sections 18-19-103.5, 42-4-1307 (10) (d) (I), and 42-4-1701 (4) (f), C.R.S., which moneys shall be divided equally between the youth account and the detoxification account, and any moneys credited to the fund pursuant to paragraph (b) of this subsection (3), which moneys shall be divided equally between the youth account and the detoxification account unless the grantee or donor specifies to which account the grant, gift, or donation shall be credited. The moneys in the fund shall be subject to annual appropriation by the general assembly to the unit for the purpose of implementing the program. All interest derived from the deposit and investment of moneys in the fund shall remain in the fund. Any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be transferred or credited to the general fund or another fund; except that any unexpended and unencumbered moneys remaining in the fund as of June 30, 2016, shall be credited to the general fund.

(b) The unit is authorized to accept any grants, gifts, or donations from any private or public source on behalf of the state for the purpose of the program. The unit shall transmit all private and public moneys received through grants, gifts, or donations to the state treasurer, who shall credit the same to the fund.

(4) (a) This section is repealed, effective July 1, 2016.

(b) Prior to such repeal, the program shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 730, § 2, effective April 29; (3)(a) amended, (HB 10-1347), ch. 258, p. 1159, § 6, effective July 1.

Editor's note: (1) This section is similar to former § 25-1-217 as it existed prior to 2010.

(2) Subsection (3)(a) was numbered as § 25-1-217 (3)(a) in House Bill 10-1347 (see L. 2010, p. 1159) but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175.

PART 2

CONTROLLED SUBSTANCES

Editor's note: This part 2 was added with relocations in 2012. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 2, see the comparative tables located in the back of the index.

27-80-201. Short title. This part 2 shall be known and may be cited as the "Colorado Licensing of Controlled Substances Act".

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1595, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-301 as it existed prior to 2012.

27-80-202. Legislative declaration. The general assembly finds, determines, and declares that strict control of controlled substances within this state is necessary for the immediate and future preservation of the public peace, health, and safety and that the licensing, record-keeping, penalty, and other provisions contained in this part 2 are necessary for the achievement of such control.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1595, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-302 as it existed prior to 2012.

27-80-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Addict" means a person who has a physical or psychological dependence on a controlled substance, which dependence develops following the use of the controlled substance on a periodic or continuing basis and is demonstrated by appropriate observation and tests by a person licensed to practice medicine pursuant to article 36 of title 12, C.R.S.

(2) "Addiction program" means a program licensed under this part 2 for the detoxification, withdrawal, or maintenance treatment of addicts.

(3) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject.

(4) "Agent" means an authorized person who acts on behalf of or at the direction of a person licensed or otherwise authorized under this part 2. "Agent" does not include a common or contract carrier, a public warehouseman, or an employee of a carrier or warehouseman.

(5) "Bureau" means the drug enforcement administration, or its successor agency, of the United States department of justice.

(6) (a) "Compound" means to prepare, mix, assemble, package, or label a drug or device:

(I) As the result of a practitioner's prescription drug order, chart order, or initiative, based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice; or

(II) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

(b) "Compound" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(7) "Controlled substance" shall have the same meaning as in section 18-18-102 (5), C.R.S.

(8) "Deliver" or "delivery" means actual, constructive, or attempted transfer of a controlled substance whether or not there is an agency relationship.

(9) "Detoxification treatment" means a program for a short term of not more than three weeks for the administering or dispensing, in decreasing doses, of a controlled substance to an addict while he or she is receiving appropriate supportive medical treatment, with the immediate goal being to render the addict no longer dependent on the intake of any amount of a controlled substance.

(10) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required under federal law to bear the label, **"Caution: federal law requires dispensing by or on the order of a physician."** "Device" also includes any component part of, or accessory or attachment to, any such article, whether or not the component part, accessory, or attachment is separately so labeled.

(11) "Dispense" means to interpret, evaluate, and implement a prescription drug or controlled substances order or chart order, including the preparation of a drug or device for a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

(12) "Distribute" means to deliver a controlled substance other than by administering or dispensing.

(13) (a) "Drug" means any of the substances:

(I) Recognized as drugs in the official United States pharmacopoeia, national formulary, or the official homeopathic pharmacopoeia of the United States, or a supplement thereof;

(II) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Other than food, intended to affect the structure or any function of the body of individuals or animals; or

(IV) Intended for use as a component of any substance specified in subparagraph (I), (II), or (III) of this paragraph (a).

(b) "Drug" does not include devices or their components, parts, or accessories.

(14) "Maintenance treatment" means a program of more than six months' duration for the administering or dispensing of a controlled substance, approved for such use by federal law or regulation, to an addict for the purpose of continuing his or her dependence upon a controlled substance in the course of conducting an authorized rehabilitation program for addicts, with a long-term goal of decreasing the addict's controlled substance dependency and leading to his or her possible withdrawal.

(15) "Marijuana" means all parts of the plant *cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant that is incapable of germination, if these items exist apart from any other item defined as "marijuana" in this subsection (15). "Marijuana" does not include marijuana concentrate as defined in subsection (16) of this section.

(16) "Marijuana concentrate" means hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols.

(17) "Peace officer" shall have the same meaning as set forth in section 16-2.5-101, C.R.S.

(18) "Person" means any individual, government, governmental subdivision, agency, business trust, estate, trust, partnership, corporation, association, institution, or other legal entity.

(19) "Peyote" means all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not, the seeds thereof, any extraction from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or extracts.

(20) "Practitioner" means a person authorized by law to prescribe any drug or device, acting within the scope of such authority.

(21) "Prescription drug" means a drug that, prior to being dispensed or delivered, is required to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription.", "Rx only", or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

(22) "Production" or "produces" means the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(23) "Researcher" means any person licensed by the department pursuant to this part 2 to experiment with, study, or test any controlled substance within this state and includes analytical laboratories.

(24) (a) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, cannabis, sp., or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as the following:

(I) ¹cis or trans tetrahydrocannabinol, and their optical isomers;

(II) ⁶cis or trans tetrahydrocannabinol, and their optical isomers;

(III) ^{3,4}cis or trans tetrahydrocannabinol, and their optical isomers.

(b) Since the nomenclature of the substances listed in paragraph (a) of this subsection (24) is not internationally standardized, compounds of these structures, regardless of the numerical designation of atomic positions, are included in this definition.

(25) "Withdrawal treatment" means a program for an intermediate term, of more than three weeks but less than six months, for the administering or dispensing, in decreasing doses, of a controlled substance, approved for such use by federal law or regulation, to an addict while receiving rehabilitative measures as indicated, with the immediate goal being to render the addict no longer dependent on the intake of any amount of a controlled substance.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1596, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-303 and § 12-22-102 as they existed prior to 2012.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The distinction between marihuana and marihuana concentrate as set forth in subsections (17) and (18) complies with both the equal protection and due process requirements of the Colorado and United States Constitutions. *People v. Rickstrew*, 712 P.2d 1008 (Colo. 1986).

Marijuana and hashish are separate drugs. The general assembly has utilized language which sufficiently distinguishes "marijuana" and "hashish" as being separate dangerous

drugs. *People v. Magoon*, 645 P.2d 286 (Colo. App. 1982).

The statutory definition of marijuana includes all variants of the species cannabis including cannabis indica. *People v. Wimer*, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 988 (Colo. 1991).

Any amount of marijuana sufficient to ingest will support a conviction for possession of contraband in a detention facility, where statute fails to specify an amount. *People v. Greenwell*, 830 P.2d 1116 (Colo. App. 1992).

27-80-204. License required - controlled substances - repeal. (1) (a) In accordance with part 3 of article 18 of title 18, C.R.S., an addiction program that compounds, administers, or dispenses a controlled substance shall annually obtain a license issued by the department for each place of business or professional practice located in this state.

- (b) (I) This subsection (1) is repealed, effective July 1, 2014.
- (II) Prior to the repeal, the department of regulatory agencies shall review the licensing functions of the department as provided in section 24-34-104, C.R.S. In conducting the review, the department of regulatory agencies shall consider whether the licensing pursuant to this subsection (1) should be combined with the licensing of any other drug and alcohol addiction treatment programs by the department.
- (2) Persons licensed as required under this part 2, or otherwise licensed as required by federal law, may possess, distribute, dispense, administer, or conduct or do research with controlled substances only to the extent authorized by their licenses and in conformity with the provisions of this part 2 and with article 18 of title 18, C.R.S.
- (3) An employee of a facility, as defined in section 25-1.5-301, C.R.S., who is administering and monitoring medications to persons under the care or jurisdiction of the facility pursuant to part 3 of article 1.5 of title 25, C.R.S., need not be licensed by the department to lawfully possess controlled substances under this part 2.
- (4) A person who is required to be but is not yet licensed may apply for a license at any time. A person who is required to be licensed under this part 2 shall not engage in any activity for which a license is required until the department grants the person's application and issues a license to him or her.
- (5) The department shall not issue a license under this part 2 to a researcher of marijuana or marijuana concentrate.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1601, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-304 as it existed prior to 2012.

27-80-205. Issuance of license - fees. (1) The department, as provided in section 27-80-204 (1), shall issue the appropriate license to each researcher and addiction program meeting all the requirements of this part 2 unless it determines that the issuance of the license would be inconsistent with the public interest. In determining the public interest, the department shall consider the following factors:

- (a) Maintenance of effective controls against diversion of controlled substances into illegitimate medical, scientific, or industrial channels;
 - (b) Compliance with applicable state and local laws;
 - (c) Any conviction of the applicant under any federal or state law relating to a controlled substance;
 - (d) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
 - (e) Any false or fraudulent information in an application filed under this part 2;
 - (f) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense a controlled substance as authorized by federal law; and
 - (g) Any other factors relevant to and consistent with the public peace, health, and safety.
- (2) Issuance of a license under subsection (1) of this section does not entitle a licensee to distribute or professionally use controlled substances beyond the scope of the licensee's federal registration.
- (3) (a) The initial and annual license fees are as follows:
- (I) Addiction program \$ 75.00
 - (II) Researchers \$ 25.00
- (b) The department shall transmit the fees collected pursuant to this section to the state treasurer for deposit in the controlled substances program fund created in section 27-80-206.

(4) Any person who is licensed may apply for license renewal not more than sixty days before the expiration date of the license.

(5) The United States, the state of Colorado, or any political subdivision of the state is not required to pay any license fee required by this part 2.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1602, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-305 as it existed prior to 2012.

27-80-206. Controlled substances program fund - disposition of fees. There is hereby created in the state treasury the controlled substances program fund. The department shall transmit all moneys it collects pursuant to this part 2 to the state treasurer, who shall credit the moneys to the controlled substances program fund. The general assembly shall make annual appropriations from the controlled substances program fund to the department for the purposes authorized by this part 2. All moneys credited to the controlled substances program fund and any interest earned on the fund remain in the fund and do not revert to the general fund or any other fund at the end of any fiscal year.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1604, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-306 as it existed prior to 2012.

27-80-207. Qualifications for license. (1) An applicant for a license under this part 2 shall have adequate and proper facilities for the handling and storage of controlled substances and shall maintain proper control over the controlled substances to ensure the controlled substances are not illegally dispensed or distributed.

(2) Any person registered as a researcher by the federal government is presumed to possess the qualifications described in this section as long as his or her federal registration is valid.

(3) The department shall not grant a license to a person who has been convicted within the last two years of a willful violation of this part 2 or any other state or federal law regulating controlled substances.

(4) Except for fees, compliance by a registrant with the provisions of the federal law respecting registration entitles the registrant to be licensed under this part 2.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1604, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-307 as it existed prior to 2012.

27-80-208. Denial, revocation, or suspension of license. (1) The department may deny, suspend, or revoke a license issued under this part 2 pursuant to article 4 of title 24, C.R.S., upon a finding that the licensee:

(a) Has furnished false or fraudulent information in an application filed under this part 2;

(b) Has been convicted of, or has had accepted by a court a plea of guilty or nolo contendere to, a felony under any state or federal law relating to a controlled substance;

(c) Has had his or her federal registration to manufacture, conduct research on, distribute, or dispense a controlled substance suspended or revoked; or

(d) Has violated any provision of this part 2 or the rules of the department or of the state board of human services created in section 26-1-107, C.R.S.

(2) The department may limit revocation or suspension of a license to the particular controlled substance that was the basis for revocation or suspension.

(3) If the department suspends or revokes a license, the department may place all controlled substances owned or possessed by the licensee at the time of the suspension or on the effective date of the revocation order under seal. The department may not dispose of substances under seal until the time for making an appeal has elapsed or until all appeals have been concluded, unless a court orders otherwise or orders the sale of any perishable controlled substances and the deposit of the proceeds with the court. When a revocation order becomes final, all controlled substances may be forfeited to the state.

(4) The department shall promptly notify the bureau and the appropriate professional licensing agency, if any, of all charges and the final disposition of the charges, and of all forfeitures of a controlled substance.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1604, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-308 as it existed prior to 2012.

27-80-209. Exemptions. (1) The provisions of section 18-18-414, C.R.S., do not apply to:

(a) Agents of persons licensed under this part 2 or under part 3 of article 18 of title 18, C.R.S., acting within the provisions of their licenses; or

(b) Officers or employees of appropriate agencies of federal, state, or local governments acting pursuant to their official duties.

(2) All combination drugs that are exempted by regulation of the attorney general of the United States department of justice, pursuant to section 1006 (b) of Public Law 91-513 (84 Stat. 1236), known as the "Comprehensive Drug Abuse Prevention and Control Act of 1970", on or after July 1, 1981, are exempt from this part 2 and part 3 of article 18 of title 18, C.R.S.

(3) This part 2 does not apply to peyote if it is used in religious ceremonies of any bona fide religious organization.

(4) Section 27-80-210 does not apply to a practitioner authorized to prescribe any controlled substance that is listed in schedules III, IV, or V of part 2 of article 18 of title 18, C.R.S., and that is manufactured, received, or dispensed by the practitioner in the course of his or her professional practice, unless:

(a) The practitioner dispenses, other than by direct administration, a schedule III, IV, or V controlled substance to his or her patients, and the practitioner charges the patients either separately or together with charges for other professional services; or

(b) The practitioner regularly engages in dispensing a schedule III, IV, or V controlled substance to his or her patients.

(5) The exemptions set forth in this section are available as a defense to any person accused of violating section 18-18-414, C.R.S.

(6) The state is not required to negate any exemption or exception in this part 2 or in part 3 or 4 of article 18 of title 18, C.R.S., in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this part 2 or under part 4 of article 18 of title 18, C.R.S. The burden of proving an exemption or exception is upon the person claiming the exemption or exception.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1605, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-317 as it existed prior to 2012.

27-80-210. Records to be kept - order forms. (1) Each person licensed or otherwise authorized under this part 2 or other laws of this state to manufacture, purchase, distribute, dispense, administer, store, or otherwise handle controlled substances shall keep and maintain separate detailed and accurate records and inventories relating to controlled

substances and retain the records and inventories for a period of two years after the respective dates of the transactions as shown on the records and inventories.

(2) The record of any controlled substance distributed, administered, dispensed, or otherwise used must show the date the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, the name and address of the person to whom or for whose use the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, and the kind and quantity of the controlled substance.

(3) A person who maintains a record required by federal law that contains substantially the same information as set forth in subsections (1) and (2) of this section is deemed to comply with the record-keeping requirements of this part 2.

(4) A person required to maintain records pursuant to this section shall keep a record of any controlled substance lost, destroyed, or stolen, the kind and quantity of the controlled substance, and the date of the loss, destruction, or theft.

(5) A person licensed or otherwise authorized under this part 2 or other laws of this state shall distribute, administer, dispense, use, or otherwise dispose of controlled substances listed in schedule I or II of part 2 of article 18 of title 18, C.R.S., only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1606, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-318 as it existed prior to 2012.

27-80-211. Enforcement and cooperation. (1) Each peace officer and district attorney in this state shall enforce this part 2 and shall cooperate with all agencies charged with the enforcement of the laws of this state, all other states, and the United States relating to controlled substances.

(2) The department shall cooperate with all agencies charged with the enforcement of the laws of this state, all other states, and the United States relating to controlled substances. To this end, the department shall:

(a) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(b) Cooperate with the bureau and with local, state, and other federal agencies by maintaining a centralized unit to accept, catalogue, file, and collect statistics, including records of dependent and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement or regulatory purposes. The department shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under section 27-80-212.

(c) Respond to referrals, complaints, or other information received regarding possible violations and, upon notification of the appropriate licensing authority, if applicable, and upon a written finding by the executive director of the department that probable cause exists to believe that there is illegal distribution or dispensing of controlled substances, to make any inspections, investigations, and reports that may be necessary to determine compliance with this part 2 by all licensed or otherwise authorized individuals who handle controlled substances;

(d) Cooperate with and make information available to appropriate state licensing and registration boards regarding any violations of this part 2 by persons licensed or registered by the boards;

(e) Enter into contracts and encourage and conduct educational and research activities designed to prevent and determine misuse and abuse of controlled substances.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1607, § 5, effective July 1.

Editor's note: This section is similar to former § 12-22-319 as it existed prior to 2012.

27-80-212. Records confidential. Prescriptions, orders, and records required by this part 2 and stocks of controlled substances are open for inspection only to federal, state, county, and municipal officers whose duty it is to enforce the laws of this state or of the United States relating to controlled substances or the regulation of practitioners. No officer having knowledge, by virtue of his or her office, of a prescription, order, or record shall divulge his or her knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1607, § 5, effective July 1.

Editor’s note: This section is similar to former § 12-22-320 as it existed prior to 2012.

27-80-213. Rules. (1) The department shall update rules and promulgate new rules, as necessary and pursuant to article 4 of title 24, C.R.S., to implement this part 2. The department shall make the rules available to the public on its web site.

(2) The department shall promulgate rules, in accordance with article 4 of title 24, C.R.S., for research programs and for the conduct of detoxification treatment, maintenance treatment, and withdrawal treatment programs for controlled substance addiction.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1608, § 5, effective July 1.

Editor’s note: This section is similar to former § 12-22-321 and § 12-22-322 as they existed prior to 2012.

27-80-214. Defenses. The common law defense known as the “procuring agent defense” is not a defense to any crime in this part 2 or in title 18, C.R.S.

Source: L. 2012: Entire part added, (SB 12-1311), ch. 281, p. 1608, § 5, effective July 1.

Editor’s note: This section is similar to former § 12-22-324 as it existed prior to 2012.

ARTICLE 81

Alcoholism and Intoxication Treatment

Editor’s note: This article was added with relocations in 2010 containing provisions of part 3 of article 1 of title 25. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For placement of a person in a state-approved treatment facility for alcoholism after he or she has been arrested and charged for driving under the influence, see § 42-4-1705 (3).

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	alcoholics.	27-81-115.	Emergency service patrol - establishment - rules.
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27-81-114.	Visitation and communication of patients.	27-81-117.	Criminal laws - limitations.

27-81-101. Legislative declaration. (1) It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. The general assembly hereby finds and declares that alcoholism and intoxication are matters of statewide concern.

(2) With the passage of this article at its first regular session in 1973, the forty-ninth general assembly has recognized the character and pervasiveness of alcohol abuse and alcoholism and that public intoxication and alcoholism are health problems that should be handled by public health rather than criminal procedures. The general assembly further finds and declares that no other health problem has been so seriously neglected and that, while the costs of dealing with the problem are burdensome, the social and economic costs and the waste of human resources caused by alcohol abuse and alcoholism are massive, tragic, and no longer acceptable. The general assembly believes that the best interests of this state demand an across-the-board locally oriented attack on the massive alcohol abuse and alcoholism problem and that this article will provide a base from which to launch the attack and reduce the tragic human loss, but only if adequately funded. Therefore, in response to the needs as determined by an ad hoc committee and to assist in the implementation of this article at both the local and state level, the general assembly hereby appropriates moneys for: Receiving and screening centers and their staffs; medical detoxification; intensive treatment; halfway house care; outpatient rehabilitative therapy; orientation, education, and in-service training; staff for the administration, monitoring, and evaluation of the program; and operating costs for patient transportation.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 732, § 2, effective April 29.

Editor’s note: This section is similar to former § 25-1-301 as it existed prior to 2010.

ANNOTATION

Annotator’s note. Since § 27-81-101 is similar to § 25-1-301 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Compelling state interest. The state has a compelling interest in protecting an intoxicated

individual and the general public from the catastrophic consequences of alcohol abuse. *Carberry v. Adams County Task Force on Alcoholism*, 672 P.2d 206 (Colo. 1983).

Applied in *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 1979).

27-81-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Alcoholic” means a person who habitually lacks self-control as to the use of alcoholic beverages or uses alcoholic beverages to the extent that his or her health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. Nothing in this subsection (1) shall preclude the denomination of an alcoholic as intoxicated by alcohol or incapacitated by alcohol.
- (2) “Approved private treatment facility” means a private agency meeting the standards prescribed in section 27-81-106 (1) and approved under section 27-81-106.
- (3) “Approved public treatment facility” means a treatment agency operating under the direction and control of or approved by the unit or providing treatment under this article through a contract with the unit under section 27-81-105 (7) and meeting the standards prescribed in section 27-81-106 (1) and approved under section 27-81-106.
- (4) “Court” means the district court in the county in which the person named in a

petition filed pursuant to this article resides or is physically present. In the city and county of Denver, "court" means the probate court.

(5) "Department" means the department of human services created in section 26-1-105, C.R.S.

(6) "Director" means the director of the unit.

(7) "Emergency service patrol" means a patrol established under section 27-81-115.

(8) "Executive director" means the executive director of the department.

(9) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious, has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment, is unable to take care of his or her basic personal needs or safety, or lacks sufficient understanding or capacity to make or communicate rational decisions about himself or herself.

(10) Repealed.

(11) "Intoxicated person" or "person intoxicated by alcohol" means a person whose mental or physical functioning is temporarily but substantially impaired as a result of the presence of alcohol in his or her body.

(12) "Licensed physician" means either a physician licensed by the state of Colorado or a hospital-licensed physician employed by the admitting facility.

(13) "Minor" means a person under the age of eighteen years.

(14) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to alcoholics and intoxicated persons.

(15) "Unit" means the unit in the department that administers behavioral health programs and services, including those related to mental health and substance abuse.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 732, § 2, effective April 29. **L. 2011:** (10) repealed, (HB 11-1303), ch. 264, p. 1172, § 81, effective August 10.

Editor's note: This section is similar to former § 25-1-302 as it existed prior to 2010.

27-81-103. Powers of the unit. (1) To carry out the purposes of this article, the unit may:

(a) Plan, establish, and maintain treatment programs as necessary or desirable;

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons;

(c) Solicit and accept for use any gift of money or property made by will or otherwise and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(d) Administer or supervise the administration of the provisions relating to alcoholics and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(e) Coordinate its activities and cooperate with alcoholism programs in this state and other states and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this state and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs;

(f) Keep records and engage in research and the gathering of relevant statistics;

(g) Do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(h) Acquire, hold, or dispose of real property, or any interest therein, and construct, lease, or otherwise provide treatment facilities for alcoholics and intoxicated persons.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 733, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-303 as it existed prior to 2010.

27-81-104. Duties of the unit - review. (1) In addition to duties prescribed by section 27-80-102, the unit shall:

(a) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons;

(c) Utilize community mental health centers and clinics whenever feasible;

(d) Cooperate with the department of corrections in establishing and conducting programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in appropriate agencies and institutions and for alcoholics and intoxicated persons in or on parole from correctional institutions and in carrying out duties specified under paragraphs (i) and (k) of this subsection (1);

(e) Cooperate with the department of education, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons and preparing curriculum materials thereon for use at all levels of school education;

(f) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(g) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(h) Organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons;

(i) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons and serve as a clearinghouse for information relating to alcoholism;

(j) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(k) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan;

(l) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation and advise the governor on provisions to be included relating to alcoholism and intoxicated persons;

(m) Assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in this state;

(n) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment;

(o) Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while under the influence of, or impaired by, alcohol;

(p) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment;

(q) Encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(r) Submit to the governor an annual report covering the activities of the unit.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 734, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-304 as it existed prior to 2010.

ANNOTATION

Applied in *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 1979) (decided prior to 2010 amendments to this article).

27-81-105. Comprehensive program for treatment - regional facilities. (1) The unit shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(2) Insofar as funds available to the unit will permit, the program established in subsection (1) of this section shall include all of the following:

- (a) Emergency treatment;
- (b) Inpatient treatment;
- (c) Intermediate treatment; and
- (d) Outpatient and follow-up treatment.

(3) The unit shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections 27-81-109 to 27-81-112. Except as otherwise provided in section 27-81-111, treatment may not be provided at a correctional institution except for inmates.

(4) The unit shall maintain, supervise, and control all facilities operated by it subject to policies of the department. The administrator of each facility shall make an annual report of its activities to the director in the form and manner the director specifies.

(5) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(6) The director shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

(7) The unit may contract for the use of any facility as an approved public treatment facility if the director, subject to the policies of the department, considers this to be an effective and economical course to follow.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 736, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-305 as it existed prior to 2010.

27-81-106. Standards for public and private treatment facilities - fees - enforcement procedures - penalties. (1) In accordance with the provisions of this article, the unit shall establish standards for approved treatment facilities that receive public funds. The standards shall be met for a treatment facility to be approved as a public or private treatment facility. The unit shall fix the fees to be charged for the required inspections. The fees that are charged to approved treatment facilities that provide level I and level II programs as provided in section 42-4-1301.3 (3) (c), C.R.S., shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund created in section 42-4-1301.3 (4) (a), C.R.S. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall reflect the success criteria established by the general assembly.

(2) The unit periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The unit shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the unit, on request, data, statistics, schedules, and information the unit reasonably requires. An

approved public or private treatment facility that fails without good cause to furnish any data, statistics, schedules, or information, as requested, or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(5) The unit, after hearing, may suspend, revoke, limit, restrict, or refuse to grant an approval for failure to meet its standards.

(6) The district court may restrain any violation of, review any denial, restriction, or revocation of approval under, and grant other relief required to enforce the provisions of this section.

(7) Upon petition of the unit and after a hearing held upon reasonable notice to the facility, the district court may issue a warrant to an officer or employee of the unit authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the unit or which the unit has reasonable cause to believe is operating in violation of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 736, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-306 as it existed prior to 2010.

27-81-107. Compliance with local government zoning regulations - notice to local governments - provisional approval. (1) The unit shall require any residential treatment facility seeking approval as a public or private treatment facility pursuant to this article to comply with any applicable zoning regulations of the municipality, city and county, or county where the facility is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of approval of a facility.

(2) The unit shall assure that timely written notice is provided to the municipality, city and county, or county where a residential treatment facility is situated, including the address of the facility and the population and number of persons to be served by the facility, when any of the following occurs:

(a) An application for approval of a residential treatment facility pursuant to section 27-81-106 is made;

(b) Approval is granted to a residential treatment facility pursuant to section 27-81-106;

(c) A change in the approval of a residential treatment facility occurs; or

(d) The approval of a residential treatment facility is revoked or otherwise terminated for any reason.

(3) In the event of a zoning or other delay or dispute between a residential treatment facility and the municipality, city and county, or county where the facility is situated, the unit may grant provisional approval of the facility for up to one hundred twenty days pending resolution of the delay or dispute.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 737, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-306.5 as it existed prior to 2010.

27-81-108. Acceptance for treatment - rules. (1) The director shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In establishing the rules the director shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he or she is found to require inpatient treatment.

(c) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 738, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-307 as it existed prior to 2010.

27-81-109. Voluntary treatment of alcoholics. (1) An alcoholic, including a minor, may apply for voluntary treatment directly to an approved treatment facility.

(2) Subject to rules adopted by the director, the administrator in charge of an approved treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator shall refer the person to another approved treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment facility, he or she shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic and requires help, the administrator may arrange for assistance in obtaining supportive services and residential facilities.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 738, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-308 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

27-81-110. Voluntary treatment for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person or person intoxicated or incapacitated by alcohol, including a minor, may voluntarily admit himself or herself to an approved treatment facility for emergency treatment.

(2) A person who comes voluntarily to an approved treatment facility shall be evaluated or examined by the facility administrator or by his or her authorized designee immediately. A person found to be in need of treatment shall then be admitted or referred to another appropriate facility. If a person is found not to be in need of treatment, he or she shall be released or referred to another appropriate facility.

(3) Except as provided in subsection (7) of this section, a voluntarily admitted person shall be released from the approved treatment facility immediately upon his or her request.

(4) A person who is not admitted to an approved treatment facility, and who is not referred to another health facility, and who has no funds may be taken to his or her home, if any. If he or she has no home, the approved treatment facility may assist him or her in obtaining shelter.

(5) If a person is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible. If an adult person requests that there be no notification, his or her request shall be respected.

(6) If the administrator in charge of the approved treatment facility or his or her

authorized designee determines that it is for the person's benefit, the person shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

(7) Nothing in this section shall preclude the approved treatment facility administrator or his or her authorized designee from seeking emergency commitment of a person as provided in section 27-81-111 or involuntary commitment of a person as provided in section 27-81-112, regardless of whether such person has been voluntarily admitted under this section. In such cases, the administrator's or designee's further conduct shall be governed by section 27-81-111 or 27-81-112, as applicable.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 738, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-309 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

27-81-111. Emergency commitment. (1) (a) When a person is intoxicated or incapacitated by alcohol and clearly dangerous to the health and safety of himself, herself, or others, he or she shall be taken into protective custody by law enforcement authorities or an emergency service patrol, acting with probable cause, and placed in an approved treatment facility. If no such facilities are available, he or she may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent injury to himself, herself, or others or to prevent a breach of the peace. If the person being detained is a juvenile, as defined in section 19-1-103 (68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders. A law enforcement officer or emergency service patrol officer, in detaining the person, is taking him or her into protective custody. In so doing, the detaining officer may protect himself or herself by reasonable methods but shall make every reasonable effort to protect the detainee's health and safety. A taking into protective custody under this section is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime. Law enforcement or emergency service personnel who act in compliance with this section are acting in the course of their official duties and are not criminally or civilly liable therefor. Nothing in this subsection (1) shall preclude an intoxicated or incapacitated person who is not dangerous to the health and safety of himself, herself, or others from being assisted to his or her home or like location by the law enforcement officer or emergency service patrol officer.

(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (1) related to detaining juveniles may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (1) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with paragraph (a) of this subsection (1).

(2) A law enforcement officer, emergency service patrolman, physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for emergency commitment under this section, directed to the administrator of the approved treatment facility. The application shall state the circumstances requiring emergency commitment, including the applicant's personal observations and the specific statements of others, if any, upon which he or she relies in making the application. A copy of the application shall be furnished to the person to be committed.

(3) If the approved treatment facility administrator or his or her authorized designee approves the application, the person shall be committed, evaluated, and treated for a period not to exceed five days. The person shall be brought to the facility by a peace officer, the emergency service patrol, or any interested person. If necessary, the court may be contacted

to issue an order to the police, the peace officer's department, or the sheriff's department to transport the person to the facility.

(4) If the approved treatment facility administrator or his or her authorized designee determines that the application fails to sustain the grounds for emergency commitment as set forth in subsection (1) of this section, the commitment shall be refused and the person detained immediately released, and the person shall be encouraged to seek voluntary treatment if appropriate.

(5) When the administrator determines that the grounds for commitment no longer exist, he or she shall discharge the person committed under this section. A person committed under this section may not be detained in any treatment facility for more than five days; except that a person may be detained for longer than five days at the approved treatment facility if, in that period of time, a petition for involuntary commitment has been filed pursuant to section 27-81-112. A person may not be detained longer than ten days after the date of filing of the petition for involuntary commitment.

(6) Whenever a person is involuntarily detained pursuant to this section, he or she shall immediately be advised by the facility administrator or his or her authorized designee, both orally and in writing, of his or her right to challenge such detention by application to the courts for a writ of habeas corpus, to be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and to have counsel appointed by the court or provided by the court if he or she wants the assistance of counsel and is unable to obtain counsel.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 739, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-310 as it existed prior to 2010.

ANNOTATION

Law reviews. For comment, "Leake v. Cain: Abrogation of the Public Duty Doctrine in Colorado?", see 59 U. Colo. L. Rev. 383 (1988).

Annotator's note. Since § 27-81-111 is similar to § 25-1-310 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Due process considerations. A judicial hearing as a prerequisite to commitment of a clearly dangerous intoxicated person would hinder the government's efforts in controlling alcohol abuse without providing additional procedural safeguards. Due process demands only that a neutral fact finder independently determine that the statutory requirements for commitment and release are satisfied. Due process does not dictate that the neutral and detached fact finder be law-trained or a judicial or administrative officer. *Carberry v. Adams County Task Force on Alcoholism*, 672 P.2d 206 (Colo. 1983).

Intent of subsection (1). In enacting subsection (1), the general assembly did not intend the police to take into protective custody every intoxicated person they meet. Rather, the general assembly designated a specific class of intoxicated persons who are subject to emergency commitment and left the determination of whether a particular individual is clearly dangerous to the police. Therefore, the decision to take a person into protective custody is discre-

tionary and protected by official immunity. *Leake v. Cain*, 720 P.2d 152 (Colo. 1986).

Class of persons section was designated to protect. Respondents-decedents are not included within the class of persons that subsection (1) was designated to protect, since the statutory intent was not to protect members of the public against intoxicated persons. Therefore, police officers had no duty to take defendant into "protective custody" or to escort him to his home. *Leake v. Cain*, 720 P.2d 152 (Colo. 1986).

The language of this section indisputably articulates a clear legislative determination that the act of taking a person into civil protective custody is not an arrest. *Colo. v. Dandrea*, 736 P.2d 1211 (Colo. 1987); *Anaya v. Crossroads Care Sys.*, 973 F. Supp. 1228 (D. Colo. 1997).

This section cannot be used to justify the equivalent of a criminal custodial arrest not supported by probable cause. *People v. Dandrea*, 736 P.2d 1211 (Colo. 1987).

This section clearly contemplates encounters between police officers and those whom they perceive are intoxicated, without any requirement that the officers also suspect involvement in criminal activity. *People v. Herrera*, 1 P.3d 234 (Colo. App. 1999).

When a search is conducted pursuant to protective custody the scope of the officer's

inventory search is limited by the privacy interest of the detainee. *People v. Chaves*, 855 P.2d 852 (Colo. 1993).

Officers exceeded their authority under this section by conducting an inventory search at the point of detention, rather than just a pat-down search. *People v. Herrera*, 1 P.3d 234 (Colo. App. 1999).

The inventory search of a civil detainee does not permit officers to search closed containers without a warrant. The purpose of such a search is to ensure that all of the detainee's possessions are held safely and to remove those which may be dangerous. *People v. Chaves*, 855 P.2d 852 (Colo. 1993).

27-81-112. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the unit by the court upon the petition of the person's spouse or guardian, a relative, a physician, an advanced practice nurse, the administrator in charge of any approved treatment facility, or any other responsible person. The petition shall allege that the person is an alcoholic and that the person has threatened or attempted to inflict or inflicted physical harm on himself or herself or on another and that unless committed the person is likely to inflict physical harm on himself or herself or on another or that the person is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition.

(2) A petition submitted pursuant to subsection (1) of this section shall not be accepted unless there is documentation of the refusal by the person to be committed to accessible and affordable voluntary treatment. The documentation may include, but shall not be limited to, notations in the person's medical or law enforcement records or statements by a physician, advanced practice nurse, or witness.

(3) Upon the filing of the petition, the court shall fix a date for a hearing no later than ten days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be personally served on the petitioner, the person whose commitment is sought, and one of his or her parents or his or her legal guardian if he or she is a minor. A copy of the petition and notice of hearing shall be mailed to the unit, to counsel for the person whose commitment is sought, to the administrator in charge of the approved treatment facility to which the person may have been committed for emergency treatment, and to any other person the court believes advisable.

(4) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that the person's presence is likely to be injurious to the person; in this event, the court shall appoint a guardian ad litem to represent the person throughout the proceeding. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court-appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may commit the person to a licensed hospital for a period of not more than five days for a diagnostic examination. In such event, the court shall schedule a further hearing for final determination of commitment, in no event later than five days after the first hearing.

(5) If after hearing all relevant evidence, including the results of any diagnostic examination by the licensed hospital, the court finds that grounds for involuntary commitment have been established by clear and convincing proof, it shall make an order of commitment to the unit. The unit shall have the right to delegate physical custody of the person to an appropriate approved treatment facility. It may not order commitment of a person unless it determines that the unit is able to provide adequate and appropriate treatment for him or her, and the treatment is likely to be beneficial.

(6) Upon the commitment of a person to the unit by the court, the court may issue an order to the sheriff to transport the person committed to the facility designated by the unit.

(7) A person committed as provided in this section shall remain in the custody of the unit for treatment for a period of thirty days unless sooner discharged. At the end of the thirty-day period, he or she shall be discharged automatically unless the unit, before expiration of the period, obtains a court order for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the unit shall apply for recommitment if after examination it is determined that the likelihood still exists.

(8) A person recommitment as provided in subsection (7) of this section who has not been discharged by the unit before the end of the ninety-day period shall be discharged at the expiration of that period unless the unit, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the unit shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsection (7) of this section and this subsection (8) are permitted.

(9) Upon the filing of a petition for recommitment under subsections (7) and (8) of this section, the court shall fix a date for hearing no later than ten days after the date the petition was filed. A copy of the petition and of the notice of hearing shall be served and mailed as required in subsection (3) of this section. At the hearing, the court shall proceed as provided in subsection (4) of this section.

(10) The unit shall provide for adequate and appropriate treatment of a person committed to its custody. The unit may transfer any person committed to its custody from one approved treatment facility to another if transfer is advisable.

(11) A person committed to the custody of the unit for treatment shall be discharged at any time before the end of the period for which he or she has been committed if either of the following conditions is met:

(a) In the case of an alcoholic committed on the grounds that he or she is likely to inflict physical harm upon another, that he or she no longer has an alcoholic condition that requires treatment or the likelihood no longer exists; or

(b) In the case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer appropriate.

(12) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, to be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and to have counsel appointed by the court or provided by the court if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the person regardless of his or her wishes. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(13) If a private treatment facility agrees with the request of a competent patient or his or her parent, sibling, adult child, or guardian to accept the patient for treatment, the administrator of the public treatment facility shall transfer him or her to the private treatment facility.

(14) A person committed under this article may at any time seek to be discharged from commitment by an order in the nature of habeas corpus.

(15) The venue for proceedings under this section is the county in which the person to be committed resides or is present.

(16) All proceedings conducted pursuant to this article shall be conducted by the district attorney of the county where the proceeding is held or by an attorney acting for the district attorney appointed by the court for that purpose; except that, in any county or in any

city and county having a population exceeding one hundred thousand persons, the proceedings shall be conducted by the county attorney or by an attorney acting for the county attorney appointed by the court.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 741, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-311 as it existed prior to 2010.

27-81-113. Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection (2) shall not be published in a way that discloses patients' names or other identifying information.

(3) Nothing in this section shall be construed to prohibit or limit the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141, C.R.S.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 743, § 2, effective April 29. **L. 2011:** (3) added, (HB 11-1169), ch. 119, p. 374, § 4, effective April 20.

Editor's note: This section is similar to former § 25-1-312 as it existed prior to 2010.

27-81-114. Visitation and communication of patients. (1) A patient in any approved treatment facility shall be granted opportunities for continuing visitation and communication with his or her family and friends consistent with an effective treatment program. A patient shall be permitted to consult with counsel at any time.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The director may adopt reasonable rules regarding the use of the telephone by patients in approved treatment facilities.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 743, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-313 as it existed prior to 2010.

27-81-115. Emergency service patrol - establishment - rules. (1) The unit and cities, counties, city and counties, and regional service authorities may establish emergency service patrols. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated or incapacitated by alcohol. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and shall be authorized to transport a person intoxicated or incapacitated by alcohol to his or her home and to and from treatment facilities.

(2) The director shall adopt rules for the establishment, training, and conduct of emergency service patrols.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 744, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-314 as it existed prior to 2010.

27-81-116. Payment for treatment - financial ability of patients. (1) If treatment is provided by an approved public treatment facility and the patient, including a committed person, has not paid the charge therefor, the approved treatment facility is entitled to any payment received by the patient or to which the patient may be entitled because of the services rendered and from any public or private source available to the approved treatment facility because of the treatment provided to the patient. The approved treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges that have not been paid.

(2) A patient in an approved treatment facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability is liable to the approved treatment facility for the cost of maintenance and treatment of the patient therein in accordance with rates established. The approved treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges that have not been paid.

(3) The director shall adopt rules that establish a standardized ability-to-pay schedule, under which those with sufficient financial ability are required to pay the full cost of services provided and those who are totally without sufficient financial ability are provided appropriate treatment at no charge. The schedule shall take into consideration the income, including government assistance programs, savings, and other personal and real property, of the person required to pay and any support the person required to pay furnishes to another person as required by law.

(4) Nothing in this section shall prohibit an approved treatment facility from charging a minimal fee for therapeutic purposes.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 744, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-315 as it existed prior to 2010.

27-81-117. Criminal laws - limitations. (1) A county, municipality, or other political subdivision may not adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) A county, municipality, or other political subdivision may not interpret or apply any law of general application to circumvent the provisions of subsection (1) of this section.

(3) Nothing in this article affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, or a boat or machinery or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(4) The fact that a person is intoxicated or incapacitated by alcohol shall not prevent his or her arrest or prosecution for the commission of any criminal act or conduct not enumerated in subsection (1) of this section.

(5) Nothing in this article shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, notwithstanding the fact that the arrested person may be intoxicated or incapacitated by alcohol.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 744, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-316 as it existed prior to 2010.

ARTICLE 82**Drug Abuse Prevention, Education,
and Treatment**

Editor's note: This article was added with relocations in 2010 containing provisions of part 11 of article 1 of title 25. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-82-101.	Legislative declaration.	27-82-107.	Emergency commitment.
27-82-102.	Definitions.	27-82-108.	Involuntary commitment of drug abusers.
27-82-103.	Standards for public and private treatment facilities - fees - enforcement procedures - penalties.	27-82-109.	Records of drug abusers and persons under influence of drugs.
27-82-104.	Acceptance for treatment - rules.	27-82-110.	Visitation and communication of patients.
27-82-105.	Voluntary treatment of drug abusers.	27-82-111.	Payment for treatment - financial ability of patients.
27-82-106.	Voluntary treatment for persons under influence of drugs and persons incapacitated by drugs.	27-82-112.	Criminal laws - limitations.
		27-82-113.	Limitations on services and programs provided - available funds.

27-82-101. Legislative declaration. (1) The general assembly recognizes the character and pervasiveness of drug abuse and drug dependency and that drug abuse and dependency are serious problems. The general assembly further finds and declares that these problems have been very seriously neglected and that the social and economic costs and the waste of human resources caused by drug abuse and dependency are massive, tragic, and no longer acceptable. The general assembly believes that the best interests of this state demand an across-the-board locally oriented attack on the massive drug abuse and dependency problem, which attack includes prevention, education, and treatment, and that this article will provide a base from which to launch the attack and reduce the tragic human loss.

(2) It is the policy of this state that drug dependent persons and persons who are under the influence of drugs should be afforded treatment in order that they may lead normal lives as productive members of society. The general assembly hereby finds and declares that drug abuse and drug dependency are matters of statewide concern.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 745, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1100.2 as it existed prior to 2010.

27-82-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Administrator" means the administrator of an approved treatment facility or an individual authorized in writing to act as his or her designee.

(2) "Approved private treatment facility" means a private agency meeting the standards prescribed in section 27-82-103 (1) and approved under section 27-82-103.

(3) "Approved public treatment facility" means a treatment agency operating under the direction and control of or approved by the unit and meeting the standards prescribed in section 27-82-103 (1) and approved under section 27-82-103.

(4) "Court" means the district court in the county in which the person named in a petition filed pursuant to this article resides or is physically present. In the city and county of Denver, "court" means the probate court.

(5) "Department" means the department of human services created in section 26-1-105, C.R.S.

(6) "Director" means the director of the unit.

(7) “Drug” means a controlled substance as defined in section 18-18-102 (5), C.R.S., and toxic vapors.

(8) “Drug abuser” means a person who habitually uses drugs or who uses drugs to the extent that his or her health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. Nothing in this subsection (8) shall preclude the denomination of a drug abuser as a person under the influence of or incapacitated by drugs.

(9) “Executive director” means the executive director of the department.

(10) “Incapacitated by drugs” means that a person, as a result of the use of drugs, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment, is unable to take care of his or her basic personal needs or safety, or lacks sufficient understanding or capacity to make or communicate rational decisions concerning himself or herself.

(11) “Licensed physician” means either a physician licensed by the state of Colorado or a hospital-licensed physician employed by the admitting facility.

(12) “Minor” means a person under the age of eighteen years.

(13) “Person under the influence of drugs” means any person whose mental or physical functioning is temporarily but substantially impaired as a result of the presence of drugs in his or her body.

(14) “Toxic vapors” means a substance or product containing such substances as defined in section 18-18-412 (3), C.R.S.

(15) “Treatment” means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to drug abusers and persons under the influence of drugs.

(16) “Unit” means the unit in the department that administers behavioral health programs and services, including those related to mental health and substance abuse.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 745, § 2, effective April 29. **L. 2012:** (7) amended, (HB 12-1311), ch. 281, p. 1629, § 79, effective July 1.

Editor’s note: This section is similar to former § 25-1-1101 as it existed prior to 2010.

27-82-103. Standards for public and private treatment facilities - fees - enforcement procedures - penalties. (1) In accordance with the provisions of this article, the unit shall establish standards for approved treatment facilities that receive public funds or that dispense controlled substances or both. The standards shall be met for a treatment facility to be approved as a public or private treatment facility. The unit shall fix the fees to be charged for the required inspections. The fees that are charged to approved treatment facilities that provide level I and level II programs as provided in section 42-4-1301.3 (3) (c), C.R.S., shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund created in section 42-4-1301.3 (4) (a), C.R.S. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall reflect the success criteria established by the general assembly.

(2) The unit periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The unit shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the unit, on request, data, statistics, schedules, and information the unit reasonably requires. An approved public or private treatment facility that fails without good cause to furnish any data, statistics, schedules, or information, as requested, or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(5) The unit, after hearing, may suspend, revoke, limit, restrict, or refuse to grant an approval for failure to meet its standards.

(6) A person shall not operate a private or public treatment facility in this state without approval from the unit; except that this article shall not apply to a private treatment facility that accepts only private funds and does not dispense controlled substances. The district court may restrain any violation of, review any denial, restriction, or revocation of approval under, and grant other relief required to enforce the provisions of this section.

(7) Upon petition of the unit and after a hearing held upon reasonable notice to the facility, the district court may issue a warrant to an officer or employee of the unit authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the unit or which the unit has reasonable cause to believe is operating in violation of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 747, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1102 as it existed prior to 2010.

27-82-104. Acceptance for treatment - rules. (1) The director shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of drug abusers and persons under the influence of drugs. In establishing the rules, the director shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient treatment, unless or until he or she is found to require residential treatment.

(c) A person may not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or leaves a form of treatment will have available and utilize other appropriate treatment.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 748, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1103 as it existed prior to 2010.

27-82-105. Voluntary treatment of drug abusers. (1) A drug abuser, including a minor, may apply for voluntary treatment directly to an approved treatment facility.

(2) Subject to rules adopted by the director, the administrator in charge of an approved treatment facility shall determine who shall be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator may refer the person to another approved and appropriate treatment facility for treatment if it is deemed likely to be beneficial. A person should not be referred for further treatment if it is determined that further treatment is not likely to bring about significant improvement in the person's condition, or treatment is no longer appropriate, or further treatment is unlikely to be beneficial.

(3) If a patient receiving residential care leaves an approved treatment facility, he or she shall be encouraged to consent to outpatient treatment or supportive services if appropriate.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 748, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1104 as it existed prior to 2010.

27-82-106. Voluntary treatment for persons under influence of drugs and persons incapacitated by drugs. (1) A person under the influence of or incapacitated by drugs, including a minor if provided by rules of the unit, may voluntarily admit himself or herself to an approved treatment facility for emergency treatment.

(2) A person who voluntarily enters an approved treatment facility shall be immediately evaluated or examined by the facility administrator. A person found to be in need of treatment shall then be admitted or referred to another appropriate facility. If a person is found not to be in need of treatment, he or she shall be released or referred to another appropriate facility.

(3) Except as provided in subsection (7) of this section, a voluntarily admitted person shall be released from the approved treatment facility immediately upon his or her request.

(4) A person who is not admitted to an approved treatment facility, and who is not referred to another health facility, and who has no funds may be taken to his or her home, if any. If he or she has no home, the approved treatment facility may assist him or her in obtaining shelter.

(5) If a person is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible in accordance with federal confidentiality regulations for alcohol and drug abuse patient records, which regulations are found at 42 CFR, part II, secs. 2.1 to 2.67, as amended. If an adult person requests that there be no notification, his or her request shall be respected.

(6) If the administrator in charge of the approved treatment facility determines that it is for the person's benefit, the person shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

(7) Nothing in this section shall preclude the approved treatment facility administrator from seeking emergency commitment of a person as provided in section 27-82-107 or involuntary commitment of a person as provided in section 27-82-108, regardless of whether the person has been voluntarily admitted under this section. In such case, the administrator's or designee's further conduct shall be governed by section 27-82-107 or 27-82-108, as applicable.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 748, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1105 as it existed prior to 2010.

27-82-107. Emergency commitment. (1) When any person is under the influence of or incapacitated by drugs and clearly dangerous to the health and safety of himself, herself, or others, he or she may be taken into protective custody by law enforcement authorities, acting with probable cause, and placed in an approved treatment facility. If no such facilities are available, he or she may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent injury to himself, herself, or others or to prevent a breach of the peace. A law enforcement officer, in detaining the person, is taking him or her into protective custody. In so doing, the detaining officer may protect himself or herself by reasonable methods but shall make every reasonable effort to protect the detainee's health and safety. A taking into protective custody under this section is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime. Law enforcement personnel who act in compliance with this section are acting in the course of their official duties and are not criminally or civilly liable therefor. Nothing in this subsection (1) shall preclude a person under the influence of or incapacitated by drugs who is not dangerous to the health and safety of himself, herself, or others from being assisted to his or her home or like location by the law enforcement officer.

(2) A law enforcement officer, physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for emergency commitment under this section, directed to the administrator of the approved treatment facility. The application shall state the circumstances requiring emergency commitment, including the applicant's personal observations and the specific statements of

others, if any, upon which he or she relies in making the application. A copy of the application shall be furnished to the person to be committed.

(3) If the approved treatment facility administrator finds that there are sufficient grounds in the application, the person shall be committed, evaluated, and treated for a period not to exceed five days. The person shall be brought to the facility by a peace officer or any interested person. If necessary, the court may be contacted to issue an order to the police, the peace officer's department, or the sheriff's department to transport the person to the facility.

(4) If the approved treatment facility administrator determines that there are insufficient grounds in the application to sustain an emergency commitment as set forth in subsection (1) of this section, the commitment shall be refused and the person detained immediately released, and the person shall be encouraged to seek voluntary treatment if appropriate.

(5) When the administrator determines that the grounds for commitment no longer exist, the emergency commitment shall be revoked and the client shall be placed on voluntary status and encouraged to seek further voluntary treatment. No person committed under this section may be detained in any treatment facility for more than five days; except that a person may be detained for longer than five days at the approved treatment facility if, in that period of time, a petition for involuntary commitment has been filed pursuant to section 27-82-108. A person may not be detained longer than ten days, excluding weekends and holidays, after the date of filing of the petition for involuntary commitment unless valid medical reasons exist for detaining a person longer.

(6) Whenever a person is involuntarily detained pursuant to this section, he or she shall be advised within twenty-four hours by the facility administrator, both orally and in writing, of his or her right to challenge such detention by application to the courts for a writ of habeas corpus, and to have counsel appointed by the court or provided by the court if he or she wants the assistance of counsel and is unable to obtain counsel.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 749, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1106 as it existed prior to 2010.

27-82-108. Involuntary commitment of drug abusers. (1) A person may be committed to the custody of the unit by the court upon the petition of the person's spouse or guardian, a relative, a physician, an advanced practice nurse, the administrator in charge of any approved treatment facility, or any other responsible person. The petition shall allege that the person is a drug abuser and that the person has threatened or attempted to inflict or inflicted physical harm on himself or herself or on another and that unless committed the person is likely to inflict physical harm on himself or herself or on another or that the person is incapacitated by drugs. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within ten days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination or an examination cannot be made of such person due to the person's condition. The certificate shall set forth the physician's findings in support of the allegations of the petition.

(2) A petition submitted pursuant to subsection (1) of this section shall not be accepted unless there is documentation of the refusal by the person to be admitted to accessible and affordable voluntary treatment. Documentation may include, but shall not be limited to, physicians' and advanced practice nurses' statements, notations in the person's medical or law enforcement records, or witnesses' statements.

(3) Upon the filing of the petition, the court shall fix a date for a hearing no later than ten days, excluding weekends and holidays, after the date the petition was filed, unless valid medical reasons exist for delaying the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be personally served on the person whose commitment is sought and one of his or her parents or his or her legal guardian if he or she is a minor. A copy of the petition and notice of hearing shall be provided to the

petitioner, to the unit, to counsel for the person whose commitment is sought, if any, to the administrator in charge of the approved treatment facility to which the person may have been committed for emergency treatment, and to any other person the court believes advisable.

(4) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that the person's presence is likely to be injurious to the person; in this event, the court shall appoint a guardian ad litem to represent the person throughout the proceeding. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court-appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may commit the person to a licensed hospital or an approved public or private treatment facility for a period of not more than five days for a diagnostic examination. In such event, the court shall schedule a further hearing for final determination of commitment, in no event later than five days after the first hearing.

(5) If after hearing all relevant evidence, including the results of any diagnostic examination by the licensed hospital, the court finds that grounds for involuntary commitment have been established by clear and convincing proof, it shall make an order of commitment to the unit. The unit shall have the right to delegate physical custody of the person to an appropriate approved treatment facility. It may not order commitment of a person unless it determines that the unit is able to provide adequate and appropriate treatment for him or her and that the treatment is likely to be beneficial.

(6) Upon the commitment of a person to the unit by the court, the court may issue an order to the sheriff to transport the person committed to the facility designated by the unit.

(7) A person committed as provided in this section shall remain in the custody of the unit for treatment for a period of thirty days unless sooner discharged. At the end of the thirty-day period, he or she shall be discharged automatically unless the unit, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days and a hearing has been scheduled in accordance with subsection (3) of this section. If a person has been committed because he or she is a drug abuser likely to inflict physical harm on another, the unit shall apply for recommitment if, after examination, it is determined that the likelihood still exists.

(8) A person recommitment as provided in subsection (7) of this section who has not been discharged by the unit before the end of the ninety-day period shall be discharged at the expiration of that period unless the unit, before expiration of the period, files a petition on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days and a hearing has been scheduled in accordance with subsection (3) of this section. If a person has been committed because he or she is a drug abuser likely to inflict physical harm on another, the unit shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsection (7) of this section and this subsection (8) are permitted.

(9) Upon the filing of a petition for recommitment under subsections (7) and (8) of this section, the court shall fix a date for hearing no later than ten days, excluding weekends and holidays, after the date the petition was filed unless valid medical reasons exist for delaying the hearing. A copy of the petition and of the notice of hearing shall be served as required in subsection (3) of this section. At the hearing, the court shall proceed as provided in subsection (4) of this section.

(10) The unit shall provide for adequate and appropriate treatment of a person committed to its custody. The unit may transfer any person committed to its custody from one approved treatment facility to another if transfer is advisable.

(11) A person committed to the custody of the unit for treatment shall be discharged at any time before the end of the period for which he or she has been committed if either of the following conditions is met:

(a) In the case of a drug abuser committed on the grounds that he or she is likely to inflict physical harm upon another, that he or she no longer has a drug abuse condition that requires treatment or the likelihood no longer exists; or

(b) In the case of a drug abuser committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, or in case of a drug abuser committed on any grounds under this section, that further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer appropriate, or further treatment is unlikely to be beneficial.

(12) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, to be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and to have counsel appointed by the court or provided by the court if the person wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(13) If a private treatment facility agrees with the request of a competent patient or his or her parent, sibling, adult child, or guardian to accept the patient for treatment, the administrator of the public treatment facility may transfer him or her to the private treatment facility.

(14) A person committed under this article may at any time seek to be discharged from commitment by an order in the nature of habeas corpus.

(15) The venue for proceedings under this section is the county in which the person to be committed resides or is present.

(16) All proceedings conducted pursuant to this article shall be conducted by the district attorney of the county where the proceeding is held or by an attorney acting for the district attorney appointed by the court for that purpose; except that, in any county or in any city and county having a population exceeding one hundred thousand persons, the proceedings shall be conducted by the county attorney or by an attorney acting for the county attorney appointed by the court.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 750, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1107 as it existed prior to 2010.

27-82-109. Records of drug abusers and persons under influence of drugs.

(1) The registration and other records of treatment facilities shall remain confidential and fully protected as outlined in federal confidentiality regulations for alcohol and drug abuse patient records found at 42 CFR, part II, secs. 2.1 to 2.67, as amended.

(2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of drug abuse. Information under this subsection (2) shall not be published in a way that discloses patients' names or other identifying information.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 753, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1108 as it existed prior to 2010.

27-82-110. Visitation and communication of patients. (1) A patient in an approved treatment facility shall be granted opportunities for continuing visitation and communication with his or her family and friends consistent with an effective treatment program. A patient shall be permitted to consult with counsel at any time.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The director may adopt reasonable rules regarding the use of the telephone by patients in approved treatment facilities.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 753, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1109 as it existed prior to 2010.

27-82-111. Payment for treatment - financial ability of patients. (1) If treatment is provided by an approved public treatment facility and the patient, including a committed person, has not paid the charge therefor, the approved treatment facility is entitled to any payment received by the patient or to which he or she may be entitled because of the services rendered and from any public or private source available to the approved treatment facility because of the treatment provided to the patient. The treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges which have not been paid.

(2) A patient in an approved treatment facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability is liable to the approved treatment facility for the cost of maintenance and treatment of the patient therein in accordance with rates established. The treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges that have not been paid.

(3) The director shall establish by rule a standardized ability-to-pay schedule, under which those with sufficient financial ability are required to pay the full cost of services provided and those who are totally without sufficient financial ability are provided appropriate treatment at no charge. Such schedule shall take into consideration the income including government assistance programs, savings, and other personal and real property of the person required to pay, and any support being furnished by him or her to any person he or she is required by law to support.

(4) Nothing in this section shall prohibit a facility from charging a minimal fee for therapeutic purposes.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 754, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1110 as it existed prior to 2010.

27-82-112. Criminal laws - limitations. (1) Nothing in this article affects any law, ordinance, resolution, or rule against driving under the influence of drugs or other similar offense involving the operation of a vehicle, an aircraft, a boat, any machinery, or any other equipment or regarding the sale, purchase, possession, or use of drugs.

(2) The fact that a person is under the influence of or incapacitated by drugs shall not prevent his or her arrest or prosecution for the commission of any criminal act or conduct.

(3) Nothing in this article shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, notwithstanding the fact that the arrested person may be under the influence of or incapacitated by drugs.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 754, § 2, effective April 29.

Editor's note: This section is similar to former § 25-1-1111 as it existed prior to 2010.

27-82-113. Limitations on services and programs provided - available funds. (1) The level of services provided and the scope of programs administered by the unit that relate to drug abuse prevention, education, and treatment, including the number of clients served in treatment programs, shall be subject to the moneys available to the unit for such purposes.

(2) The department is authorized to accept, on behalf of the state of Colorado, and expend any grants of federal funds for all or any purposes of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 754, § 2, effective April 29.

Editor’s note: This section is similar to former § 25-1-1112 as it existed prior to 2010.

INSTITUTIONS

ARTICLE 90

Institutions - Department of Human Services

Editor’s note: This article was added with relocations in 2010 containing provisions of part 1 of article 1 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-90-100.3.	Definitions.		facilities.
27-90-101.	Executive director - division heads - interagency council - advisory boards.	27-90-107.	Transfer of functions.
27-90-102.	Duties of executive director - governor acquire water rights - rules.	27-90-108.	Transfer of employees, records, and property - retirement benefits protected - decision of governor.
27-90-103.	State board of human services - rules.	27-90-109.	Department may accept gifts, donations, and grants.
27-90-104.	Institutions managed, supervised, and controlled.	27-90-110.	Rules for this article and certain provisions in title 19, C.R.S.
27-90-105.	Future juvenile detention facility needs.	27-90-111.	Employment of personnel - screening of applications - disqualifications for employment.
27-90-106.	Legislative review of facilities program plans for juvenile		

- 27-90-100.3. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Department” means the department of human services created in section 26-1-105, C.R.S.
- (2) “Executive director” means the executive director of the department of human services.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 755, § 2, effective April 29.

27-90-101. Executive director - division heads - interagency council - advisory boards. (1) (a) Medical personnel employed at any of the institutions subject to the control of the executive director, the medical director of which is licensed to practice medicine in this state, shall be exempt from the provisions of the “Colorado Medical Practice Act”, article 36 of title 12, C.R.S., with respect to service rendered to bona fide patients or inmates at those institutions, if such personnel: Are licensed to practice medicine in any other state of the United States or any province of Canada; have satisfactorily completed an internship of not less than one year in the United States, Canada, or Puerto Rico in a hospital approved for that purpose by the American medical association; have satisfactorily completed three years of postgraduate residency training, or its equivalent, in their particular specialty in a hospital approved for that purpose by the American medical association; and can read, write, speak, and understand the English language. Proof that the requirements have been met shall be submitted to and approved or disapproved by the executive director.

(b) All personnel who cannot satisfy all of the requirements set forth in paragraph (a) of this subsection (1) shall be exempt from the “Colorado Medical Practice Act”, article 36 of title 12, C.R.S., with respect to services rendered to bona fide patients or inmates at said institutions, if the personnel are of good moral character, are graduates of an approved medical college as defined in section 12-36-102.5, C.R.S., have completed an approved internship of at least one year as defined in section 12-36-102.5, C.R.S., within nine months after first being employed, pass the examinations approved by the Colorado medical board under the “Colorado Medical Practice Act” and the national board of medical examiners, the national board of examiners for osteopathic physicians and surgeons, or the federation of state medical boards, or their successor organizations, on subjects relating to the basic sciences, are able to read, write, speak, and understand the English language, and, in the case of personnel who are not citizens of the United States, become citizens within the minimum period of time within which the particular individual can become a citizen according to the laws of the United States and the regulations of the immigration and naturalization service of the United States, department of justice, or any successor agency, or within such additional time as may be granted by said boards.

(c) Medical personnel granted exemption under paragraphs (a) and (b) of this subsection (1) may not practice medicine except as described in this subsection (1) without first complying with all of the provisions of the “Colorado Medical Practice Act”.

(2) The governor may appoint an interagency council to serve at his or her pleasure, to be composed of such representatives as he or she may select from the departments of public health and environment, labor and employment, health care policy and financing, human services, personnel, and such other state officers and officials as he or she may deem appropriate.

(3) The governor may appoint advisory boards to consult with the executive director and the chief officer of any institution within the jurisdiction of the department. Any such advisory board shall consist of not less than five nor more than fifteen persons recognized or known to be interested and informed in the area of the institution’s purpose and function. Members of the advisory boards shall serve without compensation but may be reimbursed for actual and necessary expenses incurred in attending regular meetings. Advisory boards established pursuant to this subsection (3) shall meet quarterly and during any interim on call of the executive director.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 755, § 2, effective April 29; (1)(b) amended, (HB 10-1260), ch. 403, p. 1990, § 87, effective July 1. **L. 2011:** (1)(b) amended, (HB 11-1303), ch. 264, p. 1172, § 82, effective August 10.

Editor’s note: (1) This section is similar to former § 27-1-102 as it existed prior to 2010.

(2) Subsection (1)(b) was numbered as § 27-1-102 (2)(c) in House Bill 10-1260 (see L. 2010, p. 1990) but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175.

27-90-102. Duties of executive director - governor acquire water rights - rules.
(1) The duties of the executive director shall be:

(a) To manage, supervise, and control the charitable, mental, custodial, and special educational public institutions operated and supported by the state; to manage and supervise the special agencies, departments, boards, and commissions transferred to or established within the department by law; to improve, develop, and carry forward programs of therapy, counseling, and aftercare to the end that a person dependent upon tax-supported programs may be afforded opportunity and encouragement to overcome the disability causing his or her partial or total dependence upon the state;

(b) To supervise the business, fiscal, budget, personnel, and financial operations of the department and the institutions and activities under his or her control;

(c) In consultation with the several superintendents, the chief officer of the Colorado mental health institute at Pueblo, the head of the administrative division for the Colorado mental health institute at Fort Logan, and the director of the division of planning, to develop

a systematic building program providing for the projected, long-range needs of the institutions under his or her control;

(d) To classify the lands connected with the state institutions under his or her control and determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all state institutions for the food products that can be grown or produced thereon and the relative value of such agricultural use in the treatment or rehabilitation of the persons confined in those institutions;

(e) To the extent practical, to utilize the staff and services of other state agencies and departments, within their respective statutory functions, including administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., to carry out the purposes of this article;

(f) To examine and evaluate each child committed to the department and to place each child so committed as provided in section 19-2-922, C.R.S.;

(g) To transfer between appropriate state institutions children committed to the department as provided in section 19-2-923, C.R.S.;

(h) To require of the head of each institution and agency assigned to the department an annual report containing information, and submitted at a time, as the executive director decides;

(i) To exercise control over publications of the department and subdivisions thereof and cause publications that are approved for circulation in quantity outside the executive branch to be issued in accordance with the provisions of section 24-1-136, C.R.S.;

(j) To implement the procedures regarding children who are in detention or who have or may have mental illness or developmental disabilities specified in the provisions of the "Colorado Children's Code" contained in articles 1, 2, and 3 of title 19, C.R.S.;

(k) To carry out the duties prescribed in article 11.7 of title 16, C.R.S.; and

(l) To provide information to the director of research of the legislative council concerning population projections, research data, and the projected long-range needs of the institutions under the control of the executive director and any other related data requested by the director.

(2) The executive director shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(3) On behalf of the state of Colorado, the governor is authorized to acquire water and water rights for the operation of the Colorado mental health institute at Fort Logan. Title to that property may be acquired in fee simple absolute by purchase, donation, or the exercise of the power of eminent domain through condemnation proceedings in accordance with law from funds made available by the general assembly.

(4) (a) (I) The executive director shall appoint a board of medical consultants.

(II) The executive director shall determine the membership of the board based on the medical and surgical needs of the department.

(III) The executive director shall determine the qualifications for appointment to the board of medical consultants; except that all members of the board shall be licensed by the Colorado medical board pursuant to article 36 of title 12, C.R.S.

(b) A person serving on the board of medical consultants shall provide not more than one thousand hours of consultation per year in his or her capacity as a board member.

(c) Members of the board of medical consultants shall be compensated at a rate that shall be approved by the executive director. Compensation shall be paid from available funds of the department.

(d) The board members shall act as medical consultants to the department with respect to persons receiving services from the institutions listed in section 27-90-104 and from any institution operated pursuant to part 11 of article 2 of title 19, C.R.S.

(e) A member of the board of medical consultants, for all activities performed within the course and scope of his or her responsibilities to the department, is a "public employee" as defined in section 24-10-103 (4), C.R.S.

(5) (a) The executive director shall have authority to adopt "executive director rules", as described in section 26-1-108, C.R.S., for programs administered and services provided

by the department as set forth in this title. The rules shall be promulgated in accordance with the provisions of section 24-4-103, C.R.S.

(b) Whenever a statutory grant of rule-making authority in this title refers to the department, state department, or the department of human services, it shall mean the department of human services acting through either the state board of human services or the executive director or both. When exercising rule-making authority under this title, the department, either acting through the state board or the executive director, shall establish rules consistent with the powers and the distinction between “board rules” as set forth in section 27-90-103 and “executive director rules” as set forth in this section.

(c) Any rules adopted by the state board of human services to implement the provisions of this title prior to March 25, 2009, whose content meets the definition of “executive director rules” shall continue to be effective until revised, amended, or repealed by the executive director.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 756, § 2, effective April 29; (4)(a)(III) amended, (HB 10-1260), ch. 403, p. 1991, § 88, effective July 1.

Editor’s note: (1) This section is similar to former § 27-1-103 as it existed prior to 2010.

(2) Subsection (4)(a)(III) was numbered as § 27-1-103 (3)(a)(III) in House Bill 10-1260 (see L. 2010, p. 1991), but was relocated due to its harmonization with this section as it was added by Senate Bill 10-175.

27-90-103. State board of human services - rules. (1) The state board of human services, created in section 26-1-107, C.R.S., is authorized to adopt “board rules” as necessary to implement the programs administered and the services provided by the department as provided in this title. The rules shall be promulgated in accordance with the provisions of section 24-4-103, C.R.S.

(2) “Board rules” are rules promulgated by the state board of human services governing:

- (a) Program scope and content;
- (b) Requirements, obligations, and rights of clients and recipients;
- (c) Nonexecutive director rules concerning vendors, providers, and other persons affected by acts of the department.

(3) (a) Any rules adopted by the executive director to implement the provisions of this title prior to March 25, 2009, whose content meets the definition of “board rules” shall continue to be effective until revised, amended, or repealed by the state board of human services.

(b) Any rules adopted by the state board to implement the provisions of this title prior to March 25, 2009, whose content meets the definition of “executive director rules” shall continue to be effective until revised, amended, or repealed by the executive director.

(4) Whenever a statutory grant of rule-making authority in this title refers to the department, the state department, or the department of human services, it shall mean the department of human services acting through either the state board of human services or the executive director. When exercising rule-making authority under this title, the state department, either acting through the state board or the executive director, shall establish rules consistent with the powers and the distinction between “board rules” as set forth in this section and “executive director rules” as set forth in section 27-90-102.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 758, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-103.5 as it existed prior to 2010.

27-90-104. Institutions managed, supervised, and controlled. (1) The department shall manage, supervise, and control the following state institutions:

- (a) Colorado mental health institute at Pueblo;
- (b) Wheat Ridge regional center;
- (c) Grand Junction regional center;
- (d) Lookout Mountain school, at Golden;
- (e) Mount View school, at Morrison;
- (f) Colorado mental health institute at Fort Logan, in Denver;
- (g) Golden Gate youth camp, in Gilpin county;
- (h) Lathrop Park youth camp, in Huerfano county; and
- (i) Pueblo regional center.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 759, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-104 as it existed prior to 2010.

27-90-105. Future juvenile detention facility needs. (1) (a) The general assembly hereby finds and declares that currently there are no juvenile detention facilities with commitment beds or locked detention beds in the southwest portion of Colorado and that the nearest such facility in the Grand Junction or Glenwood Springs area is as much as four hours away from some southwestern communities. As a result of this distance, authorities in the southwest region of the state often avoid detention even though such avoidance presents a public safety problem, and those juveniles who are taken to distant facilities lose the critical access to family members and local community agencies that would otherwise render their transitional return to the community less difficult.

(b) The general assembly further finds and declares that the juvenile population in detention is expected to increase by seventy and nine hundredths percent by the year 2002. In addition, the general assembly finds and declares that the juvenile commitment population is expected to increase by forty-nine and nine-tenths percent by the year 2002. The general assembly finds and declares that the growth patterns on the western slope of the state have led to a growth in population of at-risk youth and increased crime and that the office of youth services accordingly has experienced a shortfall of both detention and commitment beds in the western part of the state.

(c) The general assembly therefore determines that it would be appropriate to consider the need for the construction of a juvenile detention facility in southwest Colorado.

(2) (a) The department is directed to assess the need for, and to determine the community commitment to, a new multipurpose juvenile detention facility to be constructed in La Plata county that would serve the following detention and treatment needs of juveniles in the southwest portion of the state:

(I) Secure facility housing of juveniles who are detained on juvenile-related charges; and

(II) Secure facility and medium secure facility housing of juveniles who are committed to the division of youth corrections.

(b) In assessing the need for such a facility and the services to be rendered at such a facility, the department shall evaluate privatization options.

(3) The department shall present its findings, conclusions, and recommendations to the capital development committee of the general assembly on or before November 1, 1996.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 760, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-104.4 as it existed prior to 2010.

27-90-106. Legislative review of facilities program plans for juvenile facilities.

(1) Prior to any appropriation by the general assembly for the construction of a new, expanded, renovated, or improved juvenile facility, and no later than November 1 prior to the beginning of the budget year for which the appropriation is made, the department shall

submit a proposed facility program plan for each proposed new, expanded, renovated, or improved juvenile facility to the capital development committee. The capital development committee shall make a recommendation regarding the facility program plan to the joint budget committee. The general assembly may contract with a consultant to provide assistance to the capital development committee and the joint budget committee in the review of facilities program plans submitted by the department.

(2) For the purposes of this section, “facility program plan” means a pre-architectural design program, as that term is understood in the architectural profession. A facility program plan shall include but need not be limited to the number of beds proposed to be included in the new juvenile facility or the addition to an existing juvenile facility, the primary security level of the proposed facility or addition, the staffing plan of the proposed facility or addition, and a description of any educational or ancillary support facilities required for the proposed facility or addition.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 761, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-104.5 as it existed prior to 2010.

27-90-107. Transfer of functions. (1) The department has the authority to execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the board of control of the state children’s home, the board of control of the Mount View girls’ school, and the division of administration of the division of parole prior to July 1, 1959.

(2) Except where the context plainly requires otherwise, “board” or “boards of control”, with reference to the institutions and the division listed in subsection (1) of this section, means and refers to the department of human services.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 761, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-106 as it existed prior to 2010.

27-90-108. Transfer of employees, records, and property - retirement benefits protected - decision of governor. (1) All employees of the division of administration of the division of parole and all employees of the boards of control enumerated in section 27-90-107 who were engaged in the performance of duties prescribed and supervised by the division of administration of the division of parole and the boards, respectively, and who were transferred to the department of institutions on July 1, 1959, shall retain all rights to retirement benefits under the laws of the state, and their services shall be deemed to have been continuous. All funds, accounts, books, records, documents, and equipment of the boards and the division of administration of the division of parole became the property of the department of institutions on July 1, 1959.

(2) All questions pertaining to the proper disposition of funds, accounts, books, records, documents, or equipment arising under this article and section 17-1-101, C.R.S., and caused by the transfer of powers, duties, rights, functions, and obligations from any board of control to the department of institutions shall be determined by the governor.

(3) Whenever in this article a department, agency, division, or unit thereof is transferred to the department of institutions, the provisions of subsections (1) and (2) of this section shall be declared applicable in effecting such transfer.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 761, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-1-107 as it existed prior to 2010.

27-90-109. Department may accept gifts, donations, and grants. The department or any institution managed, supervised, and controlled by the department may accept or refuse to accept, on behalf of and in the name of the state, gifts, donations, and grants, including grants of federal funds, for any purpose connected with the work or programs of the department or of any such institution. The executive director, with the approval of the governor, has the power to direct the disposition of any such gift, donation, and grant so accepted for any purpose consistent with the terms and conditions under which given.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 762, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-108 as it existed prior to 2010.

27-90-110. Rules for this article and certain provisions in title 19, C.R.S. Pursuant to section 24-4-103, C.R.S., the department shall promulgate such rules as are necessary to implement the provisions of this article and the procedures specified in sections 19-2-508, 19-2-906, 19-2-922, 19-2-923, 19-3-403, 19-3-506, 19-3-507, and 19-3-508, C.R.S., regarding children who are in detention or who have or may have mental illness or developmental disabilities.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 762, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-109 as it existed prior to 2010.

27-90-111. Employment of personnel - screening of applicants - disqualifications from employment. (1) The general assembly hereby recognizes that many of the individuals receiving services from persons employed by the department pursuant to this title or title 26, C.R.S., are unable to defend themselves and are therefore vulnerable to abuse or assault. It is the intent of the general assembly to minimize the potential for hiring and employing persons with a propensity toward abuse, assault, or similar offenses against others for positions that would provide them with unsupervised access to vulnerable persons. The general assembly hereby declares that, in accordance with section 13 of article XII of the state constitution, for purposes of terminating employees in the state personnel system who are finally convicted of criminal conduct, offenses involving moral turpitude include, but are not limited to, the disqualifying offenses specified in subsection (9) of this section.

(2) For purposes of this section, unless the context otherwise requires:

(a) "Contracting employee" means a person who contracts with the department and who is designated by the executive director or the executive director's designee as serving in a contract position involving direct contact with vulnerable persons.

(b) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(c) "Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to vulnerable persons, regardless of the level of supervision of the employee. "Direct contact" may include positions in which persons have access to or unsupervised time with clients or patients, including but not limited to maintenance personnel, housekeeping staff, kitchen staff, and security personnel.

(d) "Employee" means an employee of the department who is under the state personnel system of the state of Colorado.

(e) "Vulnerable person" means any individual served by the department who is susceptible to abuse or mistreatment because of the individual's circumstances, including

but not limited to the individual's age, disability, frailty, mental illness, developmental disability, or ill health.

(3) The employment screening and disqualification requirements in this section apply to the following facilities or programs operated by the department:

(a) Any facility operated by the department for the care and treatment of persons with mental illness pursuant to article 65 of this title;

(b) Any facility operated by the department for the care and treatment of the developmentally disabled pursuant to article 10.5 of this title;

(c) Vocational rehabilitation services provided pursuant to article 8 of title 26, C.R.S.;

(d) Any direct services identified and provided by the department in which employees have direct contact with vulnerable persons in a state-operated facility or in a vulnerable person's home or residence;

(e) State and veterans nursing homes operated pursuant to article 12 of title 26, C.R.S.;

(f) Any facility directly operated by the department in which juveniles who are in the custody of the department reside, including detention or commitment centers; and

(g) Any secure facility contracted for by the department pursuant to section 19-2-403, C.R.S., in which juveniles who are in the custody of the department reside.

(4) Prior to the department's permanent employment of a person in a position that would require that person to have direct contact with any vulnerable person, the executive director or any division head of the department shall make an inquiry to the director of the Colorado bureau of investigation to ascertain whether the person has a criminal history. The person's employment shall be conditional upon a satisfactory criminal background check. Any criminal background check conducted pursuant to this subsection (4) shall include but need not be limited to arrests, conviction records, and the disposition of any criminal charges. The department shall require the person to have his or her fingerprints taken by a local law enforcement agency. The local law enforcement agency shall forward those fingerprints to the Colorado bureau of investigation for the purpose of fingerprint processing utilizing the files and records of the Colorado bureau of investigation and the federal bureau of investigation. The department shall pay for the costs of criminal background checks conducted pursuant to this section out of existing appropriations.

(5) The executive director or any division head shall contact previous employers of any person who is one of the top three finalists for a position that would require that person to have direct contact with any vulnerable person, for the purpose of obtaining information and recommendations that may be relevant to the person's fitness for employment. Any previous employer of an applicant for employment who provides information to the executive director or a division head or who makes a recommendation concerning the person shall be immune from civil liability unless the information is false and the previous employer knows such information is false or acts with reckless disregard concerning the veracity of the information.

(6) Any local agency or provider of services pursuant to this title or title 26, C.R.S., may investigate applicants for employment.

(7) The executive director, any division head, or any local agency or provider who relies on information obtained pursuant to this section in making an employment decision or who concludes that the nature of any information disqualifies the person from employment as either an employee or a contracting employee shall be immune from civil liability for that decision or conclusion unless the information relied upon is false and the executive director, division head, or local agency or provider knows the information is false or acts with reckless disregard concerning the veracity of the information.

(8) The executive director may promulgate such rules as are necessary to implement the provisions of this section.

(9) (a) If the criminal background check conducted pursuant to subsection (4) or (11) of this section indicates that a prospective employee or prospective contracting employee was convicted of any of the disqualifying offenses set forth in paragraph (b) or (c) of this subsection (9), the person shall be disqualified from employment either as an employee or as a contracting employee in a position involving direct contact with vulnerable persons. A person who is disqualified as a result of this section shall not be hired or retained by the department in a position involving direct contact with vulnerable persons nor be eligible to

contract for or continue in a contract position designated by the executive director or the executive director's designee as involving direct contact with vulnerable persons.

(b) Except as otherwise provided in paragraph (d) of this subsection (9), a person shall be disqualified from employment either as an employee or as a contracting employee regardless of the length of time that may have passed since the discharge of the sentence imposed for any of the following criminal offenses:

(I) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(II) Any felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(III) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(IV) Any felony offense of child abuse, as defined in section 18-6-401, C.R.S.; or

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph (I), (II), (III), or (IV) of this paragraph (b).

(c) Except as otherwise provided in paragraph (d) of this subsection (9), a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

(I) Third degree assault, as described in section 18-3-204, C.R.S.;

(II) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(III) Violation of a protection order, as described in section 18-6-803.5, C.R.S.;

(IV) Any misdemeanor offense of child abuse, as defined in section 18-6-401, C.R.S.;

(V) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in section 18-3-405.5, C.R.S.; or

(VI) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph (I), (II), (III), (IV), or (V) of this paragraph (c).

(d) If a person was adjudicated a juvenile delinquent for the commission of any disqualifying offense set forth in either paragraph (b) or (c) of this subsection (9) and more than seven years have elapsed since the commission of the offense, the person may submit a written request to the executive director as provided in subsection (13) of this section for reconsideration of the disqualification.

(10) (a) Any employee who is employed in a position involving direct contact with vulnerable persons and who is arrested, charged with, or issued a summons and complaint for any of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (9) of this section shall inform his or her supervisor of the arrest, charges, or issuance of a summons and complaint before returning to work. Any employee who fails to make such a report or disclosure may be terminated from employment. The department or any facility operated by the department shall advise its employees and contracting employees in writing of the requirement for self-reporting of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (9) of this section.

(b) An employee who is charged with any of the disqualifying offenses set forth in paragraph (b) of subsection (9) of this section shall be suspended until resolution of the criminal charges or completion of administrative action by the department. An employee who is charged with any of the disqualifying offenses set forth in paragraph (c) of subsection (9) of this section may be suspended at the discretion of the department until resolution of the criminal charges or completion of administrative action by the department. The employee shall inform his or her supervisor of the disposition of the criminal charges. Any employee who fails to report such information may be terminated from employment. Upon notification to the department that the employee has received a conviction for any of the disqualifying offenses described in paragraph (b) or (c) of subsection (9) of this section, the employee shall be terminated from employment. Nothing in this paragraph (b) shall prohibit the department from taking administrative action if the employee's conduct would justify disciplinary action under section 13 of article XII of the state constitution for failure

to comply with standards of efficient service or competence or for willful misconduct, willful failure, or inability to perform his or her duties.

(11) The general assembly recognizes that the department contracts with persons to serve in positions that involve direct contact with vulnerable persons in state-operated facilities or to provide state-funded services that involve direct contact with vulnerable persons in the homes and residences of such vulnerable persons. In order to protect vulnerable persons who come into contact with these contracting employees, the executive director or the executive director's designee shall designate those contract positions that involve direct contact with vulnerable persons that shall be subject to the provisions of this subsection (11). In any contract initially entered into or renewed on or after July 1, 1999, concerning a contract position that has been designated as involving direct contact with vulnerable persons, the department shall include the following terms and conditions:

(a) That the contracting employee shall submit to a criminal background check as described in subsection (4) of this section for state employees;

(b) That the contracting employee shall report any arrests, charges, or summonses for any of the disqualifying offenses specified in paragraph (b) or (c) of subsection (9) of this section to the contracting employee's supervisor at the department before returning to work;

(c) That the contracting employee may be suspended or terminated, at the discretion of the department, prior to the resolution of the criminal charges for any of the disqualifying offenses specified in paragraph (b) or (c) of subsection (9) of this section;

(d) That, upon notification to the department that the contracting employee has received a conviction for any of the disqualifying offenses described in paragraph (b) or (c) of subsection (9) of this section, the contracting employee's position with the department shall be terminated.

(12) An employee or contracting employee who is disqualified due to conviction of any of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (9) of this section may submit a written request to the executive director for reconsideration of the disqualification. Reconsideration under this subsection (12) may only be based on a mistake of fact such as an error in the identity of the person for whom the criminal background check was performed. If the executive director determines that there was a mistake of fact involving the identity of the person, the executive director shall issue a finding that the disqualifying factor is not a bar to the person's employment either as an employee or as a contracting employee.

(13) (a) An employee or contracting employee who is disqualified for conviction of an offense specified in paragraph (c) of subsection (9) of this section may submit a written request to the executive director for reconsideration of the disqualification and a review of whether the person poses a risk of harm to vulnerable persons. In reviewing a disqualification, the executive director shall give predominant weight to the safety of vulnerable persons over the interests of the disqualified person. The final determination shall be based upon a review of:

- (I) The seriousness of the disqualifying offense;
- (II) Whether the person has a conviction for more than one disqualifying offense;
- (III) The vulnerability of the victim at the time the disqualifying offense was committed;
- (IV) The time elapsed without a repeat of the same or similar disqualifying offense;
- (V) Documentation of successful completion of training or rehabilitation pertinent to the disqualifying offense; and
- (VI) Any other relevant information submitted by the disqualified person.

(b) The decision of the executive director shall constitute final agency action.

(14) Nothing in this section shall be construed to preclude the department or the director of any facility operated by the department from adopting a policy regarding self-reporting of arrests, charges, or summonses or a policy regarding disqualification from employment that includes other offenses not set forth in paragraph (b) or (c) of subsection (9) of this section.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 762, § 2, effective April 29.

Editor's note: This section is similar to former § 27-1-110 as it existed prior to 2010.

ARTICLE 91

Institutions - General Administrative Provisions

Editor's note: This article was added with relocations in 2010 containing provisions of article 2 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-91-101.	Legislative declaration.	27-91-105.	Indebtedness limited to appropriation.
27-91-102.	Boards of control entitled only to actual expenses.	27-91-106.	Violation - penalty.
27-91-103.	Debts in excess of appropriation - emergencies.	27-91-107.	Purchase of supplies by and from institutions.
27-91-104.	The term "officer" includes members of boards.	27-91-108.	Display of flags.
		27-91-109.	Personal display of flags.

27-91-101. Legislative declaration. The purpose of this section and section 27-91-102 is to provide for the payment of actual expenses only, in lieu of stated salaries and mileage, to all members of boards of control of state institutions.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 768, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-101 as it existed prior to 2010.

27-91-102. Boards of control entitled only to actual expenses. A member of a board of control, trustees, or commissioners of all institutions supported by or under the patronage and control of the state shall receive as compensation for his or her services only actual expenses incurred in attendance upon and in going to and returning from each regular and special meeting of the board of control, trustees, or commissioners or for performing any services whatever for the institution of which he or she is a member of the board of control, trustees, or commissioners, payment to be made out of the funds appropriated for the support and maintenance of the respective institutions. In all cases of cash paid out by the member of a board of control, trustees, or commissioners, an itemized account, accompanied by the proper vouchers therefor, signed by the party to whom such money has been paid, shall accompany the vouchers upon which all warrants for such expenditures shall issue.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 768, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-102 as it existed prior to 2010.

27-91-103. Debts in excess of appropriation - emergencies. The various officers designated by law to control and direct the fiscal affairs of the several state institutions shall not contract within any year any indebtedness in excess of the amount named in any appropriation made for the support of any state institution during that time; but, in cases of emergency, the governor may authorize the contraction of such indebtedness that in his or her judgment is absolutely necessary for the maintenance and support of the institution, until such time as the general assembly meets. The officers of any state institution,

supported by the levy of any special tax, shall contract no indebtedness in any year in excess of eighty percent of the gross amount of the levy made for that year from which to support that institution.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 768, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-103 as it existed prior to 2010.

ANNOTATION

Applied in *Hoyt v. Trustees of State Normal Sch.*, 96 Colo. 442, 44 P.2d 513 (1935) (decided prior to 2010 amendments to this article).

27-91-104. The term “officer” includes members of boards. The term “officer” as used in section 27-91-105 includes any member of the various boards created by law to govern or supervise the respective state institutions.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 768, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-104 as it existed prior to 2010.

27-91-105. Indebtedness limited to appropriation. It is unlawful for any officer of any state institution of this state to incur or contract any indebtedness for, on behalf of, or in the name of the state institution or in the name of the state in excess of the sum appropriated by the general assembly for the use or support of the institution for the fiscal year. An officer of any state institution shall not draw any money from the state treasury unless the same is absolutely needed and required by the institution at the time, and then only upon the warrant of the controller.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 768, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-105 as it existed prior to 2010.

27-91-106. Violation - penalty. Any person who violates any of the provisions of section 27-91-105 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 769, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-106 as it existed prior to 2010.

27-91-107. Purchase of supplies by and from institutions. (1) The following designated state institutions are within the purview of this section: All facilities of the departments of corrections and human services, the Colorado mental health institute at Pueblo, the Wheat Ridge regional center, the Grand Junction regional center, the Pueblo regional center, the Lookout Mountain school at Golden, the Mount View school at Morrison, the Colorado industries for the blind, and the Colorado psychiatric hospital.

(2) When any of the institutions enumerated in subsection (1) of this section are in need of supplies that are grown, produced, or manufactured by any other of the institutions, it shall purchase the same from the other institution if it has a surplus thereof of suitable

quality available for sale at a price not in excess of the current market price for such supplies, and it is the duty of the managing boards of such respective institutions to require observance of the provisions of this section.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 769, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-107 as it existed prior to 2010.

27-91-108. Display of flags. (1) The chief administrative officer of any state institution supported in whole or in part by the state and under the control of the state shall have erected and maintained, at the entrance of the institution or on the principal administrative building or grounds thereof, a suitable flagstaff with the attachments necessary for the display of flags and shall cause to be displayed thereon the flags of the United States and of the state of Colorado. The flag of the state of Colorado shall be the same size as the flag of the United States with which it is displayed. If both flags are displayed on one flagstaff, the flag of the state of Colorado shall be placed below the flag of the United States.

(2) (a) The chief administrative officer of any court facility supported in whole or in part by the state and under the control of the state shall cause to be permanently and prominently displayed the flag of the United States, as described in chapter 1 of title 4, U.S.C., in each courtroom when a court proceeding is in session. A flag displayed in a courtroom must measure three by five feet. No alleged failure to cause the flag of the United States to be permanently and prominently displayed in a courtroom supported in whole or in part by the state and under the control of the state shall be the basis of any challenge to such court's authority or jurisdiction or for any appeal of any decision, order, or judgment of such court.

(b) The flags of the United States and of the state of Colorado shall be permanently and prominently displayed in all committee rooms under the control of the general assembly of the state of Colorado.

(c) On and after September 1, 1996, the chief administrative officer of any school supported in whole or in part by the state and under the control of the state shall cause to be displayed permanently and prominently the flag of the United States, as described in chapter 1 of title 4, U.S.C., in each academic classroom when an academic class is in session. A flag displayed in an academic classroom shall measure no less than either twelve by eighteen inches if it is displayed in a frame or two by three feet if it is displayed on a flagstaff.

(3) The chief administrative officer of any school or court facility supported in whole or in part by the state and under the control of the state is hereby authorized to accept donations of flags to be displayed in classrooms or courtrooms pursuant to the provisions of subsection (2) of this section.

(4) (a) The chief administrative officer of any state institution, school, or court facility described in this section shall not permit the display of any depiction or representation of a flag of the United States that is intended for public view and permanently affixed or attached to any part of the building or grounds of said state institution, school, or court facility, and which display does not conform with 4 U.S.C. sec. 7.

(b) Nothing in this subsection (4) shall be construed to preclude the temporary display of any instructional or historical materials or student work product included as part of a lesson not permanently affixed or attached to any part of said building or grounds.

(5) Any flag of the United States displayed pursuant to this section shall be displayed as described in 4 U.S.C. sec. 7.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 769, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-108 as it existed prior to 2010.

27-91-109. Personal display of flags. (1) The right to display reasonably the flag of the United States shall not be infringed with respect to the display:

- (a) On an individual's person;
- (b) Anywhere on an individual's personal or real property; and
- (c) In the buildings or on the grounds of any tax-supported property in the state; except that the state or political subdivision that has jurisdiction over the building or grounds may adopt reasonable rules and regulations regarding the size, number, placement, manner of display, and lighting of the flag, and the location, size, and height of flagpoles.

(2) (a) Notwithstanding any provision of subsection (1) of this section to the contrary, the right with respect to an individual's real property shall be subject to reasonable restrictive covenants or equitable servitudes; except that no such covenant or servitude, nor any owners' association shall prohibit the outdoor display of the flag of the United States by a property owner on that owner's property if the flag is displayed in a manner consistent with chapter 1 of title 4 of the United States Code, as amended.

(b) Notwithstanding any provision of paragraph (a) of this subsection (2) to the contrary, an owners' association, the state, or a political subdivision may adopt reasonable rules and regulations regarding the size, number, placement, manner of display, and lighting of the flag, and the location, size, and height of flagpoles.

(3) For purposes of this section, "display reasonably" shall be presumed to include a display of the flag of the United States that is consistent with chapter 1 of title 4 of the United States Code, as amended.

(4) A right described in subsection (1) of this section is a civil right of free speech and a protected form of expression under the first amendment to the United States constitution and section 10 of article II of the state constitution.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 770, § 2, effective April 29.

Editor's note: This section is similar to former § 27-2-108.5 as it existed prior to 2010.

ARTICLE 92

Institutions - Charges for Patients

Editor's note: This article was added with relocations in 2010 containing provisions of article 12 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-92-101.	Liability.	27-92-106.	Appeal.
27-92-102.	Cost determination.	27-92-107.	Service.
27-92-103.	Extent of liability.	27-92-108.	Certificate - prima facie evi-
27-92-104.	Determination of ability to		dence.
	pay.	27-92-109.	Further actions.
27-92-105.	Effect of determination.		

27-92-101. Liability. (1) When a person is admitted, committed, or transferred to a public institution of this state supervised by the department of human services for the care, support, maintenance, education, or treatment of persons with mental illness, the person, his or her spouse, and his or her parents shall be liable for the costs of his or her care, support, maintenance, and treatment to the extent and in the manner provided in this article. No other relatives of the person shall be liable to any extent for such costs.

(2) The provisions of this article shall apply also to those persons received under the provisions of article 8 of title 16 and sections 16-13-216, 19-2-922, and 19-2-923, C.R.S., but not by way of exclusion.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 771, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-101 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Liability of Counties for Support of Inmates in State Institutions", see 29 Dicta 27 (1952). For article, "Commitment Procedures in Colorado", see 29 Dicta 273 (1952). For comment on State v. Estate of Burnell (165 Colo. 205, 439 P.2d 38 (1969)), appearing below, see 45 Den. L.J. 788 (1968). For article, "Protecting the Mentally Incompetent Child's Trust Interest from State Reimbursement Claims", see 58 Den. L.J. 557 (1981).

Annotator's note. Since § 27-92-101 is similar to § 27-12-101 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Statutory scheme in this article is clear and unambiguous. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

For constitutionality of section, see Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971).

There is no constitutional inequality in requiring those receiving more expensive care to be liable for additional costs through assets which they may have accumulated. State v. Estate of Burnell, 165 Colo. 205, 439 P.2d 38, appeal dismissed per curiam, 393 U.S. 13, 89 S. Ct. 46, 21 L. Ed.2d 13, reh'g denied, 393 U.S. 992, 89 S. Ct. 441, 21 L. Ed.2d 458 (1968).

A mental patient who voluntarily works in a state hospital and is not paid for such services is not unconstitutionally denied equal protection of the laws or subjected to slavery or involuntary servitude. In re Estate of Buzzelle v. Colo. State Hosp., 176 Colo. 554, 491 P.2d 1369 (1971).

This section provides the remedy for collection for maintenance of a mentally ill or deficient pauper from his relatives while an inmate at the state hospital. People ex rel. Zimmerman v. Herder, 122 Colo. 456, 223 P.2d 197 (1950).

This section clearly imposes liability on the estate of a criminally insane person who is committed or transferred to a public institution operated by the state of Colorado for care and maintenance. State v. Estate of Burnell, 165

Colo. 205, 439 P.2d 38, appeal dismissed per curiam, 393 U.S. 13, 89 S. Ct. 46, 21 L. Ed.2d 13, reh'g denied, 393 U.S. 992, 89 S. Ct. 441, 21 L. Ed.2d 458 (1968).

Imposition of liability in derogation of common law. The imposition of liability upon relatives for the costs of care and maintenance of mental incompetents confined in mental institutions is in derogation of the common law. At common law it was the rule that in the absence of express contract or fraud, public authorities could not recover either from the person confined, from his estate, or from those under a common-law duty to support him, the expenses incurred on account of the committed patient. In re Estate of Randall v. Colo. State Hosp., 166 Colo. 1, 441 P.2d 153 (1968).

A statute imposing liability where none previously existed must be strictly construed in favor of the person against whom its provisions are intended to be applied. In re Estate of Randall v. Colo. State Hosp., 166 Colo. 1, 441 P.2d 153 (1968).

Exemptions from claim. The general assembly intended that an incompetent's estate be given the benefit of the same exemptions afforded to a normal judgment debtor. State v. Estate of Butler, 30 Colo. App. 246, 491 P.2d 102 (1971).

The exemption provisions of § 13-54-102 are applicable to the assets in the estate of a mental incompetent, and insurance proceeds in such an estate are exempt from an approved claim of the Colorado state hospital. State v. Estate of Butler, 30 Colo. App. 246, 491 P.2d 102 (1971).

There is no statutory compulsion requiring work, labor, or services by medically adjudicated incompetents whose confinement is not for punishment but rather for treatment. In re Estate of Buzzelle v. Colo. State Hosp., 176 Colo. 554, 491 P.2d 1369 (1971).

This section contains no express language requiring compensation for occupational therapy, nor any language from which an inference necessarily should be drawn that the state should pay a patient for his voluntary services. In re Estate of Buzzelle v. Colo. State Hosp., 176 Colo. 554, 491 P.2d 1369 (1971).

27-92-102. Cost determination. (1) The department of human services shall periodically determine the individual cost for the care, support, maintenance, treatment, and education of the patients of each of the public institutions supervised by the department of human services. In making the determination, it is proper for the department to use averaging methods to the extent that it is not practicable, in the judgment of the executive director of the department of human services, to compute the actual cost for each patient.

(2) With respect to a resident patient who is under the age of twenty-one years, the

department of human services shall deduct from the determined cost an amount equal to the average per capita cost for the education of children with disabilities pursuant to article 20 of title 22, C.R.S.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 771, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-102 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Protecting the Mentally Incompetent Child's Trust Interest from State Reimbursement Claims", see 58 Den. L.J. 557 (1981).

Charges not based on insurance. The charges, i.e., the actual cost of the care, are the

same whether the patient has insurance or not. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977) (decided prior to 2010 amendments to this article).

27-92-103. Extent of liability. (1) The department of human services shall assess against the patient, spouse, or parents made liable by section 27-92-101, or any of them, all or such part of the cost as they are respectively able to pay, but the department of human services shall not assess against the liable persons in the aggregate more than the whole of such cost.

(2) The liability of each parent shall cease when such parent has completed the payments as assessed in this article or upon the patient's eighteenth birthday, whichever event first occurs.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 771, § 2, effective April 29. **L. 2011:** (2) amended, (HB 11-1303), ch. 264, p. 1172, § 83, effective August 10.

Editor's note: This section is similar to former § 27-12-103 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, "Protecting the Mentally Incompetent Child's Trust Interest from State Reimbursement Claims", see 58 Den. L.J. 557 (1981).

Annotator's note. Since § 27-92-103 is similar to § 27-12-103 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Voluntary work not unconstitutional. A mental patient who voluntarily works in a state hospital and is not paid for such services is not unconstitutionally denied equal protection of the laws or subjected to slavery or involuntary servitude. In re *Estate of Buzzelle v. Colo. State Hosp.*, 176 Colo. 554, 491 P.2d 1369 (1971).

Determination and assessment conditions precedent to collection. Under this statutory scheme, the determination of ability to pay made

pursuant to former § 27-12-104 and the assessment made thereon pursuant to this section are conditions precedent to collection. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

For the estate of the deceased to be liable for the care of her daughter, a claim would have to be one that could have been asserted against the deceased in her lifetime. In re *Estate of Randall v. Colo. State Hosp.*, 166 Colo. 1, 441 P.2d 153 (1968).

This section contains no express language requiring compensation for occupational therapy, nor any language from which an inference necessarily should be drawn that the state should pay a patient for his voluntary services. In re *Estate of Buzzelle v. Colo. State Hosp.*, 176 Colo. 554, 491 P.2d 1369 (1971).

27-92-104. Determination of ability to pay. (1) All insurance and other benefits payable for the care, support, maintenance, and treatment of a patient shall be considered available for payment of the cost determined under section 27-92-102.

(2) The department of human services shall determine the ability of a patient and his or her spouse to pay the balance of the cost by consideration of the following factors: Income reportable under Colorado law; the age of the patient and spouse; the number of dependents, their ages, and their mental and physical condition; provision for retirement years; the length of the patient's care or treatment; liabilities; and assets. The determination shall be made according to schedules contained in published rules, adopted in accordance with the provisions of article 4 of title 24, C.R.S.

(3) If it is determined that the patient and his or her spouse are unable to pay the entire cost determined under section 27-92-102 and the length of the patient's care and treatment at a state institution is reasonably anticipated to be less than six months, the department of human services shall determine the parent's ability to pay by consideration of the same factors referred to in subsection (2) of this section, applying each such factor to the parent.

(4) If it is determined that the patient and his or her spouse are unable to pay the entire cost determined under section 27-92-102 and the length of the patient's care and treatment at a state institution is reasonably anticipated to exceed six months, the department of human services shall determine the parent's ability to pay by reference to the parent's net taxable income reportable under Colorado law and to the patient's length of care or treatment. At the request of the parent, the department shall also consider other factors relevant to the interest of avoiding undue hardship to the family unit. Other factors may include the parent's age, provision for retirement years, assets, liabilities, and the number of dependents, their mental and physical condition, and their educational requirements. The determination shall be made according to schedules contained in published rules adopted in accordance with the provisions of article 4 of title 24, C.R.S.

(5) Should any parent not file a Colorado income tax return, the parent's net Colorado taxable income equivalent shall be determined by reference to his or her United States income tax return as though all the income disclosed by that return had been derived from sources within Colorado, and the table of rates shall be applied to the net taxable income equivalent.

(6) Upon the willful failure of any patient, spouse, or parent to furnish to the department of human services, upon request, copies of his or her income tax returns, he or she shall be deemed to have the ability to pay the entire cost determined under this article.

(7) Every agency and department of the state is required to render all reasonable assistance to the executive director of the department of human services in obtaining all information necessary for proper implementation of the purposes of this article. Nothing in this subsection (7) shall be construed to require the department of revenue to produce a copy of any person's income tax return solely upon the request of the department of human services, but the department of revenue shall deliver a copy of any such return upon the request of the taxpayer or his or her duly authorized representative, pursuant to section 39-21-113 (4), C.R.S.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 772, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-104 as it existed prior to 2010.

ANNOTATION

- I. General Consideration.
- II. Insurance.
- III. Determination.
- IV. Amount of Liability.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Protecting the Mentally Incompetent Child's Trust Interest from State Reimbursement Claims", see 58 Den. L.J. 557 (1981).

Annotator's note. Since § 27-92-104 is similar to § 27-12-104 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Ambiguous term construed in favor of insured. Even if an insurance company intended charges to mean other than actual cost, its intent is ambiguously stated, and therefore the term must be construed in favor of the insured. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295

(1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Benefits received by individuals at state mental health hospital from veterans administration and the Colorado old age pension program fall under the term "other benefits payable" in subsection (1). As such, they may be applied to cover costs of care at the hospital. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

II. INSURANCE.

Insurance coverage to be used to reimburse costs. The plain and obvious purpose of subsection (1) is to provide that where insurance coverage exists it shall be used to reimburse the state for the actual cost of the care, support, maintenance, and treatment of the patient. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Subsection (1) makes the consideration of insurance mandatory by the use of the word "shall". State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Insurance is to be considered available for payment of the entire cost before any allowance or remission based on the patient's ability to pay is permitted. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Subsection (1) refers only to the role which insurance proceeds should play in the department of institutions' decision relative to its determination of the ability of the patient or relative to pay. State ex rel. Fort Logan Mental Health Center v. Harwood, 34 Colo. App. 213, 524 P.2d 614 (1974).

III. DETERMINATION.

Liability attaches when determination made. The liability which attaches for accrued costs of maintenance and care in a public institution under former § 27-12-101 becomes a debt upon determination by the department of institutions that the relative is able to pay. If no determination of ability to pay has been made, the amount expended by the state in caring for the incompetent does not accrue and cannot be claimed as a debt against the estate of the deceased relative. People ex rel. Schauer v. Bozaich, 29 Colo. App. 468, 487 P.2d 597 (1971).

Collection of insurance proceeds is not condition precedent to determination of ability to pay. State ex rel. Fort Logan Mental Health Center v. Harwood, 34 Colo. App. 213, 524 P.2d 614 (1974).

Determination and assessment conditions precedent to collection. Under this statutory

scheme, the determination of ability to pay made pursuant to this section and the assessment made thereon pursuant to former § 27-12-103 are conditions precedent to collection. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Failure to comply with and to exhaust statutory remedies under this article precludes later argument on the issues in a collection action. In re estate of Carlson, 749 P.2d 993 (Colo. App. 1987).

Failure to make determination bars collection. In the absence of a determination of ability to pay or an actual assessment, this section does not permit the collection of hospital expenses up to the amount of the insurance benefits payable for such expenses nor may the state maintain an action to recover for the costs of hospital care. State ex rel. Fort Logan Mental Health Center v. Harwood, 34 Colo. App. 213, 524 P.2d 614 (1974).

When the state does not determine the patient's ability to pay the balance, the doctrine of res judicata will bar collection of any balance. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

But does not obviate liability. The fact that liability cannot be asserted until a determination of ability to pay has been made in no way obviates the liability itself. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

Trustee bank is not liable for payments to hospital for care given by hospital to beneficiary where bank did not willfully fail to supply tax returns to hospital for its determination of beneficiary's ability to pay. State v. First Interstate Bank of Denver, 743 P.2d 449 (Colo. App. 1987).

IV. AMOUNT OF LIABILITY.

Liability for actual cost of care. The initial liability is for the actual cost of the care provided, and is incurred as the day-to-day expenditures are made. Schleiger v. State, 193 Colo. 531, 568 P.2d 441 (1977).

Regardless of insurance. The actual cost of the care are the same whether the patient has insurance or not. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

"Charges" are "made" and "incurred" within the meaning of an insurance policy as each day passes while the patient is hospitalized, not when the bill is sent or the assessment made. State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff'd, 193 Colo. 531, 568 P.2d 441 (1977).

When remission from full cost allowed. Only if insurance is not available to pay the full

cost and only if the patient personally is unable to pay the full cost does he get a remission or allowance from the full cost. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), *aff'd*, 193 Colo. 531, 568 P.2d 441 (1977).

State may collect only what patient is able to pay. The initial liability is for the actual cost of the care provided, but the state may collect, when there is no insurance, only that amount which the patient is able to pay. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), *aff'd*, 193 Colo. 531, 568 P.2d 441 (1977).

Or spouse or parents. In those instances where there is no insurance, the state may collect only that portion of the person's liability for the actual cost as the patient, spouse, or parents are able to pay. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), *aff'd*, 193 Colo. 531, 568 P.2d 441 (1977).

The parent is liable for the actual cost of care upon admission. *State v. Schleiger*, 37 Colo. App. 195, 547 P.2d 1295 (1975), *aff'd*, 193 Colo. 531, 568 P.2d 441 (1977).

27-92-105. Effect of determination. A determination of the ability of a patient, spouse, or parent to pay shall remain in effect until a redetermination is made.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 773, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-105 as it existed prior to 2010.

ANNOTATION

Applied in *People ex rel. Schauer v. Bozaich*, 29 Colo. App. 468, 487 P.2d 597 (1971) (decided prior to 2010 amendments to this article).

27-92-106. Appeal. Appeals from the determination of the ability of a patient or relative to pay, as provided in this article, may be taken to any court of record in Colorado having jurisdiction of the patient or his or her spouse or parents liable for payment; but no appeal may be taken until the executive director of the department of human services has ruled upon a written request for a review of the determination. The request shall be made within sixty days after receipt of notification of the determination, and the applicant shall be notified of the decision of the executive director within forty-five days after the receipt of the applicant's request for review.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 773, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-106 as it existed prior to 2010.

27-92-107. Service. Service of any notification, information, or request for information, review, or redetermination, accomplished by certified mail, return receipt requested, or in any manner provided by the Colorado rules of civil procedure, shall be sufficient for all purposes of this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 773, § 2, effective April 29.

Editor's note: This section is similar to former § 27-12-107 as it existed prior to 2010.

27-92-108. Certificate - prima facie evidence. In any action or proceeding to enforce the claims of the state provided for in this article, a certificate by the chief administrative officer of the institution involved or the executive director of the department of human services as to any fact or matter necessary to the establishment of the claim which is a matter of record in the institution or in the department of human services shall constitute prima facie evidence.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 773, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-12-108 as it existed prior to 2010.

- 27-92-109. Further actions.** (1) A patient, spouse, or parent liable by this article who fails to pay the amounts assessed pursuant to this article shall be proceeded against in any manner authorized by law for the collection of sums due and owing to the state of Colorado.
- (2) All property of persons liable pursuant to this article shall be subject to application to claims irrespective of its origin, composition, or source subject to the exemptions set forth in section 13-54-102, C.R.S.
- (3) Claims against responsible relatives in other states may be enforced as claims for support under the provisions of the “Uniform Interstate Family Support Act”, article 5 of title 14, C.R.S.
- (4) In the absence of fraud, the patient, spouse, and parents shall be liable only to the extent of assessments actually made against them respectively in accordance with this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 773, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-12-109 as it existed prior to 2010.

ANNOTATION

Law reviews. For article, “Protecting the Mentally Incompetent Child’s Trust Interest from State Reimbursement Claims”, see 58 Den. L.J. 557 (1981).

Annotator’s note. Since § 27-92-109 is similar to § 27-12-109 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Legislative intent relating to exemptions. The general assembly intended that an incompetent’s estate be given the benefit of the same exemptions afforded to a normal judgment debtor. State v. Estate of Butler, 30 Colo. App. 246, 491 P.2d 102 (1971).

Benefits received by individuals at state mental health hospital from veterans admin-

istration and the Colorado old age pension program may be applied to cover costs of care at the hospital under former § 27-12-104 and therefore are not exempt under this section. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

In the absence of a determination of ability to pay and of an actual assessment, the state may not maintain an action to recover for the costs of hospital care. State ex rel. Fort Logan Mental Health Center v. Harwood, 34 Colo. App. 213, 524 P.2d 614 (1974).

Applied in State v. Schleiger, 37 Colo. App. 195, 547 P.2d 1295 (1975), aff’d, 193 Colo. 531, 568 P.2d 441 (1977).

ARTICLE 93

Colorado Mental Health Institute at Pueblo

Editor’s note: This article was added with relocations in 2010 containing provisions of article 13 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-93-101.	Institute established.		equipment replacement
27-93-102.	Capacity to take property.		fund.
27-93-103.	Employees - publications.	27-93-105.	Alternative uses for institute
27-93-104.	Authorized utilization of medical facilities at institute -		facilities.

27-93-101. Institute established. (1) There is hereby established the Colorado mental health institute at Pueblo for the treatment and cure of persons who may have mental illness from any cause and for other persons in state institutions on an inpatient and outpatient basis and in state programs relating to the treatment of alcoholism and drugs who may require medical care and treatment within the capabilities of the staff and facilities of the institute.

(2) All materials without limitation that contain the former names of the Colorado mental health institute at Fort Logan and the Colorado mental health institute at Pueblo shall be utilized to the maximum extent possible in the ordinary course of business before being replaced.

(3) The Colorado mental health institute at Pueblo is authorized to contract, pursuant to the federal government procurement process, with federal agencies to provide psychiatric, medical, and surgical services at the institute to persons under the care of or in the custody or control of an agency of the federal government, so long as the provision of such services does not exceed the capabilities of the staff and facilities of the institute and does not preempt services to state patients.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 774, § 2, effective April 29.

Editor's note: This section is similar to former § 27-13-101 as it existed prior to 2010.

27-93-102. Capacity to take property. The Colorado mental health institute at Pueblo is authorized to receive gifts, legacies, devises, and conveyances of property, real or personal, that may be made, given, or granted to or for the Colorado mental health institute at Pueblo. The chief officer of the institute, with the approval of the governor, shall make disposition of such gifts or property as may be for the best interest of said Colorado mental health institute at Pueblo.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 774, § 2, effective April 29.

Editor's note: This section is similar to former § 27-13-102 as it existed prior to 2010.

27-93-103. Employees - publications. (1) The head of the administrative division overseeing the Colorado mental health institute at Pueblo shall appoint or employ, pursuant to section 13 of article XII of the state constitution, such administrators, physicians, nurses, attendants, and additional employees as may be necessary for the proper conduct of said institute. The head of the administrative division may contract with the board of regents of the university of Colorado health sciences center or any other governing board of a state-supported institution of higher education for the provision of services by physicians and other health care practitioners when deemed necessary for the proper conduct of the institute. During the performance of any duties by the physicians and other health care practitioners for the department of human services, the physicians and other health care practitioners are "public employees" as defined in section 24-10-103 (4), C.R.S., and the limitation of section 24-30-1517 (2), C.R.S., shall not apply.

(2) Publications of the institute circulated in quantity outside the institute shall be subject to the approval and control of the executive director of the department of human services.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 774, § 2, effective April 29.

Editor's note: This section is similar to former § 27-13-103 as it existed prior to 2010.

27-93-104. Authorized utilization of medical facilities at institute - equipment replacement fund. (1) A person committed to the custody of or cared for in the

department of human services or the department of corrections who requires medical care and treatment that can be advantageously treated by psychiatric, medical, or surgical care available at the Colorado mental health institute at Pueblo may be treated at the institute. Charges for patient care and treatment shall be made in the manner provided in article 92 of this title. A specific appropriation shall be made annually for the general medical division of the Colorado mental health institute at Pueblo, based upon projections of the total patient load and associated costs from all institutions, and the department of human services shall determine at least annually the per diem expenses and the actual utilization of the general medical division by each institution, including other divisions of the Colorado mental health institute at Pueblo.

(2) A person under the care of or in the custody or control of an agency of the federal government whose psychiatric, medical, or surgical needs could be advantageously treated at the Colorado mental health institute at Pueblo may be treated at the institute pursuant to a contract between the institute and the agency of the federal government.

(3) A contract entered into pursuant to subsection (2) of this section shall cover the full direct and indirect costs of services as determined by generally accepted accounting principles and shall include a fee to cover the need for replacement of existing equipment which would occur because of this additional use. All fees collected pursuant to this subsection (3) shall be collected by the Colorado mental health institute at Pueblo and shall be transmitted to the state treasurer, who shall credit the same to the equipment replacement fund, which fund is hereby created. Moneys in the equipment replacement fund shall be appropriated by the general assembly on an annual basis to the department of human services for replacement of existing equipment made necessary pursuant to this section.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 774, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-13-109 as it existed prior to 2010.

27-93-105. Alternative uses for institute facilities. The department of human services shall determine the existence of resources at the Colorado mental health institute at Pueblo that are in excess of the needs of the primary purpose of the institute and may make available to the regents of the university of Colorado, on mutually agreeable terms, a maximum of ten beds at the institute for the purpose of teaching students in the family practice medical training program conducted by and under the control of the regents. The resources shall be a supplement to any existing health care resources and academic facilities in the region.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 775, § 2, effective April 29.

Editor’s note: This section is similar to former § 27-13-110 as it existed prior to 2010.

ARTICLE 94

Colorado Mental Health Institute at Fort Logan

Editor’s note: This article was added with relocations in 2010 containing provisions of article 15 of this title. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

27-94-101.	Legislative declaration.	27-94-104.	Capacity to take property.
27-94-102.	Establishment of mental health center.	27-94-105.	Admissions to center - transfers - releases.
27-94-103.	Employees - publications.		

27-94-101. Legislative declaration. In order to provide a program to promote mental health in the state of Colorado, a mental health center is established as provided in this article.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 775, § 2, effective April 29.

Editor's note: This section is similar to former § 27-15-101 as it existed prior to 2010.

27-94-102. Establishment of mental health center. (1) There is hereby established at the site of Fort Logan, Denver county, Colorado, a mental health center to be known as the Colorado mental health institute at Fort Logan, referred to in this article as the "center". The center shall be under the general supervision and control of the department of human services.

(2) All materials without limitation that contain the former names of the Colorado mental health institute at Fort Logan and the Colorado mental health institute at Pueblo shall be utilized to the maximum extent possible in the ordinary course of business before being replaced.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 775, § 2, effective April 29.

Editor's note: This section is similar to former § 27-15-102 as it existed prior to 2010.

27-94-103. Employees - publications. (1) The head of the administrative division overseeing the center shall appoint or employ, pursuant to section 13 of article XII of the state constitution, administrators, physicians, nurses, attendants, and additional employees as necessary for the proper conduct of the center. The head of the administrative division may contract with the board of regents of the university of Colorado health sciences center for the provision of services by physicians when deemed necessary for the proper conduct of the center, and during the performance of any duties by the physicians for the department of human services, the physicians are "public employees" as defined in section 24-10-103 (4), C.R.S., and the limitation of section 24-30-1517 (2), C.R.S., shall not apply.

(2) Publications of the center circulated in quantity outside the center shall be subject to the approval and control of the executive director of the department of human services.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 776, § 2, effective April 29.

Editor's note: This section is similar to former § 27-15-103 as it existed prior to 2010.

27-94-104. Capacity to take property. The center is authorized to receive gifts, legacies, devises, and conveyances of property, real and personal, that may be granted or given to the center. The executive director of the department of human services, with the approval of the governor, shall make disposition of such property as may be for the best interest of said center.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 776, § 2, effective April 29.

Editor's note: This section is similar to former § 27-15-104 as it existed prior to 2010.

27-94-105. Admissions to center - transfers - releases. (1) A person who by law is committed to the department of human services for placement in a state hospital may be committed to or placed in the center upon order of a court of competent jurisdiction, except

those persons committed to the Colorado mental health institute at Pueblo pursuant to a judicial determination of not guilty by reason of insanity and those persons committed under section 16-8-106 (1), C.R.S., relating to commitments for observation and examination.

(2) A person placed at the center may be transferred to the Colorado mental health institute at Pueblo, the Wheat Ridge regional center, the Grand Junction regional center, the Pueblo regional center, the Mount View school, or the Lookout Mountain school in accordance with law.

(3) A person placed at the center may be released under such terms and conditions as would entitle him or her to his or her release from the Colorado mental health institute at Pueblo.

Source: L. 2010: Entire article added with relocations, (SB 10-175), ch. 188, p. 776, § 2, effective April 29.

Editor's note: This section is similar to former § 27-15-105 as it existed prior to 2010.

TITLE 28

MILITARY AND VETERANS

PLATE 30

ALPHABET AND CIPHERS

TITLE 28

MILITARY AND VETERANS

EMERGENCY PREPAREDNESS

- Art. 1. Civil Air Patrol, 28-1-101 to 28-1-106.
Art. 2. Disaster Emergency Services (Repealed).

MILITARY

- Art. 3. National Guard, 28-3-101 to 28-3-1704.
Art. 3.1. Colorado Code of Military Justice, 28-3.1-101 to 28-3.1-607.
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EMERGENCY PREPAREDNESS

ARTICLE 1

Civil Air Patrol

- | | | | |
|-----------|---|-----------|---------------------------------------|
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| 28-1-102. | Definitions. | 28-1-105. | Private employees - leave of absence. |
| 28-1-103. | Civil air patrol - discrimination prohibited. | 28-1-106. | Employer's noncompliance - actions. |

28-1-101. Colorado division of civil air patrol - publication - benefits.

(1) (a) There is hereby created and established within the department of military and veterans affairs the Colorado division of civil air patrol. The mission of the division shall be to provide support for and facilitate the operation of the civil air patrol, Colorado wing, which shall be under the command and control of the duly appointed commanding officer of such wing. On and after July 1, 2004, the head of the division shall be appointed by the adjutant general acting on behalf of the governor and in consultation with the duly appointed commanding officer of the civil air patrol, Colorado wing. Warrants shall be drawn against appropriations made for the division upon vouchers issued and signed by the head of the division.

(b) All active officers in the civil air patrol, Colorado wing, including the duly appointed commanding officer of the civil air patrol, Colorado wing, shall be eligible to be appointed as the head of the Colorado division of civil air patrol by the adjutant general.

(2) Repealed.

(3) Publications of the division circulated in quantity outside the executive branch, to be paid for in whole or in part out of state-appropriated funds, shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(4) Members of the civil air patrol, Colorado wing, shall be eligible for benefits under the "Workers' Compensation Act of Colorado". Premiums for such coverage shall be included in annual appropriations by the general assembly.

Source: L. 45: p. 253, §§ 1-3. CSA: C. 17, § 34. CRS 53: § 5-2-1. C.R.S. 1963: § 5-2-1. L. 64: p. 122, § 20. L. 68: p. 136, § 169. L. 78: (4) added, p. 279, § 5, effective May 5. L. 83: (2) and (3) amended, p. 840, § 62, effective July 1. L. 90: (4) amended, p. 571, § 58, effective July 1. L. 96: (2) repealed, p. 1272, § 205, effective August 7. L. 2002: (1) amended, p. 360, § 20, effective July 1. L. 2004: (1) amended, p. 1882, § 1, effective June 4.

Cross references: (1) For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 121, Session Laws of Colorado 2002.

(2) For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of title 8.

28-1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Civil air patrol mission" means an actual emergency operational mission of the Colorado wing of civil air patrol that has been duly authorized under civil air patrol regulations, including, but not limited to, through the United States Air Force, the governor's office, or other political subdivision of the state that has the authority to authorize an emergency operational mission of the Colorado wing of the civil air patrol.

(2) "Member" means a member of the civil air patrol, Colorado wing.

(3) "Private employer" means an employer that is not the state or any political subdivision, municipal corporation, or other public agency of the state.

Source: L. 2008: Entire section added, p. 608, § 1, effective August 5.

28-1-103. Civil air patrol - discrimination prohibited. An employer shall not discriminate against or discharge from employment any member of the civil air patrol because of such membership and shall not hinder or prevent a member from performing during any civil air patrol mission for which a member is entitled to leave pursuant to this article.

Source: L. 2008: Entire section added, p. 608, § 1, effective August 5.

28-1-104. Public employees - leave of absence. (1) Any member who is an officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state and who is called to duty for a civil air patrol mission is entitled to a leave of absence from the member's office or employment for the time when the member is engaged in the civil air patrol mission without loss of pay, seniority, status, efficiency rating, vacation, sick leave, or other benefits. The leave without loss of pay that is allowed pursuant to this section shall not exceed a total of fifteen work days in the leave year established by the employer; except that such leave without loss of pay shall be allowed only if the required civil air patrol service is satisfactorily performed, which shall be presumed unless the contrary is established.

(2) The leave allowed pursuant to subsection (1) of this section shall be allowed only if the member returns to his or her public position the next scheduled work day after being relieved from service for the civil air patrol mission; except that leave shall be allowed pursuant to subsection (1) of this section if the member is unable to return to work due to injury or circumstances beyond the member's control and the member notifies the employer as soon as practicable, but prior to the next scheduled work day.

(3) A state agency or any political subdivision, municipal corporation, or other public agency of the state may hire a temporary employee to fill a vacancy created by a leave of absence allowed pursuant to subsection (1) of this section.

(4) Upon returning from a leave of absence allowed pursuant to this section, a member is entitled to return to the same position and classification held by the member before the leave of absence for the civil air patrol mission or to the position, including the geographic location of the position, and classification that the member would have been entitled to if the member did not take a leave of absence for the civil air patrol mission.

(5) A member who is an officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state, receiving a leave of absence pursuant to this section and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all of the rights accrued up to the time of taking the leave and shall have all rights subsequently accruing under such system as if the member did not take the leave. Any increase in the amount of money benefits accruing with respect to the time of the leave is dependent upon the payment of any contributions or assessments, and the right to the increase is dependent upon the payment of contributions or assessments within a reasonable time after the termination of the leave and upon such terms as the authorities in charge of the system may prescribe.

Source: L. 2008: Entire section added, p. 609, § 1, effective August 5. **L. 2009:** (1) and (2) amended, (HB 09-1315), ch. 312, p. 1694, § 3, effective August 5.

28-1-105. Private employees - leave of absence. (1) Any member who is employed by a private employer and who is called to duty for a civil air patrol mission is entitled to a leave of absence from the member's private employment, other than employment of a temporary nature, for the time when the member is engaged in the civil air patrol mission. The leave allowed pursuant to this section shall not exceed a total of fifteen work days in any calendar year, and the leave shall be allowed only if the member gives evidence to the employer of the satisfactory completion of the civil air patrol service.

(2) The period of absence allowed pursuant to this section shall be construed as an absence with leave and without pay and shall in no way affect the member's rights to vacation, sick leave, bonus, advancement, or other employment benefits or advantages relating to and normally to be expected for the member's particular employment.

(3) The leave allowed pursuant to subsection (1) of this section shall be allowed only if the member returns to his or her private employment as soon as practicable after being relieved from service for the civil air patrol mission.

(4) The private employer of a member who takes leave from the member's employment in order to engage in a civil air patrol mission shall, upon the member's completion of the mission, restore the member to the position the member held prior to the leave of absence or to a similar position.

Source: L. 2008: Entire section added, p. 609, § 1, effective August 5; (3) amended, p. 1912, § 120, effective August 5.

28-1-106. Employer's noncompliance - actions. If an employer violates any provision of this article, the aggrieved member may bring a civil action for damages or equitable relief or both. In any such civil action, the court shall award reasonable attorney fees and costs to the prevailing party.

Source: L. 2008: Entire section added, p. 610, § 1, effective August 5.

ARTICLE 2

Disaster Emergency Services

28-2-101 to 28-2-601. (Repealed)

Source: L. 83: Entire article repealed, p. 971, § 28, effective July 1, 1984.

Editor's note: This article was numbered as article 1 of chapter 24, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to emergency management, see part 7 of article 33.5 of title 24.

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PART 1

GENERAL AND ADMINISTRATIVE

- 28-3-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) "Active service" means full-time service on behalf of the state when ordered by competent authority.
 - (2) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States.
 - (3) "Board" means the Colorado board of veterans affairs.
 - (4) "County veterans service officer" means any person appointed to serve as such pursuant to section 28-5-801.
 - (5) "Department" means the department of military and veterans affairs created and existing pursuant to section 24-1-127, C.R.S.
 - (6) "Director" means the director of the division of veterans affairs.
 - (7) "Division" or "division of veterans affairs" means the division of veterans affairs created and existing within the department of military and veterans affairs.
 - (8) "In the service of the United States" and "not in the service of the United States" mean the same as such terms are used in the "National Defense Act of Congress", approved June 3, 1916, and amendments thereto.
 - (9) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.
 - (10) "Military forces" includes the federally recognized National Guard and any other organizations or components of the organized militia as may be created by the governor pursuant to federal or state law.
 - (11) "Military service" means service in any of the armed forces of the state of Colorado or the United States.
 - (12) "National Guard" includes the Army National Guard and the Air National Guard.
 - (13) "On duty" includes periods of drill and such other training and service as may be required under state or federal law, regulations, or orders.
 - (13.5) "Saboteur" means a person who intentionally destroys, damages, moves, or interferes with any property with reasonable grounds to believe that the act will interfere with the preparation of the United States or any state for defense or for war or with the prosecution of war by the United States.

(13.7) “Terrorist” means a person who has engaged in, or is suspected of engaging in, acts of terrorism, as that term is defined in 18 U.S.C. sec. 3077 (1), as amended.

(14) “Trust fund” means the Colorado state veterans trust fund created in section 28-5-709.

(15) “Veteran” means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

Source: L. 55: p. 606, § 1. CRS 53: § 94-9-1. C.R.S. 1963: § 94-1-1. L. 2002: (13.5) and (13.7) added, p. 584, § 1, effective May 24; entire section R&RE, p. 343, § 2, effective July 1.

Editor’s note: Subsections (13.5) and (13.7) were originally enacted as (7) and (8), respectively, in Senate Bill 02-099 but have been renumbered on revision and harmonized with amendments to this section by House Bill 02-1413.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, “A Comprehensive Study of the Use of Military Troops in Civil Disorders with Proposals for Legislative Reform”, see 43 U. Colo. L. Rev. 399 (1972).

28-3-102. Persons subject to military duty. (Repealed)

Source: L. 55: p. 606, § 2. CRS 53: § 94-9-2. C.R.S. 1963: § 94-1-2. L. 75: (1)(f) amended, p. 932, § 50, effective July 1. L. 2002: Entire section repealed, p. 584, § 2, effective May 24.

Cross references: For current provisions concerning persons subject to military duty, see § 28-4-103.5.

28-3-103. General provisions. (1) In case the United States is at war or in case of any other emergency declared by the president or the congress of the United States or by the governor or the general assembly of this state, any organization, unit, or detachment of the military forces of this state, by direction of the governor and upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces beyond the border of this state into another state until they are apprehended or captured by such organization, unit, or detachment or until the military or police forces of such other state or the forces of the United States have had a reasonable opportunity to pick up the pursuit or to apprehend or capture the persons pursued, if such other state has given authority by law for such pursuit by such forces of this state. Except as provided by law, any person who is apprehended or captured in another state by any of the forces of this state shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he or she is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

(2) Any military forces of another state who are in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued, and the pursuing forces may arrest or capture such persons within this state while in fresh pursuit. Any such persons who are captured or arrested by the military forces of such other state while in this state shall, without unnecessary delay, be surrendered to the military or police forces of this state to be dealt with according to law.

(3) This section shall not be construed so as to make unlawful any arrest in this state

which would otherwise be lawful nor to repeal or prevent the application of any of the provisions of sections 16-3-104 and 16-3-106, C.R.S.

(4) The intent of this article and all acts of the state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all acts of the state shall be construed to effect this purpose, and anything to the contrary shall be held null and void so long as the subject matter has been acted on by the United States, and, upon any subject not acted upon with reference to these matters by United States authority, any act of the state shall be in full force and effect. Nothing in this subsection (4) shall be construed to limit in any way the application of this article to the discipline of the Colorado National Guard when on "active service" or "on duty" as defined in section 28-3-101.

(5) All matters relating to the organization, discipline, and government of the military forces not otherwise provided for in this article shall be decided by the custom, regulations, and usage of the appropriate service of the armed forces of the United States.

(6) The military forces of the state of Colorado shall be divided into two classes - the organized militia and the unorganized militia.

(7) The organized militia shall consist of the following:

- (a) The federally recognized National Guard; and
- (b) The state defense force.

(8) The unorganized militia shall consist of all other members of the military forces.

(9) Consistent with federal law, women may enlist in the state military forces in the same manner as men and shall be appointed by the governor in the same manner as men. While so serving in the state military forces, women shall have the same status as male members of the state military forces, consistent with federal law.

Source: L. 55: p. 607, § 3. CRS 53: § 94-9-3. C.R.S. 1963: § 94-1-3. L. 69: p. 868, § 1. L. 71: p. 1047, § 9. L. 86: (7)(b) amended, p. 1016, § 8, effective May 3. L. 95: (9) amended, p. 319, § 1, effective April 21. L. 2002: (1), (2), and (7) amended and (9) R&RE, pp. 584, 585, §§ 3, 4, effective May 24.

ANNOTATION

Governor may not be interfered with.

When the governor decides that an insurrection exists which necessitates the calling out of the militia, his action cannot be interfered with so long as he does not exceed his authorized power. In re Moyer, 35 Colo. 159, 85 P. 190 (1905);

Moyer v. Peabody, 148 F. 870 (D. Colo. 1906), aff'd, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

The Colorado Air National Guard is a state agency. Williams v. Colo. Air Nat'l Guard, 821 P.2d 922 (Colo. App. 1991).

28-3-104. Commander in chief - staff. The governor shall be the commander in chief of the military forces except so much thereof as may be in the actual service of the United States and may employ the same for the defense or relief of the state, the enforcement of its laws, the protection of life and property therein, and the implementation of the Emergency Management Assistance Compact; for service in a national special security event or in situations involving imminent danger of emergency or disaster; and for the training of the military forces for all appropriate state missions. He or she shall make and publish regulations not inconsistent with law and enforce the provisions of this article. He or she may appoint a staff, consisting of an adjutant general as chief of staff and such other officers as he or she deems necessary if all such officers are federally recognized officers in their respective ranks in the National Guard of the state.

Source: L. 55: p. 609, § 4. CRS 53: § 94-9-4. C.R.S. 1963: § 94-1-4. L. 2002: Entire section amended, pp. 585, 593, §§ 5, 27, effective May 24. L. 2009: Entire section amended, (HB 09-1325), ch. 315, p. 1702, § 1, effective May 21.

Editor's note: Amendments to this section by sections 5 and 27 of Senate Bill 02-099 were harmonized.

Cross references: For the “Emergency Management Assistance Compact”, see part 29 of article 60 of title 24.

28-3-105. Adjutant general - assistants. (1) There shall be an adjutant general of the state who shall be appointed by the governor, with the advice and consent of the senate, who shall be a staff officer, who at the time of appointment shall be a commissioned officer of the National Guard of this state with not fewer than ten years’ military service in the armed forces of this state or of the United States at least five of which have been commissioned service in the Colorado National Guard, and who has attained the grade of lieutenant colonel or a higher grade with federal recognition in such grade at least one year prior to his or her appointment as adjutant general. The adjutant general shall serve at the pleasure of the governor.

(2) The adjutant general shall be appointed to the rank of brigadier general or to such higher grade or rank as he or she may be federally recognized in.

(3) The adjutant general shall receive as compensation such salary as the governor by order may prescribe, but such salary shall not exceed the pay and allowances as provided by law for an officer of similar rank and length of service in the regular Army or regular Air Force of the United States.

(4) The adjutant general may appoint an assistant adjutant general for Army, an assistant adjutant general for air, and an assistant adjutant general for space. The adjutant general may appoint other assistant adjutant generals that may be authorized by the federal National Guard bureau or as authorized by the governor. In addition, the adjutant general may appoint any necessary administrative and clerical assistants.

(5) No adverse personnel action shall be taken against an officer or enlisted member of the military forces as a consequence of communicating with any member of the general assembly.

Source: L. 55: p. 609, § 5. CRS 53: § 94-9-5. C.R.S. 1963: § 94-1-5. L. 69: p. 868, § 2. L. 71: p. 1045, § 2. L. 95: (1) amended and (5) added, p. 319, § 2, effective April 21. L. 2002: (1), (2), and (4) amended, p. 594, § 28, effective May 24. L. 2003: (4) amended, p. 1907, § 1, effective August 6.

ANNOTATION

General assembly may fix qualifications and tenure. The general assembly has plenary power, and there are no constitutional prohibitions which prevent it fixing the qualifications and tenure of the adjutant general. *People ex rel. Boatright v. Newlon*, 77 Colo. 516, 238 P. 44 (1925).

Appointment of adjutant general is itself an assignment to duty, and thereafter, the appointee is “on duty by order of the governor”. *MacGinnis v. Newlon*, 82 Colo. 228, 257 P. 1085 (1927).

28-3-106. Powers and duties of adjutant general. (1) The adjutant general has the following powers and duties:

(a) The adjutant general shall be the chief of staff to the commander in chief and the administrative head of the department of military and veterans affairs. Whenever any law of this state refers to the military department, said law shall be construed as referring to the department of military and veterans affairs.

(b) He or she shall have custody of all military records, correspondence, and other military documents. He or she shall be the medium of military correspondence with the governor and perform all other duties pertaining to his or her office prescribed by law.

(c) The adjutant general shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor and the state, veterans, and military affairs committees of the house of representatives and the senate for the efficient discharge of all responsibilities assigned by law or directive to the adjutant general.

(d) He or she shall make and transmit to the federal government such reports and returns as are required by the laws of the United States.

(e) He or she shall, when necessary and pursuant to the provisions of section 24-1-136, C.R.S., cause the military code, orders, and regulations of the state to be reproduced and distributed to the commissioned officers and the several organizations of the National Guard.

(f) He or she shall cause to be prepared and issued all necessary books, blanks, and notices required to carry into full effect the provisions of the military code. All such books and blanks are the property of the state.

(g) The seal of office of the adjutant general shall contain the coat of arms of the state with the words added thereto "State of Colorado, Adjutant General's Office", and said seal shall be delivered by him or her to his or her successor. All orders issued from his or her office shall be authenticated with said seal. The adjutant general shall attest to all commissions issued to officers of the military forces.

(h) He or she shall superintend the preparation of all returns and reports required by the United States from the state on military matters.

(i) In the absence of the adjutant general or temporary inability to perform his or her duties as adjutant general, he or she shall appoint, with the consent of the governor, an officer of the National Guard to perform the duties prescribed for the adjutant general. Should the adjutant general be absent or unable to perform his or her duties for a period of six months or more, it shall be considered cause to justify his or her removal. Removal under this paragraph (i) shall be at the sole discretion of the governor.

(j) He or she shall prescribe such regulations not inconsistent with law as will increase the discipline and efficiency and will preserve and protect the property of the military forces of the state of Colorado. These regulations, as prepared by the adjutant general and approved by the governor, shall be published in orders, and the governor, when in his or her judgment it is necessary, may order the adjutant general to revise and amend these regulations. The regulations required by this paragraph (j) need not comply with the provisions of article 4 of title 24, C.R.S.

(k) He or she shall submit a budget respecting the military forces for the ensuing fiscal year for the approval of the controller, and the total of the budget for such period of time shall not be exceeded.

(l) He or she shall keep the papers, volumes, and records of the department in an office provided by the state and shall keep such accounts of activities and expenditures as are necessary and required.

(m) He or she shall attend to the safekeeping and repairing of the ordnance, arms, accouterments, equipment, and all other military property belonging to the state or issued to it by the United States. All military property of the state which, after proper inspection, is found unsuitable for the use of the state, under the direction of the governor, shall be disposed of by the adjutant general at public auction or by inviting bids after suitable advertisement of the sale daily for ten days in at least one newspaper published in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor or, with the approval of the governor, may be turned over to any other department, board, or commission of the state government by which it can be used. Such department, board, or commission of the state government shall reimburse the military fund for the reasonable value of the property so received. He or she shall bid on the property or suspend the sale when in his or her opinion better prices may or should be obtained. He or she shall from time to time render to the governor a just and true account of the sales made by him or her and shall deposit the proceeds of the same in the military fund.

(n) He or she shall not issue or cause to be issued military property to persons or organizations other than those belonging to the National Guard, except in cases of emergency and then only on written approval of the governor.

(o) All purchases, with the exception of emergency purchases, shall be made through the executive director of the department of personnel in the manner provided by law. All property purchased under the authority granted shall be inspected by an inspector or an officer detailed for that purpose by the adjutant general, and no payment shall be made therefor until it appears by the certificate of such officer that such property is of the kind and

quality specified in such agreement or contract. In case of emergency, the governor may suspend the operation of this paragraph (o) and direct the adjutant general in writing to purchase such military property as may be required in the open market. The governor shall report such actions with the reasons therefor and statement of the property purchased and the prices paid therefor to the general assembly at its next session. All payments shall be made by voucher drawn upon the military fund of the state upon such form as may be provided by the controller of the state of Colorado. Each voucher shall show the attestation of the adjutant general that it is within the budget as approved by the governor.

(p) He or she shall employ such clerks, laborers, and other force as may be required for his or her office, other departments, armories, and properties of the National Guard, and, in all cases of employment under this provision, a preference shall be extended to members of the National Guard. The pay of such clerks and other force shall be determined and fixed by the adjutant general with the approval of the governor and consistent with the pay for equivalent positions under the state personnel system. In case of emergency or when authorized by the governor, he or she may employ such additional temporary assistants as are necessary, to be paid from the amounts appropriated for the maintenance of the military forces.

(q) The adjutant general shall have charge of the campgrounds and military reservations of the state and shall be responsible for the protection and safety thereof, and he or she shall promulgate regulations for the maintenance of order thereon, for the enforcement of traffic rules, and for all other lawful regulations as may be ordered for the operation, care, and preservation of existing facilities and installations on all state military reservations. He or she shall keep in repair all state buildings and other improvements thereon. He or she may make such sound improvements thereon as the good of the service requires.

(r) The adjutant general, by and with the advice and approval of the governor, is authorized to rent, hire, purchase, take the conveyance of, and hold in trust for the use of the state of Colorado such buildings, lands, tenements, and appurtenances thereof as may be from time to time deemed necessary for use by the National Guard. All such expenditures shall be paid out of the military fund, but all titles shall be taken in the name of the governor of the state of Colorado for the use of the National Guard. Prior to acquiring any real property pursuant to the provisions of this paragraph (r), the adjutant general shall submit a report to the capital development committee which describes the anticipated use of such real property, the maintenance costs related to such real property, the current value of such real property, any conditions or limitations which may restrict the use of such real property, and any potential liability to the state which could result from acquiring such real property. The capital development committee shall review any such report which is submitted to the capital development committee and shall provide recommendations to the adjutant general concerning the proposed real property acquisition within thirty days after the date of receipt of such report. The adjutant general shall not complete any such real property acquisition without considering any recommendations of the capital development committee which are provided within such thirty-day period.

(s) (I) If, in the judgment of the adjutant general, any real estate which has been acquired for military purposes is unsuitable for military purposes, the adjutant general, by and with the approval of the governor, in writing, has authority to sell, trade, or otherwise dispose of such real estate, but, except as otherwise provided by subparagraph (II) of this paragraph (s), such real estate shall not be disposed of for less than its appraised value. The appraised value of such real estate shall be determined by an appraiser who is registered, licensed, or certificated pursuant to part 7 of article 61 of title 12, C.R.S., and who is selected by the adjutant general from a list of three qualified individuals submitted to the adjutant general by the department. Appraisers shall be selected for the list, and their fees shall be negotiated in accordance with the standards established by part 14 of article 30 of title 24, C.R.S. The adjutant general, by and with the advice and approval of the governor, is authorized to lease any property belonging to the department when it is not needed for the immediate use of the department. All conveyances which are required for the purpose of this section shall be executed by the governor under the seal of the state, and the proceeds of all sales, trades, or other disposition shall be placed in an account to be invested by the state treasurer as provided in section 24-36-113, C.R.S. Any interest earned on the

investment or deposit of such proceeds shall remain in such account and shall not be credited to the general fund or any other fund of the state. Said proceeds and any interest thereon shall be disbursed by authority of the adjutant general, subject to appropriation by the general assembly, only for the construction, repair, improvement, acquisition, or costs of acquisition or sale of armories throughout the state. Costs of acquisition or sale shall include but need not be limited to appraisals, site surveys, environmental surveys, title work, property inspections, closing costs, legal fees, real estate fees, site preparation, or utility studies. Prior to disposing of any real property pursuant to the provisions of this paragraph (s), the adjutant general shall submit a report to the capital development committee which describes such real property, the maintenance costs related to such real property, the current value of such real property, any conditions or limitations which may restrict the use of such real property, and the terms of the proposed disposition of such real property. The capital development committee shall review any such report which is submitted to the capital development committee and shall provide recommendations to the adjutant general concerning the proposed real property disposition within thirty days after the date of receipt of such report. The adjutant general shall not complete any such real property disposition without considering any recommendations of the capital development committee which are provided within such thirty-day period.

(II) The adjutant general may dispose of real estate acquired but unsuitable for military purposes for less than its appraised value when the disposition is to an agency of state government. The adjutant general shall not be required to have an appraisal performed in order to complete such disposition. In the event an offer has been made to purchase such real estate for more than its appraised value, prior to any disposition the adjutant general shall give due consideration to the terms of the offer and to any cost savings to the state which would result from a transfer of such real estate to a state agency.

(t) Repealed.

(u) He or she shall prescribe the rules and regulations described in section 23-5-111.4 (7), C.R.S.

(v) The adjutant general shall ensure that the department complies with the requirements of section 24-1-136.5, C.R.S., concerning the preparation of operational master plans, facilities master plans, and facilities program plans for the department.

(w) Repealed.

(x) The adjutant general is authorized to accept gifts, grants, or donations of any kind from any private source or from any governmental unit in order to carry out the functions and duties set forth in this title subject to the conditions upon which the gifts, grants, or donations are made; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the use or expenditure thereof in a manner contrary to law or require expenditures from the general fund unless such expenditures are approved by the general assembly.

(y) The adjutant general may make available for public or private use any distance learning audio and video facilities located within the state. Such public or private use shall be subject to reasonable fees for the costs, including repair, replacement, and salaries involved in the use of the facilities, as well as maintenance and operation of the facilities and equipment.

Source: L. 55: p. 610, § 6. CRS 53: § 94-9-6. C.R.S. 1963: § 94-1-6. L. 64: p. 157, § 104. L. 67: p. 78, § 1. L. 68: p. 136, § 168. L. 81: (1)(o) amended, p. 1296, § 37, effective January 1, 1982. L. 83: (1)(c) and (1)(e) amended, p. 840, § 64, effective July 1. L. 86: (1)(s) amended and (1)(t) repealed, pp. 1014, 1018, §§1, 18, effective May 3. L. 91: (1)(r) amended, p. 1375, § 1, effective April 1; (1)(u) added, p. 549, § 3, effective May 18. L. 94: (1)(s) amended, p. 24, § 1, effective March 2; (1)(v) added, p. 566, § 15, effective April 6; (1)(s) amended, p. 1617, § 1, effective May 31. L. 96: (1)(o) amended, p. 1542, § 133, effective June 1. L. 2001: (1)(c) amended, p. 1178, § 10, effective August 8. L. 2002: (1)(b), (1)(d) to (1)(n), (1)(p), (1)(q), and (1)(u) amended, pp. 594, 586, §§ 29, 7, effective May 24; (1)(a) and (1)(s)(I) amended and (1)(w) added, p. 360, § 21, effective July 1. L. 2003: (1)(c) and (1)(w)(I) amended, p. 2012, § 104, effective May 22; (1)(x) and (1)(y) added, p. 1907, § 2, effective August 6. L. 2005: (1)(s)(I) amended, p. 661, § 1, effective May 27.

Editor's note: Subsection (1)(w)(II) provided for the repeal of subsection (1)(w), effective January 1, 2004. (See L. 2002, p. 360.)

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (1)(s)(I) and enacting subsection (1)(w), see section 1 of chapter 121, Session Laws of Colorado 2002.

28-3-107. Department of military and veterans affairs fund - creation. Any gifts, grants, and donations accepted by the adjutant general pursuant to section 28-3-106 (1) (x) shall be transmitted to the state treasurer, who shall credit the same to the department of military and veterans affairs fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be invested by the state treasurer as provided in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert or be credited or transferred to the general fund or be transferred to any other fund. Any interest or income derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be credited to the general fund. Moneys in the fund shall be continuously appropriated to the department for use by the adjutant general to carry out the functions and duties set forth in this title.

Source: L. 2003: Entire section added, p. 1908, § 3, effective August 6.

28-3-108. Distance learning cash fund - creation. There is hereby created in the state treasury the distance learning cash fund, referred to in this section as the "fund", which shall consist of the cash fees generated by the public and private use of distance learning facilities pursuant to section 28-3-106 (1) (y). The moneys in the fund shall be invested by the state treasurer as provided in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert or be credited or transferred to the general fund or be transferred to any other fund. Any interest or income derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be credited to the general fund. The moneys in the fund shall be continuously appropriated and shall be used to defray the costs associated with operating the distance learning facilities and equipment. Such costs shall include, but need not be limited to, repair, replacement, and salaries involved in the use of said facilities as well as the maintenance and operation of the facilities and equipment.

Source: L. 2003: Entire section added, p. 1908, § 3, effective August 6.

28-3-109. Chargeable quarters and billeting cash fund - creation. There is hereby created in the state treasury the chargeable quarters and billeting cash fund, referred to in this section as the "fund", which shall consist of any moneys generated through the public or private use of the Colorado Army National Guard facilities managed pursuant to section 28-3-106 (1) (q). The moneys in the fund shall be invested by the state treasurer as provided in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert or be credited or transferred to the general fund or be transferred to any other fund. Any interest or income derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be credited to the general fund. The moneys in the fund shall be continuously appropriated and shall be used to defray the costs associated with operating National Guard training facilities and associated quarters and billeting facilities. Such costs shall include, but need not be limited to, repair, replacement, and salaries involved in the use of the National Guard training facilities as well as the maintenance and operation of the National Guard training facilities.

Source: L. 2011: Entire section added, (HB 11-1237), ch. 223, p. 957, § 1, effective August 10.

PART 2

ORGANIZATION

28-3-201. Composition. The Colorado National Guard consists of the regularly enlisted militia within the ages prescribed by federal law and regulations, organized, armed, and equipped as provided in this article, and of commissioned officers and warrant officers within the ages and having the qualifications prescribed by federal law and regulations. "National Guard" applies only to militia organized as provided for in this article and authorized by federal law and regulations relating to the National Guard. The number of officers and enlisted men of the National Guard shall be fixed from time to time and organized so as to meet the requirements of the federal laws and regulations.

Source: L. 55: p. 614, § 7. CRS 53: § 94-9-7. C.R.S. 1963: § 94-1-7.

28-3-202. Organization of inactive guard. The inactive National Guard shall be organized and maintained under such rules and regulations as may be prescribed in accordance with federal law.

Source: L. 55: p. 614, § 8. CRS 53: § 94-9-8. C.R.S. 1963: § 94-1-8.

28-3-203. Organization of National Guard. The organization of the National Guard, including the composition of all units thereof, shall be such as is or may be prescribed for this state by federal law.

Source: L. 55: p. 614, § 9. CRS 53: § 94-9-9. C.R.S. 1963: § 94-1-9.

28-3-204. Call to federal duty - status. When congress has declared a national emergency or has authorized the use of the armed forces of the United States for any purpose requiring the use of troops in excess of those in the regular armed services and the president has ordered into the active military service of the United States, to serve therein for the period of the war or emergency, any units and members of the National Guard of this state, all forces so ordered into the active military service of the United States shall from the date thereof stand relieved from duty in the National Guard of this state so long as they remain in the active military service of the United States when so provided by the federal law. Upon being relieved from such duty in the military service of the United States, all such individuals and units shall revert to their Colorado National Guard status.

Source: L. 55: p. 614, § 10. CRS 53: § 94-9-10. C.R.S. 1963: § 94-1-10.

PART 3

OFFICERS

28-3-301. State staff - number and grades. The state headquarters shall contain a staff and detachment and shall be divided into a department of the Army and a department of the Air Force. Each department shall be commanded by an officer of the Colorado National Guard. Said officer may be appointed by the governor to the rank of brigadier general or to such higher rank in which he or she may be federally recognized. The number and grades of all other officers and enlisted men and women in the state staff and detachment shall be as prescribed by federal or state law, but, in case of war, invasion, insurrection, riot, or imminent danger of any such emergency, the governor may temporarily increase such forces to meet such emergency, and retired officers who are physically qualified may be assigned to such duty.

Source: L. 55: p. 615, § 11. CRS 53: § 94-9-11. L. 58: p. 256, § 1. C.R.S. 1963: § 94-1-11. L. 71: p. 1045, § 3. L. 2002: Entire section amended, p. 595, § 30, effective May 24.

28-3-302. Appointment of officers. The officers of the state staff and detachment shall be selected and appointed by the adjutant general and commissioned by the governor if such appointees at the time of appointment shall have been, for at least three years immediately prior to appointment, a regularly commissioned officer of the National Guard; except that, where there is no qualified person in the National Guard available to fill a vacancy on the staff, an appointment may be made by the adjutant general if the individual so appointed qualifies for a commission pursuant to section 28-3-303.

Source: L. 55: p. 615, § 12. CRS 53: § 94-9-12. C.R.S. 1963: § 94-1-12.

ANNOTATION

Regulation of tenure not unconstitutional. Legislative regulation of the tenure of officers of the National Guard does not contravene § 5 of art. I, Colo. Const., providing that the governor

shall be commander in chief of the military forces of the state. People ex rel. Boatright v. Newlon, 77 Colo. 516, 238 P. 44 (1925).

28-3-303. Qualifications of officers. Officers of the National Guard shall not be commissioned as such unless they have been selected from the classes of persons having the qualifications prescribed by federal law and have taken and subscribed to the oath of office prescribed by congress.

Source: L. 55: p. 615, § 13. CRS 53: § 94-9-13. C.R.S. 1963: § 94-1-13.

28-3-304. Commissions - examinations - assignments. Any person appointed, promoted, and commissioned on or after April 14, 1955, as an officer of the National Guard shall successively pass such examinations and tests as to his or her physical, moral, and professional fitness as are prescribed by federal law. Officers shall be commissioned by the governor, and the commissions shall designate the armed service, staff corps, or department in which they are appointed. They will be assigned to duty within each organization by the immediate commander thereof.

Source: L. 55: p. 615, § 14. CRS 53: § 94-9-14. C.R.S. 1963: § 94-1-14. L. 71: p. 1046, § 4. L. 2002: Entire section amended, p. 596, § 31, effective May 24.

28-3-305. Officers' duties - administer oaths. In addition to the powers and duties prescribed in this part 3, all officers of the National Guard shall have the same duties as officers of similar rank and position in the United States Army or the United States Air Force, as the case may be, insofar as may be authorized by federal law. They are authorized to administer oaths in all matters connected with the service.

Source: L. 55: p. 616, § 15. CRS 53: § 94-9-15. C.R.S. 1963: § 94-1-15.

Cross references: For officers' powers to perform notarial acts, compare § 24-12-104.

28-3-306. Federal duty as continuous service. Service by any person in the United States volunteers or in any of the armed forces of the United States in time of war, insurrection, or rebellion shall be considered as continuous service in the National Guard for all purposes regarding privileges and exemptions provided by law for members of the National Guard, by enlistment or commission, but the continuous service for an officer shall include only the time he or she was commissioned as such.

Source: L. 55: p. 616, § 16. CRS 53: § 94-9-16. C.R.S. 1963: § 94-1-16. L. 2002: Entire section amended, p. 596, § 32, effective May 24.

28-3-307. Supplies - indemnity bonds - depots. Arms, ammunition, equipment, and stores shall be issued to the proper officers of each organization upon requisition as

prescribed by federal law. The governor may require of the accountable officers such bonds as he or she deems necessary for securing the care and safety of property so issued and shall allow them sufficient money to insure such property against fire when so required by the federal government. He or she may also allow them sufficient money to establish and maintain depots approved by him or her and to pay for transportation, handling, and care of such property, which allowance shall be paid out of the moneys appropriated or designated for the purchase of supplies for the National Guard. The adjutant general, with the approval of the governor, shall obtain and pay for, out of the military fund, an adequate indemnity bond covering all of the officers of the National Guard responsible for moneys and military property.

Source: L. 55: p. 616, § 17. CRS 53: § 94-9-17. C.R.S. 1963: § 94-1-17. L. 2002: Entire section amended, p. 596, § 33, effective May 24.

28-3-308. Resignation of officers. Commissioned officers and warrant officers may resign in such manner and under such circumstances as may be provided by federal laws or regulations.

Source: L. 55: p. 616, § 18. CRS 53: § 94-9-18. C.R.S. 1963: § 94-1-18.

28-3-309. Officer's fitness - vacation of commissions. The moral character, capacity, and general fitness for the service of any National Guard officer may be determined by an efficiency board as provided by federal law. Commissions or warrants of officers of the National Guard may be vacated upon resignation, absence without leave for three months, the recommendation of an efficiency board pursuant to sentence of a court-martial, permanent removal from the state, termination of federal recognition, or transfer to another reserve component.

Source: L. 55: p. 616, § 19. CRS 53: § 94-9-19. C.R.S. 1963: § 94-1-19. L. 71: p. 1046, § 5.

28-3-310. Disbandment - surplus officers - disposition. Officers of the National Guard rendered surplus by the disbandment of their organization shall be disposed of as provided by federal law.

Source: L. 55: p. 617, § 20. CRS 53: § 94-9-20. C.R.S. 1963: § 94-1-20.

28-3-311. Officers - inactive status - procedure. Officers may, upon their own application, be placed in the inactive National Guard as may be authorized by federal law.

Source: L. 55: p. 617, § 21. CRS 53: § 94-9-21. C.R.S. 1963: § 94-1-21.

28-3-312. Retirement of officers. Officers may voluntarily retire and be placed on the retirement list if they have qualified for such retirement under the provisions of federal law. Officers may be involuntarily retired and placed on the retirement list if under federal law such retirement becomes mandatory.

Source: L. 55: p. 617, § 22. CRS 53: § 94-9-22. C.R.S. 1963: § 94-1-22.

28-3-313. Termination of commission - recall. Commissions of National Guard officers shall be terminated as provided by federal law, but, in time of war or other declared emergency, any officer who reaches retirement age may, in the discretion of the commander in chief, on the recommendation of the adjutant general, be continued in the active service of the state defense force in his or her then grade and assignment for the duration of the war or emergency and for six months thereafter.

Source: L. 55: p. 617, § 23. CRS 53: § 94-9-23. C.R.S. 1963: § 94-1-23. L. 86: Entire section amended, p. 1016, § 9, effective May 3. L. 2002: Entire section amended, p. 596, § 34, effective May 24.

28-3-314. Roll of retired officers. Any commissioned officer of the National Guard who resigns or is retired and who has served as such officer for a period of not less than fifteen years, and any commissioned officer of the National Guard who has been honorably discharged from any of the armed forces of the United States after serving therein for a period of ninety days or more during any war and who has served as such officer of the National Guard for a period of not less than ten years, and any commissioned officer of the National Guard who becomes disabled and thereby incapable of performing the duties of his or her office shall, upon retirement, have his or her name placed on a roll in the office of the adjutant general to be known as the "roll of retired officers" and is thereby entitled to wear, when not in conflict with federal law, on state or other occasions of ceremony, the uniform of the rank last held by him or her.

Source: L. 55: p. 617, § 24. CRS 53: § 94-9-24. C.R.S. 1963: § 94-1-24. L. 2002: Entire section amended, p. 597, § 35, effective May 24.

28-3-315. Retired officers - warrant officers - limited assignments. The commander in chief may assign officers and warrant officers on the retired list to state active duty in recruiting, to serve upon courts-martial, courts of inquiry and board, to staff duty not involving service with troops, to be in charge of a military reservation left temporarily without officers, or to such other duties as the adjutant general may designate. Such officers and warrant officers while so assigned shall receive the full pay and allowances of their grades at time of retirement or may serve in a volunteer unpaid status.

Source: L. 55: p. 618, § 25. CRS 53: § 94-9-25. C.R.S. 1963: § 94-1-25. L. 2002: Entire section amended, p. 586, § 8, effective May 24.

28-3-316. Brevet commissions. General and field officers of the National Guard who have, after twenty-five years' service, resigned or retired may, in the discretion of the commander in chief, on the recommendation of the adjutant general, be commissioned by brevet in the next higher grade than that held by them at the time of their resignation or retirement, but not above the grade of major general. Brevet rank shall be considered strictly honorary and shall confer no privilege of precedence or command nor pay any emoluments. Brevet officers may wear the uniform of their brevet rank on occasions of ceremony.

Source: L. 55: p. 618, § 26. CRS 53: § 94-9-26. C.R.S. 1963: § 94-1-26.

PART 4

ENLISTED PERSONS

28-3-401. Enlistment periods - extensions. Except as otherwise provided in this article or by federal law, original enlistments in the military forces shall be for a period of three years and subsequent enlistments for a period of one or three years. The governor may by order fix shorter periods of enlistment or reenlistment for any of the military forces so far as not inconsistent with federal law. In the event of any emergency wherein the governor has called out any of the military forces, he or she may by order extend, for not exceeding the period of emergency and sixty days thereafter, the period of any enlistment in the forces called out which would otherwise expire.

Source: L. 55: p. 618, § 27. CRS 53: § 94-9-27. C.R.S. 1963: § 94-1-27. L. 2002: Entire section amended, p. 597, § 36, effective May 24.

28-3-402. Enlistment contract - form - oath. Every person enlisting in the military forces shall sign an enlistment contract in the form prescribed by the adjutant general and shall subscribe to the following oath or affirmation: "I hereby acknowledge to have voluntarily enlisted this day of 20...., in the for the period of three (or one) years, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and the state of Colorado; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the president of the United States and the governor of the state of Colorado and the officers appointed over me according to law and the rules and articles of war." However, the words "the president of the United States and" shall be omitted in the case of personnel enlisting in forces not subject to federal service.

Source: L. 55: p. 618, § 28. CRS 53: § 94-9-28. C.R.S. 1963: § 94-1-28.

28-3-403. Group enlistments barred - when. No civil association, society, club, post, order, fraternity, brotherhood, union, league, or other organized body shall be enlisted in the military forces as a unit.

Source: L. 55: p. 619, § 29. CRS 53: § 94-9-29. C.R.S. 1963: § 94-1-29.

28-3-404. Honorable discharge. An enlisted person discharged from service in the National Guard shall receive a discharge in writing in such form and with such classification as is prescribed by federal law, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the federal authorities may prescribe.

Source: L. 55: p. 619, § 30. CRS 53: § 94-9-30. C.R.S. 1963: § 94-1-30. L. 2002: Entire section amended, p. 597, § 37, effective May 24.

28-3-405. Dishonorable discharge. A dishonorable discharge from service in the National Guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general.

Source: L. 55: p. 619, § 31. CRS 53: § 94-9-31. C.R.S. 1963: § 94-1-31.

28-3-406. Exemption from arrest or civil process. No member of the National Guard shall be arrested or served with any summons, order, warrant, or other civil process after having been ordered to any duty or while going to, attending, or returning from any place to which he or she is required to go for military duty; but nothing in this article shall prevent his or her arrest by order of a military officer or for a crime committed while not in actual performance of his or her duty. The articles of military equipment personally owned by such members shall be exempt from seizure or sale for debt pursuant to section 13-54-102, C.R.S.

Source: L. 55: p. 619, § 32. CRS 53: § 94-9-32. C.R.S. 1963: § 94-1-32. L. 2002: Entire section amended, p. 587, § 9, effective May 24.

28-3-407. Retired noncommissioned officers - limited assignments. The commander in chief may assign noncommissioned officers on the retired list to state active duty in recruiting, to serve upon courts-martial, courts of inquiry and board, to staff duty not involving service with troops, to be in charge of a military reservation left temporarily without officers, or to such other duties as the adjutant general may designate. Such

noncommissioned officers while so assigned shall receive the full pay and allowances of their grades at time of retirement or may serve in a volunteer unpaid status.

Source: L. 2002: Entire section added, p. 587, § 10, effective May 24.

PART 5

RIGHTS - EXEMPTIONS - DUTIES

28-3-501. Nonliability for official acts. The commanding officer of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob, or the enforcement of the laws shall exercise his or her discretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if he or she exercises his or her honest judgment thereon, he or she shall not be liable in either a civil or a criminal action for any act done while on such duty. No officer or enlisted person shall be held liable in either a civil or criminal action for any act done under lawful orders and in the performance of his or her duty.

Source: L. 55: p. 623, § 45. **CRS 53:** § 94-9-45. **C.R.S. 1963:** § 94-1-45. **L. 2002:** Entire section amended, p. 597, § 38, effective May 24.

28-3-502. Actions against military personnel - defense counsel. If a suit or proceeding is commenced in any court by any person against any officer of the military forces for any act done by such officer in his or her official capacity in the discharge of any duty under this article, or against any enlisted person acting under the authority or order of any such officer, or by virtue of any warrant issued by him or her pursuant to law, it is the duty of the governor, upon the recommendation of the attorney general, to appoint counsel to defend such person. The cost and expenses of any such defense shall be paid out of the military fund.

Source: L. 55: p. 623, § 46. **CRS 53:** § 94-9-46. **C.R.S. 1963:** § 94-1-46. **L. 2002:** Entire section amended, p. 598, § 39, effective May 24.

28-3-503. Actions against military personnel - cost bond. Any person bringing an action or proceeding against a military officer of the state for any act done in the course of his or her official duty or against any person acting under the order or authority of such officer shall give security for the costs, disbursements, and reasonable attorney fees incurred by the state or defendant in defending the same in the same manner and subject to the same regulations, so far as applicable, as in the case of a nonresident plaintiff, and, if the plaintiff fails to recover, such attorney fees may be taxed with the costs and disbursements and judgment therefor entered against him or her and his or her sureties on the bond.

Source: L. 55: p. 623, § 47. **CRS 53:** § 94-9-47. **C.R.S. 1963:** § 94-1-47. **L. 2002:** Entire section amended, p. 598, § 40, effective May 24.

28-3-504. Exemption from traffic regulations. The military forces of the United States and of the state and the adjutant general and general officers of such forces with official insignia displayed, while on any authorized duty, shall not be restricted by state or municipal traffic regulations and shall have the right-of-way on any street or highway through which they may pass against except carriers of the United States mail, fire engines, and police vehicles.

Source: L. 55: p. 623, § 48. **CRS 53:** § 94-9-48. **C.R.S. 1963:** § 94-1-48.

28-3-505. Discrimination - public places and common carriers - penalty. It is unlawful for any common carrier, innkeeper, proprietor, or lessee of any place of public

amusement or entertainment or any agent, servant, or representative of any such common carrier, innkeeper, proprietor, or lessee as aforesaid to bar from the full and equal enjoyment of the accommodations, advantages, facilities, or privileges of any public conveyance or any inn or of any place of public amusement or entertainment any person in the service of the armed forces of the United States or of the National Guard, wearing the uniform prescribed for him or her at that time or place by law, regulation of the service, or custom, on account of his or her wearing such uniform or of his or her being in such service. Any person who is barred from such enjoyment contrary to the provisions contained in this section is entitled to recover in an action against any corporation, association, or person who commits such violation his or her actual damages and three hundred dollars in addition thereto and reasonable attorney fees and costs. Evidence that such person barred was at the time sober, orderly, and willing to pay for such enjoyment in accordance with rates affixed therefor for civilians shall be prima facie evidence that he or she was barred on account of his or her wearing such uniform or of his or her being in such service.

Source: L. 55: p. 624, § 49. CRS 53: § 94-9-49. C.R.S. 1963: § 94-1-49. L. 2002: Entire section amended, p. 587, § 12, effective July 1.

28-3-506. Discrimination against employment - penalty. (1) (a) No person shall discriminate against any officer or enlisted person of the military forces of the state because of the officer or enlisted person's membership therein.

(b) No employer or officer or agent of any corporation, company, or firm or other person shall:

(I) Refuse to hire any person for or discharge any person from employment because of the person's status as an officer or enlisted person of the military forces of the state; or

(II) Hinder or prevent the person from performing any military service he or she may be called upon to perform by proper authority; or

(III) Dissuade any person from enlistment in the said National Guard by threat or injury to such person, if he or she so enlists, in respect to the person's employment, trade, or business.

(2) Any person violating any of the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars. In addition, the aggrieved person may bring an action at law for damages for such noncompliance or apply to the district court for such equitable relief as is just and proper under the circumstances.

Source: L. 55: p. 624, § 50. CRS 53: § 94-9-50. C.R.S. 1963: § 94-1-50. L. 2002: Entire section amended, p. 588, § 13, effective July 1; entire section amended, p. 693, § 2, effective July 1.

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

28-3-507. Interference with duty - arrest - penalty. Any person who obstructs or interferes with a member of the National Guard in the performance of his or her duty may be placed under guard by the officer in command. As soon as possible, such officer shall either release such person or turn him or her over to any peace officer of the city or place where such duty is being performed, and such peace officer shall thereupon deliver such offender for examination and trial before any court having jurisdiction. Any person violating the provisions of this section is guilty of a class 3 misdemeanor.

Source: L. 55: p. 624, § 51. CRS 53: § 94-9-51. C.R.S. 1963: § 94-1-51. L. 2002: Entire section amended, p. 588, § 14, effective May 24.

PART 6

PUBLIC AND PRIVATE EMPLOYEES - DUTIES

28-3-601. Public employees - annual military leave. (1) Subject to the conditions prescribed in sections 28-3-601 to 28-3-607, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who is a member of the National Guard or any other component of the military forces of the state organized or constituted under state or federal law or who is a member of the reserve forces of the United States, organized or constituted under federal law is entitled to leave of absence from his or her public office or employment without loss of pay, seniority, status, efficiency rating, vacation, sick leave, or other benefits for all the time when he or she is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding fifteen days in the leave year established by the employer. Such leave shall be allowed if the required military service is satisfactorily performed, which shall be presumed unless the contrary is established.

(2) Such leave shall not be allowed unless the officer or employee returns to his or her public position immediately on being relieved from such military service and not later than the expiration of the time limited in subsection (1) of this section for such leave, or is prevented from so returning by physical or mental disability or other cause not due to his or her own fault, or is required by proper authority to continue in such military service beyond the time limited in subsection (1) of this section for such leave.

Source: L. 55: p. 619, § 33. CRS 53: § 94-9-33. C.R.S. 1963: § 94-1-33. L. 2002: Entire section amended, p. 598, § 41, effective May 24. L. 2009: (1) amended, (HB 09-1315), ch. 312, p. 1694, § 4, effective August 5.

ANNOTATION

Contractual provision not in conflict with statutory prohibition. A contractual provision requiring teachers on military leave to turn over to the school board payments received for re-

serve service does not, on its face, conflict with any statutory prohibition. *Colo. Springs Teachers Ass'n v. Sch. Dist. No. 11*, 622 P.2d 602 (Colo. App. 1980).

28-3-602. Public employees - extended military leave. If any such officer or employee is required by proper authority to continue in such military service beyond the time for which leave with pay is allowed, he or she is entitled to leave of absence from his or her public office or employment without pay for all such additional service with right of reinstatement thereafter upon the same conditions as provided in section 28-3-604 for reinstatement after active service in time of war or other emergency.

Source: L. 55: p. 620, § 34. CRS 53: § 94-9-34. C.R.S. 1963: § 94-1-34. L. 2002: Entire section amended, p. 598, § 42, effective May 24.

28-3-603. Public employees - emergency military leave. Subject to the conditions prescribed in this section, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active military service in time of war or other emergency declared by proper authority of the state or the United States, for which leave is not otherwise allowed by law, is entitled to leave of absence from his or her public office or employment without pay during such service with right of reinstatement as provided in section 28-3-604.

Source: L. 55: p. 620, § 35. CRS 53: § 94-9-35. C.R.S. 1963: § 94-1-35. L. 2002: Entire section amended, p. 599, § 43, effective May 24.

ANNOTATION

Legislative intent of this section was to provide a benefit to career public employees who went into active military service on a temporary basis in time of war or other emergency declared by proper authority. *State Civil Serv. Comm'n v. Fleming*, 183 Colo. 71, 514 P.2d 1135 (1973), cert. denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.2d 873 (1974).

When employee in active military service entitled to leave without pay status. A public employee who goes into active military service in time of declared war or other emergency is entitled to leave without pay status, but only so long as the war or emergency actually exists. *State Civil Serv. Comm'n v. Fleming*, 183 Colo. 71, 514 P.2d 1135 (1973), cert. denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.2d 873 (1974).

Section is nonoperative after cessation of war or emergency. After the cessation of active combat or the condition requiring military intervention, it was intended that this statute become nonoperative. *State Civil Serv. Comm'n v. Fleming*, 183 Colo. 71, 514 P.2d 1135 (1973), cert. denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.2d 873 (1974).

Benefit derived from this statute is not to continue during periods when this country is not engaged in any war or other emergency which requires our military intervention. *State Civil Serv. Comm'n v. Fleming*, 183 Colo. 71, 514 P.2d 1135 (1973), cert. denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.2d 873 (1974).

28-3-604. Reinstatement. (1) Except as otherwise provided in sections 28-3-601 to 28-3-607, upon the completion of such service, such officer or employee shall be reinstated in the public position which he or she held at the time of entry into such service or a public position of like seniority, status, and pay if such is available at the same salary which he or she would have received if he or she had not taken such leave upon the following conditions:

(a) That the position has not been abolished or that the term thereof, if limited, has not expired;

(b) That he or she is not physically or mentally disabled from performing the duties of such position;

(c) That he or she makes written application for reinstatement to the appointing authority within ninety days after discharge from hospitalization or medical treatment which immediately follows the termination of and results from such service, but such application shall be made within one year and ninety days after termination of such service, notwithstanding such hospitalization or medical treatment;

(d) That he or she submits an honorable discharge or other form of release by proper authority indicating that his or her military service was satisfactory.

(2) Upon such reinstatement, the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if he or she had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter, except for cause and after notice and hearing; but this shall not operate to extend a term of service or office limited by law.

Source: L. 55: p. 620, § 36. CRS 53: § 94-9-36. C.R.S. 1963: § 94-1-36. L. 2002: IP(1), (1)(b), (1)(c), (1)(d), and (2) amended, p. 599, § 44, effective May 24.

28-3-605. Public officer - certificate for reinstatement. Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military service under leave of absence without pay, in lieu of making written application for reinstatement as provided in section 28-3-604, shall file in the same office where his or her official oath is filed, within forty-five days after termination of such military service, a verified certificate that he or she has complied with the conditions for reinstatement prescribed in section 28-3-604, and he or she shall thereupon be deemed to have resumed his or her office.

Source: L. 55: p. 621, § 37. CRS 53: § 94-9-37. C.R.S. 1963: § 94-1-37. L. 2002: Entire section amended, p. 599, § 45, effective May 24.

28-3-606. Public pension rights retained. Any public officer or employee receiving leave of absence under the preceding sections and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave and shall have all rights subsequently accruing under such system as if he or she had been actually employed during the time of such leave. Any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, and the right to such increase is dependent upon the payment of such contributions or assessments within such reasonable time after the termination of such leave and upon such terms as the authorities in charge of the system may prescribe.

Source: L. 55: p. 621, § 38. CRS 53: § 94-9-38. C.R.S. 1963: § 94-1-38. L. 2002: Entire section amended, p. 600, § 46, effective May 24.

28-3-607. Public employees - substitute during service. If a public officer or employee is absent with leave under the provisions of the preceding sections and if it is necessary in the public interest to provide for the performance of the duties of his or her position during such absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law or otherwise such compensation as may be fixed by proper authority, and shall have all the power and perform all the duties of the position until the return of the regular incumbent; except that this shall not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law.

Source: L. 55: p. 621, § 39. CRS 53: § 94-9-39. C.R.S. 1963: § 94-1-39. L. 2002: Entire section amended, p. 600, § 47, effective May 24.

28-3-608. Sections supplemental. The rights and privileges granted by sections 28-3-601 to 28-3-607 are supplementary to and not exclusive of any other rights or privileges conferred by law on public officers or employees but shall not obtain in any case where the military services are constitutionally or legally incompatible with the public office or employment.

Source: L. 55: p. 622, § 40. CRS 53: § 94-9-40. C.R.S. 1963: § 94-1-40.

28-3-609. Private employees - annual military leave. Any person who is a duly qualified member of the Colorado National Guard or the reserve forces of the United States who in order to receive military training with the armed forces of the United States, not to exceed fifteen days in any one calendar year, leaves a position other than a temporary position in the employ of an employer, and who gives evidence of the satisfactory completion of such training, and who is still qualified to perform the duties of such position is entitled to be restored to his or her previous or a similar position in the same status, pay, and seniority, and such period of absence for military training shall be construed as an absence with leave and without pay.

Source: L. 55: p. 622, § 41. CRS 53: § 94-9-41. C.R.S. 1963: § 94-1-41. L. 2002: Entire section amended, p. 600, § 48, effective May 24.

28-3-610. Private employees - benefits retained. Such absence for military training will in no way affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his or her employment normally to be anticipated in his or her particular position.

Source: L. 55: p. 622, § 42. CRS 53: § 94-9-42. C.R.S. 1963: § 94-1-42. L. 2002: Entire section amended, p. 600, § 49, effective May 24.

28-3-610.5. Private employees - state service - reemployment rights - benefits retained. (1) A private employee who is a duly qualified member of the Colorado National Guard who leaves or who is absent from his or her employment, regardless of the length of such absence, in order to engage in active service for state purposes pursuant to section 28-3-104:

- (a) Is entitled to the reemployment rights for members described in section 28-3-609, so long as such member otherwise meets the requirements of section 28-3-609; and
- (b) Retains his or her right to the employee benefits described in section 28-3-610.

Source: L. 97: Entire section added, p. 6, § 1, effective July 1.

28-3-611. Employer's noncompliance - actions. Any employer violating any of the provisions of this part 6 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars. In addition, the employee may bring an action at law for damages and reasonable attorney fees for such noncompliance or apply to the district court for such equitable relief and reasonable attorney fees as are just and proper under the circumstances.

Source: L. 55: p. 622, § 43. **CRS 53:** § 94-9-43. **C.R.S. 1963:** § 94-1-43. **L. 2002:** Entire section amended, p. 589, § 15, effective May 24; entire section amended, p. 693, § 3, effective July 1.

28-3-612. Federal law - rights - applicability. Nothing in this article shall be construed as restricting or abrogating any right available to any officer or enlisted person of the military forces of the state under the federal "Uniformed Services Employment and Reemployment Rights Act", 38 U.S.C. sec. 4301 et seq.

Source: L. 2002: Entire section added, p. 589, § 16, effective May 24.

PART 7

PROPERTY AND EQUIPMENT

28-3-701. Misuse of property and funds by military personnel - penalty. Any officer or enlisted person who refuses to account for and to surrender up any moneys or any uniforms or equipment or other military property for which he or she is responsible or accountable, or who appropriates the same to his or her own use, or who knowingly makes a false payroll or signs a false certificate which is the basis for the payment of moneys under this article, or who aids or abets another in any of these acts commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 55: p. 625, § 52. **CRS 53:** § 94-9-52. **C.R.S. 1963:** § 94-1-52. **L. 77:** Entire section amended, p. 881, § 56, effective July 1, 1979. **L. 89:** Entire section amended, p. 847, § 120, effective July 1. **L. 2002:** Entire section amended, p. 601, § 50, effective May 24; entire section amended, p. 1541, § 282, effective October 1.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Amendments to this section by Senate Bill 02-099 and House Bill 02-1046 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

28-3-702. Misuse of property - generally - penalty. Every person, whether a member of the military forces or not, who willfully destroys, damages, sells or disposes of, or buys

or receives any arms, equipment, or accouterments issued by the United States or the state for the use of military forces or refuses to deliver or pay for the same upon lawful demand is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months.

Source: L. 55: p. 625, § 53. CRS 53: § 94-9-53. C.R.S. 1963: § 94-1-53.

28-3-703. Property and fiscal officer - appointment - duties. The governor, pursuant to federal authority, shall appoint, designate, or detail an officer of the National Guard who shall be regarded as property and fiscal officer for the United States. The property and fiscal officer shall serve at the pleasure of the governor. The property and fiscal officer shall receipt and account for all funds and property belonging to the United States in possession of the National Guard of this state and shall make such returns and reports concerning the same as may be required by federal law and regulations. The property and fiscal officer shall render, through the United States department of defense, such accounts of federal funds entrusted to the property and fiscal officer for disbursement as may be required by the United States treasury department. Before entering upon the performance of the duties as property and fiscal officer, the property and fiscal officer shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by federal laws or regulations, for the faithful performance of the duties of the office and for the safekeeping and proper disposition of federal property and funds entrusted to the property and fiscal officer's care.

Source: L. 55: p. 626, § 56. CRS 53: § 94-9-56. C.R.S. 1963: § 94-1-56. L. 95: Entire section amended, p. 320, § 3, effective April 21.

28-3-704. Uniforms and equipment - procurement and issuance. The National Guard shall be uniformed, armed, and equipped as provided by federal law. Such uniforms, arms, and equipment shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as regulations may prescribe.

Source: L. 55: p. 626, § 57. CRS 53: § 94-9-57. C.R.S. 1963: § 94-1-57.

28-3-705. Uniforms and equipment - distribution and return. The commanding officer of an organization receiving clothing or equipment for the use of his or her command shall distribute the same to the members of his or her command, taking receipts and requiring the return of each article at such time and place as he or she directs.

Source: L. 55: p. 626, § 58. CRS 53: § 94-9-58. C.R.S. 1963: § 94-1-58. L. 2002: Entire section amended, p. 601, § 51, effective May 24.

28-3-706. Deductions from pay - forfeitures - lost equipment. Legal fines or forfeitures and the value of any articles of uniform, arms, or equipment, whether state or federal, issued to any officer or enlisted person which he or she fails to return on demand of proper authority and for the loss of or damage to which he or she has been held responsible by a report of survey or other proper proceeding shall be deducted from such officer's or enlisted person's pay in the manner provided for in federal or state orders or regulations. Deductions from federal pay and allowances may only be made in the manner prescribed by federal law or regulation.

Source: L. 55: p. 626, § 59. CRS 53: § 94-9-59. C.R.S. 1963: § 94-1-59. L. 2002: Entire section amended, p. 601, § 52, effective May 24.

PART 8

SERVICE BENEFITS

28-3-801. Disability and death benefits. A member of the military forces of the state of Colorado who dies or is disabled while in, or as a result of, active service on behalf of this state ordered by competent authority, which death or disability arises out of and in the course of his or her employment in the active service of the state of Colorado, is entitled to workers' compensation benefits in accordance with the provisions of the "Workers' Compensation Act of Colorado"; but no workers' compensation benefits shall be paid under this section in any case where similar benefits are payable under the provisions of any federal law or regulation.

Source: L. 55: p. 625, § 54. CRS 53: § 94-9-54. C.R.S. 1963: § 94-1-54. L. 71: p. 1046, § 6. L. 90: Entire section amended, p. 571, § 59, effective July 1. L. 2002: Entire section amended, p. 601, § 53, effective May 24.

Cross references: For the "Workers' Compensation Act of Colorado", see articles 40 to 47 of title 8.

28-3-802. Unit funds. (1) There is authorized to be created and maintained for each separate unit of the Colorado National Guard a unit fund. Expenditures from such unit fund shall be made in accordance with rules and regulations established by the adjutant general of the state of Colorado and applicable federal laws, rules, and regulations.

(2) There is authorized to be deposited in each unit fund such moneys as may be received from gifts, bequests, contributions, including federal contributions, and such amounts as may be appropriated to such unit funds from the general fund of the state of Colorado.

Source: L. 55: p. 625, § 55. CRS 53: § 94-9-5. C.R.S. 1963: § 94-1-55. L. 71: p. 1046, § 7. L. 2002: (2) amended, p. 589, § 17, effective May 24.

PART 9

ORGANIZATION - ALLOWANCES - DRILLS

28-3-901. Organization assemblies and exercises. Each organization shall assemble for drill and instruction and shall participate in encampments, maneuvers, and other exercises at such time and places and for such periods as may be prescribed by the governor in accordance with the requirements of the state or federal law.

Source: L. 55: p. 626, § 60. CRS 53: § 94-9-60. C.R.S. 1963: § 94-1-60.

28-3-902. Encampments, maneuvers, and parades. The governor may order the military forces or any part thereof into camp each year for such period as he or she may direct and shall also provide for their participation in encampments or field maneuvers at such places as may be designated by the federal government. The governor may, in his or her discretion, order such organizations as he or she may deem proper to parade for purposes of drill, review, or escort duty and prescribe all regulations and requirements therefor.

Source: L. 55: p. 627, § 61. CRS 53: § 94-9-61. C.R.S. 1963: § 94-1-61. L. 2002: Entire section amended, p. 601, § 54, effective May 24.

28-3-903. Inspections. When so ordered by the governor, an inspection shall be made by such officer designated by the governor of all of the military forces of the state of

Colorado, and such inspector shall report the number of troops present, the condition of their arms, equipment, and clothing, their proficiency, and such other information as may be required of or deemed proper by him or her. There shall be at least one inspection annually at such time and place as the governor designates. The forms and mode of inspection shall be prescribed by the adjutant general.

Source: L. 55: p. 627, § 62. CRS 53: § 94-9-62. C.R.S. 1963: § 94-1-62. L. 2002: Entire section amended, p. 602, § 55, effective May 24.

28-3-904. Pay and allowances. Every member of the military forces not salaried as such shall receive from the state, while engaged in any service ordered by the governor, pay and allowances at the rate paid or allowed by law to members of similar rank and length of service in the regular Army or regular Air Force of the United States, as the case may be, but no such member shall receive less than twenty dollars per day. Subject to available appropriations, after a member of the military forces has been engaged in service pursuant to this section for a period of more than thirty consecutive days, the member shall be eligible to enroll in any benefit plan created for employees of the state, including but not limited to state employee group benefits pursuant to part 6 of article 50 of title 24, C.R.S., and the public employees' retirement association created pursuant to article 51 of title 24, C.R.S.

Source: L. 55: p. 627, § 63. CRS 53: § 94-9-63. C.R.S. 1963: § 94-1-63. L. 71: p. 1046, § 8. L. 2005: Entire section amended, p. 662, § 4, effective May 27.

28-3-905. Insufficient funds - payment from general fund. In all cases where any of the military forces are called into active service by the governor and there are no funds otherwise appropriated or available therefor or where the appropriated funds, if any, are insufficient, the payrolls of officers and enlisted men and expense bills shall be audited by the adjutant general and paid upon the adjutant general's certificate out of the general revenue fund, and the necessary funds are hereby appropriated.

Source: L. 55: p. 627, § 64. CRS 53: § 94-9-64. C.R.S. 1963: § 94-1-64. L. 93: Entire section amended, p. 30, § 1, effective March 18.

28-3-906. Units - corporate structure and powers. (1) Each federally recognized organization of the National Guard, without any further proceeding other than the filing with the secretary of state of a certificate by the adjutant general to that effect, constitutes a corporate body to be known by the name by which such organization is officially designated under the military laws and regulations of the state and shall possess all the powers necessary and convenient to accomplish the objects and perform the duties prescribed by law.

(2) The members of such military organization in good standing, and no others, shall constitute the members of such corporation and shall elect three trustees who, together with the commanding officer, shall manage and administer the civil business of such corporation. The commanding officer shall be ex officio president, and the trustees shall elect one of their number vice-president, one treasurer, and one secretary.

(3) Each such organization may take, by purchase, devise, gift, or otherwise, and hold, so long as such organization is an existing organization and a part of the National Guard, any property, real or personal. All such property shall be in the custody and control of the trustees provided for in subsection (2) of this section. Such organizations may sell, exchange, or otherwise dispose of property so acquired.

(4) When any such organization is disbanded by proper authority, such corporation shall cease to exist, and all property belonging to it shall become the property of the state of Colorado and be devoted to such military uses as the adjutant general determines. Nothing in this section shall limit the authority vested in the officers of the organization by state or federal law.

Source: L. 55: p. 627, § 65. CRS 53: § 94-9-65. C.R.S. 1963: § 94-1-65.

PART 10

COURTS-MARTIAL

28-3-1001 to 28-3-1026. (Repealed)

Source: L. 83: Entire part repealed, p. 1195, § 2, effective June 10.

Editor's note: This article was numbered as article 1 of chapter 94, C.R.S. 1963, and this part 10 was subsequently repealed in 1983. For amendments to this part 10 prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to courts-martial in the "Colorado Code of Military Justice", see part 2 of article 3.1 of this title.

PART 11

OFFENSES

28-3-1101 to 28-3-1137. (Repealed)

Source: L. 83: Entire part repealed, p. 1195, § 2, effective June 10.

Editor's note: This article was numbered as article 1 of chapter 94, C.R.S. 1963, and this part 11 was subsequently repealed in 1983. For amendments to this part 11 prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to military offenses in the "Colorado Code of Military Justice", see part 5 of article 3.1 of this title.

PART 12

MEDALS - DECORATIONS

28-3-1201. Long service medal. A medal, designated as the "long service medal", shall be awarded each officer and enlisted person of the National Guard of Colorado who has served honestly and faithfully in any organization or department of the National Guard of Colorado, in state or federal service, for a period of ten years, not necessarily consecutive, and, for every period of five years thereafter, there shall be awarded a suitable bar to be worn on the ribbon of the medal.

Source: L. 55: p. 641, § 132. **CRS 53:** § 94-9-132. **C.R.S. 1963:** § 94-1-129. **L. 2002:** Entire section amended, p. 602, § 56, effective May 24.

28-3-1202. Meritorious conduct medal. A medal, designated as the "meritorious conduct medal", shall be awarded each officer and enlisted person of the National Guard of Colorado who, when on an active duty status not in the federal service, distinguishes himself or herself by extraordinary heroism or has endangered his or her life in saving the lives of others.

Source: L. 55: p. 641, § 133. **CRS 53:** § 94-9-133. **C.R.S. 1963:** § 94-1-130. **L. 2002:** Entire section amended, p. 602, § 57, effective May 24.

28-3-1203. Meritorious service medal. A medal, designated as the "meritorious service medal", shall be awarded any person serving in any capacity in or with the National Guard of Colorado who distinguishes himself or herself by exceptionally meritorious service for the state of Colorado.

Source: L. 55: p. 642, § 134. CRS 53: § 94-9-134. C.R.S. 1963: § 94-1-131. L. 2002: Entire section amended, p. 602, § 58, effective May 24.

28-3-1204. Active service medal. A medal, designated as the “active service medal”, shall be awarded to any person who is serving with or has served with the National Guard of Colorado in any campaign or period of federal active duty under call or order of the president of the United States. This medal shall be awarded pursuant to regulations issued by the adjutant general. A clasp showing the dates only of such active service will be worn on the ribbon of the medal, and there shall be one clasp for each separate period of active service.

Source: L. 55: p. 642, § 135. CRS 53: § 94-9-135. C.R.S. 1963: § 94-1-132. L. 2005: Entire section amended, p. 662, § 2, effective May 27.

28-3-1205. Lapel button. A lapel button denoting membership in the Colorado National Guard shall be given without cost to every actively participating officer and enlisted person.

Source: L. 55: p. 642, § 136. CRS 53: § 94-9-136. C.R.S. 1963: § 94-1-133. L. 2002: Entire section amended, p. 602, § 59, effective May 24.

28-3-1206. Medals and lapel buttons - design - issue. The design, procurement, and regulations governing the issue of the medals and lapel buttons provided for in this article shall be as prescribed by the governor in orders through the office of the adjutant general.

Source: L. 55: p. 642, § 137. CRS 53: § 94-9-137. C.R.S. 1963: § 94-1-134.

28-3-1207. Cost of medals and lapel buttons. The necessary amounts to defray the costs of providing the medals and lapel buttons authorized by this article shall be deemed a proper charge against the appropriation for the support of the department.

Source: L. 55: p. 642, § 138. CRS 53: § 94-9-138. C.R.S. 1963: § 94-1-135. L. 2002: Entire section amended, p. 362, § 22, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

28-3-1208. Noncommissioned officer/soldier/airman of the year ribbon. (1) A ribbon, designated as the “noncommissioned officer/soldier/airman of the year ribbon”, shall be awarded each year to five members of the National Guard of Colorado selected through both the Army and air command channels. The five recipients shall be as follows:

- (a) An Army noncommissioned officer;
- (b) An Army enlisted soldier;
- (c) An air senior noncommissioned officer;
- (d) An air noncommissioned officer; and
- (e) An airman.

Source: L. 2002: Entire section added, p. 264, § 1, effective April 15.

28-3-1209. Commendation ribbon. A ribbon, designated as the “commendation ribbon”, shall be awarded to any member of the National Guard of Colorado and to any other persons who have distinguished themselves either by exceptional service to the state of Colorado or by accomplishment of a special act or deed reflecting credit upon the state of Colorado and the National Guard of Colorado.

Source: L. 2002: Entire section added, p. 264, § 1, effective April 15.

28-3-1210. Achievement ribbon. A ribbon, designated as the “achievement ribbon”, shall be awarded to provide recognition to members of the National Guard of Colorado and other persons who have, through their own individual outstanding and exemplary actions, attitude, efforts, and service, contributed to the safekeeping and welfare of citizens of the state of Colorado, the preservation of public and private property, and the improvement of the readiness posture of the National Guard of Colorado or who have accomplished a particularly significant or noteworthy achievement or deed reflecting great credit upon the individual or individuals and the state of Colorado.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1211. Adjutant general’s outstanding unit citation. A ribbon, designated as the “adjutant general’s outstanding unit citation”, shall be awarded for outstanding meritorious performance, on or after June 1, 1995, by any unit assigned to the National Guard of Colorado. Said unit shall display superior performance of an exceptionally difficult task deemed extraordinary and not representing the normal day-to-day circumstances, that sets it apart from other units with similar missions and circumstances.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1212. State emergency service ribbon. A ribbon, designated as the “state emergency service ribbon”, shall be awarded to any member of the National Guard of Colorado who is called to state duty in either an active or supportive role for a period of at least one day during a crisis within the state of Colorado, during which crisis the welfare of the residents of Colorado is in peril and where the preservation or protection of public and private property is required.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1213. Foreign deployment service ribbon. A ribbon, designated as the “foreign deployment service ribbon”, shall be awarded to any member of the National Guard of Colorado who has satisfactorily served the state and nation on a deployment to a foreign country for a continuous period of at least four days.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1214. State mobilization support ribbon. A ribbon, designated as the “state mobilization support ribbon”, shall be awarded to members of the National Guard of Colorado and other persons or organizations who have, through their own outstanding and exemplary actions, attitude, efforts, and service, supported the mobilization of units of the National Guard of Colorado when called to serve their country. These actions may include support in returning units to state control upon demobilization.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1215. Recruiting ribbon. A ribbon, designated as the “recruiting ribbon”, shall be awarded to an individual in the National Guard who secures enlistment or appointment of at least three individuals within one year or at least five individuals within a period of five years to the National Guard of Colorado.

Source: L. 2002: Entire section added, p. 265, § 1, effective April 15.

28-3-1216. Command tour ribbon. A ribbon, designated as the “command tour ribbon”, shall be awarded to a command sergeant major, a command chief, or a first

sergeant who has been or is currently assigned to one of those designated positions for a period of not less than twenty-four months and who meets any additional criteria established by the adjutant general in military regulations.

Source: L. 2005: Entire section added, p. 662, § 3, effective May 27.

PART 13

ENHANCED DRUG INTERDICTION AND ENFORCEMENT ROLE FOR THE NATIONAL GUARD

28-3-1301. Legislative declaration. The general assembly hereby finds and declares that drug abuse and drug trafficking are matters of statewide concern and further declares that the state should take advantage of assistance offered by the National Guard in fighting against the spread of drug trafficking and abuse in the state.

Source: L. 89: Entire part added, p. 1253, § 1, effective April 12.

28-3-1302. Commander in chief - order for plan. The governor, as commander in chief, shall order the adjutant general of the National Guard to prepare, in cooperation with the Colorado bureau of investigation, a drug interdiction and enforcement plan for submission to the secretary of defense of the United States.

Source: L. 89: Entire part added, p. 1253, § 1, effective April 12.

28-3-1303. Drug interdiction and enforcement plan - requirements. (1) The drug interdiction and enforcement plan required by this part 13 shall be in compliance with the provisions set forth in Pub.L. 100-456, section 1105, and shall specifically request the secretary of defense to provide sufficient funds for the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard when utilized in conjunction with the plan. The plan shall specify that such funds are to be used solely for the purpose of drug interdiction and enforcement operations and for the operation and maintenance of the equipment and facilities of the National Guard when used in conjunction with such plan.

(2) Notwithstanding any other provision of law, when participating in operations pursuant to the drug interdiction and enforcement plan required by this part 13, the National Guard shall be considered a law enforcement agency of the state for purposes of accepting, receiving, disposing of, and expending the property and proceeds from any property forfeited to the federal government and allocated to the National Guard pursuant to section 16-13-601, C.R.S.

Source: L. 89: Entire part added, p. 1253, § 1, effective April 12. **L. 2007:** Entire section amended, p. 444, § 3, effective August 3.

Cross references: For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 117, Session Laws of Colorado 2007.

28-3-1304. Drug interdiction and enforcement plan - limitations. The plan shall state specifically that any drug interdiction and enforcement plan approved by the secretary of defense shall be conducted at a time when personnel of the National Guard are not in federal service. The plan shall also specifically state that participation by National Guard personnel in such operations is service in addition to annual training required under section 502 of Title 32, United States Code.

Source: L. 89: Entire part added, p. 1254, § 1, effective April 12.

28-3-1305. Department of military and veterans affairs counterdrug program federal forfeiture fund - creation. Any moneys accepted by the adjutant general pursuant to section 16-13-601, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the department of military and veterans affairs counterdrug program federal forfeiture fund, which fund is hereby created in the state treasury and referred to in this section as the “fund”. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. Moneys in the fund shall be continuously appropriated to the department for use by the adjutant general in compliance with state and federal law.

Source: L. 2007: Entire section added, p. 444, § 4, effective August 3.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 117, Session Laws of Colorado 2007.

PART 14

COLORADO STATE MILITARY SERVICE CIVIL RELIEF ACT

28-3-1401. Short title. This part 14 shall be known and may be cited as the “Colorado State Military Service Civil Relief Act of 2002”.

Source: L. 2002: Entire part added, p. 690, § 1, effective July 1.

28-3-1402. Applicability. This part 14 shall apply to any person who is called to state military service, as the term “military service” is defined in section 28-3-101, or called to state defense force active duty, as the term is defined in section 28-4-102, for any period of time longer than thirty days and who is ordered by the governor to enforce the law, preserve the peace, secure the rights or lives of citizens, or protect property.

Source: L. 2002: Entire part added, p. 690, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1999, § 56, effective May 22.

28-3-1403. Stay of civil proceedings. Any court of competent jurisdiction may, on its own motion, stay any civil action or proceeding that involves a person described in section 28-3-1402 for the duration of the period of service or duty and for thirty days thereafter, or may otherwise dispose of the case as may be equitable to conserve the interests of all parties. The court shall stay the proceedings upon the application of a person, or an agent of the person, engaged in state military service or state defense force active duty unless, in the opinion of the court, the ability of the person to prosecute or defend the action is not materially affected.

Source: L. 2002: Entire part added, p. 690, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2000, § 57, effective May 22.

28-3-1404. Actions for rent or possession by landlord. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), an eviction, distress action, or requirement for deposit of accrued rent, as provided for in law, may not proceed against any person described in section 28-3-1402 during the period of service or duty and for thirty days thereafter if:

(I) The person, within thirty days after being called to said service or duty, has given written notice to the affected landlord with regard to any premises; and

(II) The rental unit is occupied chiefly as a residential dwelling by the person, the person’s spouse, or a dependent of the person.

(b) A court of competent jurisdiction may allow an action described in paragraph (a) of this subsection (1) to proceed based upon a finding of no substantive prejudice to the person as a result of the service or duty.

(2) The court may, on its own motion, stay the proceedings described in paragraph (a) of subsection (1) of this section for the duration of the period of service or duty and for thirty days thereafter or otherwise dispose of the case as may be equitable to conserve the interests of all parties. The court shall stay the proceedings upon the application of a person, or an agent of the person, engaged in state military service or state defense force active duty unless, in the opinion of the court, the ability of the person to pay the agreed upon rent has not been materially affected by reason of the service or duty.

Source: L. 2002: Entire part added, p. 691, § 1, effective July 1. L. 2003: (2) amended, p. 2000, § 58, effective May 22.

28-3-1405. Installment contracts - purchase of property. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), a creditor who has received a deposit or installment of the purchase price under an installment contract for the purchase of real or personal property from a person who, after the date of the payment of such deposit or installment, is called to state military service or state defense force active duty as described in section 28-3-1402, may not:

(I) Exercise any right or option under said contract to rescind or terminate the contract; or

(II) Resume possession of the property.

(b) A creditor described in paragraph (a) of this subsection (1) may rescind or terminate the installment contract or resume possession of the property for nonpayment if:

(I) The person, within thirty days after being called to said service or duty, has not provided the creditor with written notice of the service or duty;

(II) A court of competent jurisdiction has affirmatively authorized such rescission, termination, or possession; or

(III) The nonpayment of any installment under the installment contract or any other breach of the terms thereof did not occur during the period of the service or duty or for thirty days thereafter.

(2) (a) Upon hearing said action, a court may order the repayment of prior installments or deposits or any part thereof as a condition of terminating the contract and resuming possession of the property.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), a court may, on its own motion, stay the proceedings for the duration of the period of service or duty and for thirty days thereafter or otherwise dispose of the case as may be equitable to conserve the interests of all parties. The court shall stay the proceedings upon the application of a person, or an agent of the person, engaged in state military service or state defense force active duty unless, in the opinion of the court, the ability of the person to comply with the terms of the obligation is not materially affected.

Source: L. 2002: Entire part added, p. 691, § 1, effective July 1. L. 2003: IP(1)(a) and (2)(b) amended, p. 2000, § 59, effective May 22.

28-3-1406. Mortgage or security on property. (1) In any proceeding commenced during a period of state military service or state defense force active duty, as described in section 28-3-1402, to enforce obligations secured by a mortgage, trust deed, or other security upon real or personal property owned prior to the commencement of the period of state military service or state defense force active duty, the court may, on its own motion, stay the proceedings for the duration of the period of service or duty and for thirty days thereafter or otherwise dispose of the case as may be equitable to conserve the interests of all parties. The court shall stay the proceedings upon the application of a person, or an agent of the person, engaged in state military service or state defense force active duty unless, in

the opinion of the court, the ability of the person to comply with the terms of the obligation is not materially affected.

(2) A sale, foreclosure, or seizure of property for nonpayment of any sum due under any obligation, or for breach of the terms of any such obligation, is not valid if made during a period of state military service or state defense force active duty, as described in section 28-3-1402, or within thirty days thereafter, unless such sale, foreclosure, or seizure is made upon an order previously granted by the court and a return thereto made and approved by the court.

(3) This section applies only to obligations secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person described in section 28-3-1402 at the commencement of state military service or state defense force active duty, which obligation originated prior to the person's service or duty and is still owed by the person during the period of service or duty.

Source: L. 2002: Entire part added, p. 692, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2000, § 60, effective May 22.

28-3-1407. Duty to furnish orders. Before a person shall be entitled to any stay pursuant to this part 14, that person shall furnish to the court and to any other affected parties a copy of the person's orders, together with a written statement from the adjutant general of the state of Colorado, that the person has served continuously on state orders for the period commencing with the date of the orders through the date of the statement. The court or other affected parties may require the person to furnish a recertification every thirty days thereafter, which shall be furnished to the person by the adjutant general upon request.

Source: L. 2002: Entire part added, p. 693, § 1, effective July 1.

PART 15

MILITARY FAMILY RELIEF FUND

28-3-1501. Legislative declaration. The general assembly hereby finds and declares that, due to the many involuntary mobilizations subsequent to the September 11, 2001, terrorist attacks, many families of Colorado National Guard members and reservists face financial hardships when the National Guard member or reservist is called to active military duty because the military pay of a soldier is often far less than his or her civilian salary. Because private companies often do not make up the difference in salary, military families may see a significant drop in household income while a family member is away on active military duty. In addition, active duty military personnel and their families encounter additional hardships when the active duty member is deployed to zones in which he or she will encounter hostile fire. Many families of Colorado National Guard members, reservists, and active duty military personnel also face additional expenses caused by a long family separation. The general assembly further finds and declares that grants from the military family relief fund are intended to help families defray the costs of food, housing, utilities, medical services, and other expenses that may be difficult to afford when a family member leaves civilian employment for active military duty or is on active military duty in a hostile fire zone.

Source: L. 2005: Entire part added, p. 652, § 1, effective May 27; entire section amended, p. 658, § 1, effective May 27.

28-3-1502. Military family relief fund - creation. (1) There is hereby created in the state treasury the military family relief fund, referred to in this part 15 as the "fund". The fund shall consist of gifts, grants, and donations to the fund, which the adjutant general is authorized to accept, and any voluntary contributions to the fund pursuant to part 30 of article 22 of title 39, C.R.S.

(2) The adjutant general shall transfer any gifts, grants, and donations to the fund to the state treasurer who shall credit the same to the fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. All moneys remaining in the fund at the end of a fiscal year shall be transferred to the Colorado National Guard foundation, a Colorado nonprofit organization. The foundation shall administer such moneys pursuant to section 28-3-1503.

Source: L. 2005: Entire part added, p. 653, § 1, effective May 27.

28-3-1503. Administration of moneys. (1) (a) The Colorado National Guard foundation shall make grants from the fund to members of the Colorado National Guard or reservists, to active duty military personnel stationed in Colorado, or to the families of members of the Colorado National Guard or reservists or active duty military personnel stationed in Colorado subject to the provisions of this section.

(b) The Colorado National Guard foundation, in cooperation with the department, shall develop criteria for awarding the grants to members of the Colorado National Guard and reservists, subject to the provisions of subsection (2) of this section.

(c) The Air Force aid society and Army emergency relief shall work in cooperation to develop criteria for awarding the grants to active duty military personnel, subject to the provisions of subsection (2.5) of this section.

(2) A member of the Colorado National Guard or a reservist shall meet the following requirements to be eligible to receive a grant from the fund:

(a) The National Guard member or reservist is currently on active military duty for a minimum of thirty days on involuntary mobilization orders.

(b) (Deleted by amendment, L. 2007, p. 2083, § 1, effective June 4, 2007.)

(c) The National Guard member or reservist or the family of the National Guard member or reservist applies for a grant as required by the Colorado National Guard foundation.

(d) The National Guard member or reservist is a Colorado resident as evidenced by a Colorado income tax return for the then current or previous fiscal year on which the National Guard member or reservist filed as a Colorado resident.

(2.5) Any active duty military member stationed in Colorado shall meet the following requirements to be eligible to receive a grant from the fund:

(a) The active duty military member has been deployed overseas and is in receipt of hostile fire pay or the equivalent.

(b) (Deleted by amendment, L. 2007, p. 2083, § 1, effective June 4, 2007.)

(c) The active duty military member or the family of the active duty military member applies for a grant as required by the Colorado National Guard foundation.

(d) The active duty military member is stationed in Colorado as verified by his or her commanding officer.

(e) The active duty military member is a Colorado resident for income tax purposes.

(3) (a) Each National Guard member or reservist or the family of a National Guard member or reservist may apply to the Colorado National Guard foundation for one grant per set of mobilization orders. Subject to the provisions of paragraph (c) of this subsection (3), if the foundation determines that the National Guard member or reservist or the family of a National Guard member or reservist is eligible to receive a grant pursuant to this section, the foundation shall issue the grant.

(b) Each active duty military member or the family of an active duty military member may apply to the Air Force aid society or Army emergency relief, as appropriate, for one grant per deployment to a zone in which the active duty military member qualifies to receive hostile fire pay or the equivalent. If the Air Force aid society or Army emergency relief determines that the active duty military member or the family of an active duty military member is eligible to receive a grant pursuant to this section, the Air Force aid society or Army emergency relief shall notify the Colorado National Guard foundation, in writing, of the active duty military member or family member that is eligible to receive a grant. Subject to the provisions of paragraph (c) of this subsection (3), upon receipt of such notification, the foundation shall issue the grant.

(c) The Colorado National Guard foundation shall award grants in accordance with the criteria developed for awarding grants pursuant to subsection (1) of this section. In awarding the grants, the foundation shall, to the extent possible, prioritize eligible grant applicants who hold the lowest pay grades. Timeliness of payment will be determined by the amount of funds available at the time of application.

(4) The Colorado National Guard foundation may be reimbursed from the moneys in the fund for actual expenses incurred in implementing the provisions of this part 15; except that the total annual reimbursement to the foundation shall not exceed an amount equal to five percent of the amount of fund moneys transferred to the foundation in such year.

(5) The department shall have the authority to oversee the grants issued by the Colorado National Guard foundation from the fund pursuant to this part 15.

Source: L. 2005: Entire part added, p. 653, § 1, effective May 27; (1) and (3) amended and (2.5) added, p. 659, § 2, effective May 27. L. 2007: (2)(b), (2.5)(b), and (3)(c) amended, p. 2083, § 1, effective June 4.

28-3-1504. Moneys remaining in military family relief fund. In the event that the voluntary contribution program created in part 30 of article 22 of title 39, C.R.S., is not continued or reestablished by the general assembly, the Colorado National Guard foundation may donate any moneys remaining in the fund upon the repeal of the voluntary contribution program to the western slope military veterans' cemetery fund created in section 28-5-708 (1) (a).

Source: L. 2005: Entire part added, p. 654, § 1, effective May 27.

PART 16

REAL PROPERTY

Editor's note: This part 16 was originally numbered as part 15 in Senate Bill 05-240 but has been renumbered on revision for ease of location.

28-3-1601. Legislative declaration. (1) The general assembly hereby finds and declares that there are no suitable National Guard training and maintenance facilities in the Grand Junction area to serve the members of the Colorado National Guard and the state. The general assembly believes that the state owes a duty to all of its National Guard members to assist in providing adequate training and maintenance facilities.

(2) The property specified to be used for the purpose described in subsection (1) of this section was received from the federal government to be used for any public purpose authorized by the general assembly. The general assembly hereby declares the specified property should be used for National Guard training and maintenance facilities and the requested transfers of appropriate property rights from the department of human services and the state board of land commissioners to the department should be made without compensation.

Source: L. 2005: Entire part added, p. 1033, § 2, effective June 2.

28-3-1602. Establishment of National Guard facilities - rules. (1) (a) If rights to the property described in section 28-3-1603 are transferred to the department, the general assembly hereby authorizes the establishment and maintenance of National Guard facilities, referred to in this part 16 as the "guard facilities", located adjacent to the western slope military veterans' cemetery. The guard facilities shall be for the purpose of providing an area for National Guard training and maintenance as determined to be necessary by the department. The adjutant general shall promulgate such rules as may be necessary to establish and maintain the guard facilities in compliance with applicable state and federal statutes and rules. The department is directed to prepare, develop, construct, and maintain

such guard facilities at the site described in section 28-3-1603. The department may enter into contracts or agreements with any person or public or private entity to prepare, develop, construct, operate, and maintain the guard facilities. The department is hereby authorized to provide for surveys, engineering studies, conceptual and architectural plans, environmental impact studies, construction work, facilities master plans, and joint use agreements in cooperation with the department of human services and the state board of land commissioners.

(b) The adjutant general shall determine the amount of the appropriation necessary to meet the requirements set forth in paragraph (a) of this subsection (1) and shall submit a request as part of the department's annual budget request to the joint budget committee no later than November 1, 2007.

(2) The general assembly hereby finds, determines, and declares that any use of the property described in section 28-3-1603 as guard facilities is for a public purpose expressly authorized by the general assembly and therefore permissible under any grant of right-of-way applicable to such property executed by the state board of land commissioners.

Source: L. 2005: Entire part added, p. 1033, § 2, effective June 2.

28-3-1603. Location of National Guard facilities. The department, in preparing, developing, constructing, and maintaining the guard facilities, may use for such purposes a parcel consisting of approximately thirty-five acres, as determined by the facilities master plan, of existing improved and unimproved property surrounding the western slope military veterans' cemetery within the eastern portion of the real property known as the Grand Junction regional center; except that the parcel shall not include the approximately twenty acres currently serving the western slope military veterans' cemetery. The department shall enter into all necessary agreements to secure the appropriate property rights for such parcel, including the shared use of the existing structure in cooperation with the department of human services. The general assembly requests the department of human services and the state board of land commissioners to transfer, without compensation, appropriate rights to the property described in this section to the department within two months of the completion of a legal survey of the property described in this section.

Source: L. 2005: Entire part added, p. 1034, § 2, effective June 2.

PART 17

YOUTH CHALLENGE CORPS PROGRAM

28-3-1701. Short title. This part 17 shall be known and may be cited as the "Colorado Youth Challenge Corps Program Act".

Source: L. 2009: Entire part added, (HB 09-1280), ch. 384, p. 2083, § 1, effective August 5.

28-3-1702. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The need for educating at-risk or disruptive youth is well established;

(b) Recognizing the need for special programs to address positive youth development, the United States congress authorized and appropriated moneys for the use of National Guard or other facilities and equipment for the provision of a program designed to improve the employment potential and life skills of eligible youth through National Guard youth challenge corps programs; and

(c) An evaluation of similar programs for eligible youth operating in other states indicates that:

(I) Eighty percent of the students accepted into these programs went on to graduate from the programs;

(II) Eighty percent of the students in these programs were placed in schools or employed at the time of graduation from the programs;

(III) Eighty percent of the students in these programs obtained a GED either during the time in which they were participating in the programs or within one year after graduating from the programs; and

(IV) Less than one percent of the students who participated in these programs were incarcerated within one year after graduating from the programs.

(2) Therefore, the general assembly hereby finds and declares that it would be in the best interest of the people of the state of Colorado to authorize the department to operate a youth challenge corps program and to take advantage of the opportunity to use National Guard or other facilities and equipment and any federal funding that may be available for such a program as authorized by federal law.

Source: L. 2009: Entire part added, (HB 09-1280), ch. 384, p. 2083, § 1, effective August 5.

28-3-1703. Definitions. As used in this part 17, unless the context otherwise requires:

(1) "Eligible youth" means a person who has voluntarily consented, with the written permission of his or her parent or guardian if the person is a minor, to participate in the National Guard youth challenge corps program and the United States congressional youth awards program and to act in accordance with program requirements. Additionally, an eligible youth shall be:

- (a) At least sixteen years of age but less than nineteen years of age;
- (b) A high school dropout, suspended or expelled from school, habitually truant, or otherwise habitually disruptive in school;
- (c) Economically and educationally disadvantaged;
- (d) Unemployed;
- (e) Drug-free;
- (f) Free of felony convictions or capital offenses, not indicted or charged with a crime, and not on parole or probation for anything other than juvenile status offenses; and
- (g) Physically and mentally capable of participating in the program with reasonable accommodations for physical or other disabilities.

(2) "GED" means a certificate that demonstrates that a person has passed the battery of tests given at a testing center authorized by the commissioner of education that are designed to measure the major outcomes and concepts generally associated with four years of high school education.

(3) "Program" means the youth challenge corps program authorized and described in section 28-3-1704.

Source: L. 2009: Entire part added, (HB 09-1280), ch. 384, p. 2084, § 1, effective August 5.

28-3-1704. Youth challenge corps program - authority - youth challenge corps program fund - creation. (1) The department is hereby authorized to operate a youth challenge corps program through the use of National Guard or other facilities and equipment for the purpose of providing eligible youth with a program to help them obtain high school diplomas or GEDs, increase their employment potential, and enhance their education and life skills. The program shall be structured as a five-and-one-half-month residential phase that focuses on education and practical life skills, followed by a twelve-month, post-residential phase that involves skilled and trained mentors who support the program graduates. The department shall not be obligated to implement the program if adequate appropriations or federal or other moneys are not available.

(2) The program shall comply with the criteria and conditions specified in a cooperative agreement entered into between the chief of the federal National Guard bureau and the state of Colorado.

(3) The program shall comply with any applicable state licensing requirements and shall establish a collaborative partnership composed of a representative from, at a minimum, the following:

- (a) The state departments of education, public health and environment, labor, judicial, public safety, and human services;
- (b) A county department of human services director;
- (c) A school district;
- (d) A sheriff or police department; and
- (e) A community agency that serves youth and three appointed advisory youth members from the agency's service population.

(4) The adjutant general of the department, or the adjutant general's designee, is directed to apply for any federal moneys that may be available to the state for the implementation and operation of the program.

(5) (a) The adjutant general of the department, or the adjutant general's designee, is authorized to accept on behalf of the state any gifts, grants, or donations from any private or public source for the purpose of implementing this part 17; except that the department shall not accept a gift, grant, or donation if it is subject to conditions that are inconsistent with this part 17 or any other law of the state.

(b) All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the youth challenge corps program fund, which fund is hereby created and referred to in this part 17 as the "fund". The moneys in the fund are continuously appropriated to the department for the direct and indirect costs associated with the implementation and administration of this part 17. All investment earnings derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

Source: L. 2009: Entire part added, (HB 09-1280), ch. 384, p. 2085, § 1, effective August 5.

ARTICLE 3.1

Colorado Code of Military Justice

Editor's note: Prior to the enactment of this article in 1983, the provisions concerning courts-martial were contained in part 10 of article 3 of this title, and the provisions concerning offenses were contained in part 11 of article 3 of this title.

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PART 1

GENERAL PROVISIONS

28-3.1-101. Short title. This article shall be known and may be cited as the “Colorado Code of Military Justice”.

Source: L. 83: Entire article added, p. 1162, § 1, effective June 10.

28-3.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Accuser” means any person who signs and swears to charges, any person who directs that charges be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

(2) “Active state duty” means all duty authorized under the constitution and laws of the state of Colorado and all training authorized under title 32 of the United States Code.

(3) “Code” means the Colorado code of military justice.

(4) “Commanding officer” includes only a commissioned officer.

(5) “Commissioned officer” means a person who holds the rank of not less than second lieutenant.

(6) “Convening authority” includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command.

(7) “Enlisted member” means any person who is serving in an enlisted grade.

(8) “Grade” means a step or degree in a graduated scale of office or military rank that is established by law or regulation.

(9) “Hostile force” means any person or group of persons acting in violation of the law or opposing the military force in the carrying out of its missions, including but not limited to saboteurs, rioters, and looters.

(10) “Judge advocate” means any commissioned officer who is certified by the state judge advocate general.

(11) “Legal officer” means any commissioned officer of the state military forces designated to perform legal duties of a command.

(12) “Military” or “military forces” refers to any or all of the state military forces.

(13) “Military court” means a court-martial, a court of inquiry, or a provost court.

(14) "Military judge" means an official of general and special courts-martial detailed in accordance with section 28-3.1-210.

(15) "Officer" means a commissioned or warrant officer.

(16) "Officer candidate" means a cadet of the state officer candidate school.

(17) "President" means the member of the court highest in grade and rank.

(18) "Rank" means order of precedence among members of the state military forces.

(19) "State judge advocate general" means the judge advocate general of the state military forces, appointed pursuant to section 28-3.1-106, who is responsible for supervising the administration of military justice in the state military forces and performing such other legal duties as may be required by the adjutant general.

(20) "State military forces" means the National Guard of this state, as defined in section 28-3-101 (12), and any other militia or military forces organized under the laws of the state.

(21) "Superior commissioned officer" means a commissioned officer superior in rank of command.

Source: L. 83: Entire article added, p. 1162, § 1, effective June 10. L. 2002: (20) amended, p. 362, § 23, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (20), see section 1 of chapter 121, Session Laws of Colorado 2002.

28-3.1-103. Persons subject to this code. This code applies to all members of the state military forces.

Source: L. 83: Entire article added, p. 1163, § 1, effective June 10. L. 91: Entire section amended, p. 1377, § 1, effective April 1.

28-3.1-104. Jurisdiction to try certain personnel. (1) Any person discharged from the military forces who is later charged with having fraudulently obtained his or her discharge is subject to trial by court-martial on that charge and, after apprehension, shall be subject to this code while in the custody of the military for that trial. Upon conviction of that charge, he or she is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(2) No person who has deserted from the military forces may be relieved from the jurisdiction of this code by virtue of a separation from any later period of service.

(3) The fact that the enlistment of any person charged with an offense under this code expires while proceedings are pending or while serving a sentence shall not affect the jurisdiction of any court-martial.

(4) Nothing in this code shall preclude applicable federal or state jurisdiction over offenses committed.

Source: L. 83: Entire article added, p. 1164, § 1, effective June 10. L. 2002: (1) amended, p. 602, § 60, effective May 24.

28-3.1-105. Territorial applicability of this code. (1) This code shall apply to all persons otherwise subject to this code while they are serving outside the state and while they are going to and returning from such service outside the state in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state. Offenses committed outside the state may be tried and punished either inside or outside the state.

Source: L. 83: Entire article added, p. 1164, § 1, June 10.

28-3.1-106. State judge advocate general and judge advocates. (1) The adjutant general shall select and appoint an officer of the military forces as state judge advocate general. To be eligible for such appointment, an officer must be a member of the bar of the state of Colorado for at least five years and must meet the additional requirements for appointment to the state staff as set forth in section 28-3-302.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the state military forces and members of the bar of the state of Colorado.

(3) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice. The staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command or with the state judge advocate general.

(4) No person who has acted as a member military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate to any reviewing authority upon the same case.

Source: L. 83: Entire article added, p. 1164, § 1, effective June 10. L. 2002: (2) amended, p. 603, § 61, effective May 24.

28-3.1-107. Apprehension and restraint. (1) Officers, warrant officers, and enlisted members of the military forces may be placed in arrest by their military superiors upon reasonable belief that an offense in violation of this code has been committed and that the person apprehended committed such offense. An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his or her company or subject to his or her authority into arrest or confinement. A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he or she is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated. No person may be ordered apprehended or into arrest or confinement except for probable cause. This section shall not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(2) If any member of the military forces fails or refuses to report to his or her appointed place of duty, his or her commanding officer is authorized to arrest or cause to be arrested such member and have him or her brought before the commanding officer at his or her unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport such member to his or her appointed place of duty, whether within or without the borders of the state. If military personnel are not available for the purpose of making the arrest, or if the commanding officer deems it advisable, he or she may issue a warrant to any peace officer authorized to serve warrants of arrest under state criminal law, and such peace officer is authorized and required to serve such warrant in the same manner as other warrants of arrest and make return thereof to the commanding officer issuing the warrant.

(3) If the commanding officer issuing the warrant is unavailable to receive the person arrested, the arresting officer shall take the person before a county court judge in the state. The judge may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he or she deems proper, conditioned upon the person arrested appearing before said judge at a time specified in such bond for his or her surrender to the commanding officer issuing the warrant or to his or her representative. If the person arrested is unable to post bail, he or she shall be committed by the judge to the county jail for a period of time not to exceed three days to await surrender to the commanding officer issuing the warrant or to his or her representative.

(4) Warrants of arrest issued pursuant to this section shall be in the following form:

STATE OF _____)
) ss.
COUNTY OF _____)
To the (Sheriff), (Constable), (Chief of Police) of _____ (Or the name and rank of the officer, First Sergeant, or N.C.O. ordered to make the arrest) of _____ County _____ :

(name of individual to be arrested, rank, serial number)
a member of _____, Colorado National Guard, having failed or refused
(unit designation)
to report to his or her appointed place of duty at _____, you are therefore
commanded forthwith to arrest the above named _____
(name of individual to be arrested)
and bring him or her before me at _____
(unit headquarters)
The arrest is authorized to be made either during the day or at night. Dated at _____, this _____ day of _____, 20__.

/s/_____
(Type signer's name, rank, branch, organization, and designation as commanding officer)

(5) The fees and mileage allowed for the service of warrants of arrest issued pursuant to this section shall be the same as provided by law for the service of criminal process and shall be paid out of funds appropriated to the office of the adjutant general upon proper application therefor.

Source: L. 83: Entire article added, p. 1165, § 1, effective June 10. **L. 2002:** (1) to (4) amended, p. 603, § 62, effective May 24.

28-3.1-108. Apprehension of deserters. Any officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or the District of Columbia may summarily apprehend a deserter from the military forces. If the offender is apprehended outside the state of Colorado, his or her return to Colorado must be in accordance with normal extradition procedure or reciprocal agreement.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. **L. 2002:** Entire section amended, p. 604, § 63, effective May 24.

28-3.1-109. Restraint of persons charged with offenses. Any person subject to this code who is charged with an offense under this code may be ordered into arrest or confinement by the convening authority, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him or her of the specific offense of which he or she is accused and to try him or her or to dismiss the charges and release him or her.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. **L. 2002:** Entire section amended, p. 604, § 64, effective May 24.

28-3.1-110. Confinement. (1) Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in a jail in the county

where the offense was committed or a jail designated by the convening authority, the costs of such confinement to be paid out of funds appropriated to the office of the adjutant general.

(2) No provost marshal, commander of a guard, or master-at-arms, and no warden, sheriff, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under subsection (1) of this section may refuse to receive or keep any prisoner committed to his or her charge when the committing person furnishes a statement signed by him or her of the offense charged against the prisoner.

(3) Every commander of a guard, every master-at-arms, and every warden, sheriff, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under subsection (1) of this section to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him or her, and the name of the person who ordered or authorized the commitment.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. L. 2002: (2) and (3) amended, p. 605, § 65, effective May 24.

28-3.1-111. Confinement with enemy prisoners prohibited. No member of the military forces may be placed in confinement in immediate association with enemy prisoners.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10.

28-3.1-112. Punishment prohibited before trial. Subject to section 28-3.1-403, no person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against such person, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances require to insure his or her presence. However, such person may be subjected to minor punishment during that period for infractions of discipline.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10. L. 2002: Entire section amended, p. 605, § 66, effective May 24.

28-3.1-113. Delivery of offenders to civil authorities. (1) Under such regulations as are prescribed under this code, a person subject to this code who is on active state duty who is accused of any offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial and the delivery interrupts the execution of the sentence of the court-martial, the offender after having answered to the civil authorities for his or her offense shall, upon the request of competent military authority, be returned to military custody for the completion of his or her sentence.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10. L. 2002: (2) amended, p. 605, § 67, effective May 24.

28-3.1-114. Commanding officer's nonjudicial punishment. (1) Punishment may be imposed for any offense cognizable by a court-martial upon any member of the state military forces under this section. Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers and warrant officers exercising command authorized to exercise those powers. If authorized by regulations of the governor, the governor or an officer of general rank in command may delegate his or her powers under this section to a principal assistant. If subject to disciplinary

punishment, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under section 28-3.1-102 (14), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his or her choice. The accused may also employ civilian counsel of his or her own choosing at his or her own expense. In all proceedings, the accused is allowed three duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses, as defined by the governor, without the intervention of a court-martial:

(a) Upon an officer of his or her command:

(I) Withholding of privileges for not more than two consecutive weeks;

(II) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(III) If imposed by the governor, the adjutant general, or a commanding officer of the Army or Air National Guard, a fine or forfeiture of pay and allowance of not more than two hundred fifty dollars;

(b) Upon other military personnel of his or her command:

(I) Withholding of privileges for not more than two consecutive weeks;

(II) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(III) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included;

(IV) Reduction to next inferior grade if the grade from which he or she was demoted was established by the command or an equivalent or lower command;

(V) A fine or forfeiture of pay and allowances of not more than fifty dollars for a single offense and of not more than two hundred fifty dollars for multiple offenses.

(3) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(4) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he or she is in charge, the punishments authorized to be imposed by commanding officers.

(5) Except where punishment has been imposed by the governor, a person punished under this section who considers such punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his or her successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this section; but the fact that disciplinary punishment has been enforced may be shown by the accused upon trial and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on and after the date that punishment is imposed and to pay and allowances accrued before that date.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10. L. 86: (1) and (2)(b)(V) amended, p. 1014, § 2, effective July 1. L. 91: (2)(b)(V) amended, p. 1377, § 2, effective April 1. L. 2002: (1), IP(2)(a), IP(2)(b), (2)(b)(IV), (4), and (5) amended, p. 605, § 68, effective May 24.

PART 2

COURTS-MARTIAL

28-3.1-201. Courts-martial - jurisdiction - composition. (1) In the military forces general, special, and summary courts-martial shall be constituted like similar courts of the armed forces of the United States. They shall have the jurisdiction and powers, except as to punishment, of a similar court of the armed forces of the United States and shall follow the forms and procedures provided by those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a military judge and not less than five members, or consisting of only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of a military judge and not less than three members, or consisting of only a military judge if the accused so requests under the same conditions as those prescribed in paragraph (a) of this subsection (2);

(c) Summary courts-martial, consisting of one commissioned officer.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

28-3.1-202. Complete record of proceedings and testimony - when required. A dishonorable discharge or dismissal may not be adjudged unless a verbatim record of the proceedings and testimony before the court has been made.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

28-3.1-203. Jurisdiction of general courts-martial. (1) General courts-martial have jurisdiction to try persons subject to this code for any offense punishable under this code and may adjudge any of the following punishments:

- (a) Confinement for not more than two years;
- (b) A fine of not more than one thousand dollars;
- (c) Forfeiture of pay and allowances of not more than two hundred dollars;
- (d) A reprimand;
- (e) Dismissal or dishonorable discharge;
- (f) Reduction of a noncommissioned officer to any inferior grade; or
- (g) Any combination of these punishments.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

28-3.1-204. Jurisdiction of special courts-martial. Special courts-martial have jurisdiction to try any person subject to this code, except officers, for any offense punishable under this code. A special court-martial has the same powers of punishment as a general court-martial; except that confinement may not be more than ninety days and the fine or forfeiture of pay and allowances imposed by a special court-martial may not be more than five hundred dollars for a single offense.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

28-3.1-205. Jurisdiction of summary courts-martial. (1) Summary courts-martial have jurisdiction to try any person subject to this code, except officers, for any offense made punishable under this code.

(2) No person shall be tried by a summary court-martial if, prior to trial, he or she objects thereto. If an objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as appropriate.

(3) A summary court-martial may sentence an offender to confinement for not more than thirty days, to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances of not more than two hundred fifty dollars for a single offense, to reduction of an enlisted person to any inferior grade, and to any combination of these punishments.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 2002: (2) and (3) amended, p. 606, § 69, effective May 24.

28-3.1-206. Who may convene general courts-martial. General courts-martial may be convened by the governor, the adjutant general for the Colorado National Guard, the assistant adjutant general for the Colorado Army National Guard, the assistant adjutant general for the Colorado Air National Guard, or the tactical fighter wing commander.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 91: Entire section amended, p. 1377, § 3, effective April 1.

28-3.1-207. Who may convene special courts-martial. The commanding officer of a garrison, fort, post, camp, air base, or other place where members of the military forces are on duty or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or any group of detached units placed under a command for this purpose may convene special courts-martial. In the Colorado Army National Guard, special courts-martial convening authorities shall include the state aviation officer, troop command commander, and artillery brigade commander. In the Colorado Air National Guard, special courts-martial convening authorities shall include the deputy commander for support, the detachment one commander, and the tactical control group commander. Special courts-martial may also be convened by superior authority. When any such commanding officer is an accuser, the court shall be convened by superior authority.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 91: Entire section amended, p. 1378, § 4, effective April 1.

28-3.1-208. Who may convene summary courts-martial. (1) The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the military forces are on duty or of a division, brigade, regiment, wing, group, battalion, squadron, company, or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment, he or she shall be the summary court-martial of that command or detachment and shall hear and determine all summary courts-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior authority.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 2002: (2) amended, p. 606, § 70, effective May 24.

28-3.1-209. Who may serve on courts-martial. (1) Any commissioned officer off or on duty with the military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.

(2) Any warrant officer off or on duty with the military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer.

(3) (a) Any enlisted member of the military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member, but he or she shall serve as a member of a court only if, before convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused shall not be tried by a general or

special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained because of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why enlisted members could not be obtained.

(b) As used in this section, "unit" means any regularly organized body of the military forces not larger than a company, a squadron, or a body corresponding to one of them.

(4) (a) No person subject to this code may be tried by a court-martial of which any member is junior to him or her in rank or grade, unless it cannot be avoided and then only by order of the governor.

(b) When convening a court-martial, the convening authority shall detail as members thereof those persons as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he or she is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of this state and of appropriate rank and grade, the convening authority shall appoint him or her as president of a general or special court-martial. Although this requirement shall be binding on the convening authority, failure to meet it in any case shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 2002: (3)(a) and (4) amended, p. 607, § 71, effective May 24.

28-3.1-210. Military judge of a general or special court-martial. (1) The authority convening a general or special court-martial shall request the state judge advocate general to detail as military judge thereof a commissioned officer who is a member of the bar of this state. No person is eligible to act as military judge in a case if he or she is the accuser or witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(2) The military judge may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he or she vote with the members of the court.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10. L. 2002: Entire section amended, p. 607, § 72, effective May 24.

28-3.1-211. Detail of trial and defense counsel. (1) For each general or special court-martial, the authority convening the court shall request the state judge advocate general to detail trial counsel and defense counsel and assistants as he or she considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel and defense counsel for a general or special court-martial shall be members of the bar of this state.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10. L. 2002: (1) amended, p. 608, § 73, effective May 24.

28-3.1-212. Detail or employment of reporters and interpreters. The convening authority of a general court-martial or court of inquiry shall detail or employ qualified court

reporters, who shall record the proceedings of testimony taken before that court or, in the alternative, may utilize sound recording equipment. The convening authority of a special court-martial may detail or employ qualified court reporters who shall record the proceedings of testimony taken before that court. The convening authority of a military court may appoint interpreters who shall interpret for the court.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10.

28-3.1-213. Absent and additional members. (1) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(2) Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused, and counsel.

(3) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial may proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10.

28-3.1-214. Charges and specifications. (1) Charges and specifications shall be signed by an accuser subject to this code, under oath, before a commissioned officer of the state military force authorized to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the accused shall be informed of the charges against him or her as soon as practicable.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10. **L. 2002:** (1)(b) and (2) amended, p. 608, § 74, effective May 24.

28-3.1-215. Compulsory self-incrimination prohibited. (1) No person subject to this code shall compel any person to incriminate himself or herself or to answer any question, the answer to which may tend to incriminate him or her.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising the person that he or she does not have to make any statement regarding the offense of which he or she is accused or suspected, that any statement made by the person may be used as evidence against him or her in a trial by court-martial, that the person has a right to consult with a lawyer, that the person has a right to have a lawyer, and that upon the person's request a lawyer will be provided him or her without cost or, if the person prefers, he or she may retain counsel of his or her choice at his or her own expense.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person compelled.

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against such person in a trial by court-martial.

(5) The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10. L. 2002: (1), (2), and (4) amended, p. 608, § 75, effective May 24.

28-3.1-216. Investigation. (1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of his or her right to be represented by civilian counsel if provided by him or her, or by military counsel of his or her own selection if such counsel is reasonably available, or by counsel detailed by the state judge advocate. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides, and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section, no further investigation of that charge is necessary under this section, unless it is demanded by the accused after he or she is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1173, § 1, effective June 10. L. 86: (1) amended, p. 1015, § 3, effective July 1. L. 2002: (2) and (3) amended, p. 608, § 76, effective May 24.

28-3.1-217. Forwarding of charges. When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that officer the reasons for delay.

Source: L. 83: Entire article added, p. 1173, § 1, effective June 10.

28-3.1-218. Advice of state judge advocate and reference for trial. (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate general for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications needed to make them conform to the evidence may be made.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. L. 2002: (1) amended, p. 609, § 77, effective May 24.

28-3.1-219. Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. No person shall, against his or her objection, be brought to trial or be required to participate by himself or herself or by counsel in a session called by the military judge under section 28-3.1-304 before a general court-martial within five days after the service of the charges upon him or her, or before a special court-martial within three days after the service of the charges upon him or her.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. L. 2002: Entire section amended, p. 609, § 78, effective May 24.

PART 3

TRIAL PROCEDURE

28-3.1-301. General procedures. The procedure, including modes of proof, in cases before military courts and other military tribunals, may be prescribed by the governor by regulation and shall so far as practicable be the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of Colorado and in the trial of courts-martial of the United States, but such procedure may not be contrary to or inconsistent with this code.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. L. 2002: (3) amended, p. 362, § 24, effective July 1.

28-3.1-302. Unlawfully influencing action of court. (1) No authority convening a general, special, or summary court-martial, nor any other commanding officer or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of their functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to his or her judicial acts. The provisions of this subsection (1) shall not apply to general instructional or informational courses in military justice, if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or to statements and instructions given in open court by the military judge or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces should be retained on duty, no person subject to this code may, in preparing any such report:

(a) Consider or evaluate the performance of duty of any such member as a member, military judge, or trial counsel of a court-martial; except that this paragraph (a) is not applicable to evaluations made by the state judge advocate of the performance of personnel under his or her supervision;

(b) Give a less favorable rating or evaluation of any member of the military forces because of the zeal with which such member as counsel represented any accused before a court-martial.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. L. 2002: (1) and (2)(a) amended, p. 609, § 79, effective May 24.

28-3.1-303. Duties of trial counsel and defense counsel. (1) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of proceedings.

(2) The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by him or her, or by military counsel of his or her own selection if reasonably available, or by the defense counsel detailed under section 28-3.1-211. If the accused has counsel of his or her own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his or her associate counsel; otherwise they shall be excused by the military judge.

(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of the matters he or she feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he or she is qualified to be a trial counsel as required by section 28-3.1-211, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he or she is qualified to be the defense counsel as required by section 28-3.1-211, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Source: L. 83: Entire article added, p. 1175, § 1, effective June 10. L. 2002: (2) to (5) amended, p. 610, § 80, effective May 24.

28-3.1-304. Sessions. (1) (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may call the court into session without the presence of the members for:

(I) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(II) Hearing and ruling upon any matter which may be ruled upon by the military judge, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(III) If permitted by the regulations of the governor, holding the arraignment and receiving the pleas of the accused; or

(IV) Performing any other procedural function which may be performed by the military judge pursuant to section 28-3.1-301 which does not require the presence of the members of the court.

(b) These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made part of the record.

(2) Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. All other proceedings, including any consultation of the court with counsel or the military judge, shall be made part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

(3) Trial counsel, in the name of the state of Colorado, may file an interlocutory appeal in the supreme court of the state of Colorado from a ruling of the military judge granting a motion made by the accused in advance of trial for the return of property, the suppression of evidence, or the suppression of an extrajudicial confession or admission if trial counsel certifies to the military judge who granted the motion that the interlocutory appeal is not taken for the purpose of delay and said property or evidence is a substantial part of the proof of a charge pending against the accused.

Source: L. 83: Entire article added, p. 1175, § 1, effective June 10. L. 87: (3) added, p. 1176, § 1, effective April 16.

28-3.1-305. Continuances. The military judge or a court-martial without a military judge may for reasonable cause grant a continuance to any party for such time and as often as appears just.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-306. Challenges. (1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Both the accused and the trial counsel are entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-307. Oaths. (1) Interpreters and, in general and special courts-martial, members, military judges, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(2) Each witness before a military court shall be examined on oath or affirmation.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-308. Statute of limitations. (1) A person charged with any offense under the code is not liable to be tried by court-martial or punished under section 28-3.1-114, if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 28-3.1-114.

(2) Notwithstanding the provisions of subsection (1) of this section, a prosecution for larceny and wrongful appropriation under section 28-3.1-538, against one who obtained property lawfully and subsequently misappropriated it, may be commenced within one year after discovery of the loss, but in no case shall this extend the time limitation by more than five years.

(3) Periods in which the accused was absent from territory in which the state has authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy of any hostile force shall be excluded in computing the period of limitation prescribed in this section.

(4) A person charged with desertion or absence without leave in time of national emergency or war, or with aiding the enemy, or with mutiny may be tried and punished at any time without limitation.

(5) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offenses punishable under section 28-3.1-535, 28-3.1-536, or 28-3.1-537 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specification.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10. **L. 2002:** (3) amended, p. 610, § 81, effective May 24.

28-3.1-309. Former jeopardy. (1) No person may be tried a second time in any military court for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charges or specification is a trial for purposes of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial for purposes of this section.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10.

28-3.1-310. Pleas of the accused. (1) If an accused, after arraignment, makes an irregular pleading or, after a plea of guilty, sets up matter inconsistent with the plea, or if it appears that an accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if an accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he or she had pleaded not guilty.

(2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by the regulations of the governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10. L. 2002: (1) amended, p. 611, § 82, effective May 24.

28-3.1-311. Opportunity to obtain witnesses and other evidence. (1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations the governor prescribes.

(2) The military judge of a court-martial or a summary court-martial may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce the attendance of witnesses and the production of books and papers.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10.

28-3.1-312. Refusal to appear or testify. (1) Any person not subject to this code who has been subpoenaed to appear as a witness or to produce books and records before a military court or before a military or civil officer designated to take a deposition to be read in evidence before such a court and who willfully neglects or refuses to appear, refuses to qualify as a witness, refuses to testify, or refuses to produce any evidence commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Upon the certification of the facts in subsection (1) of this section by the military court or tribunal to the district attorney of the county where the offense occurred, the district attorney shall prosecute the accused in any court of record, and jurisdiction is hereby conferred upon such courts for this purpose.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10. L. 2002: (1) amended, p. 1541, § 283, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

28-3.1-313. Contempt. A military court may punish for contempt any person who willfully and unlawfully refuses to be sworn as a witness, or who refuses to answer any legal or proper question, or who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by a riot or disorder. The punishment shall not exceed confinement for thirty days or a fine of one hundred dollars, or both.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-314. Depositions. (1) At any time after charges have been signed as provided in section 28-3.1-214, any party may take oral or written depositions, unless an authority

competent to convene a court-martial for the trial of those charges forbids such depositions for good cause. If a deposition is to be taken before charges are referred for trial, such authority shall designate lawyers to represent the prosecution and the defense.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions shall be taken and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) An authenticated deposition taken upon reasonable notice to the other parties, if otherwise admissible under the rules of evidence, may be used in evidence before any court-martial or in any proceeding before a court of inquiry.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-315. Admissibility of records of courts of inquiry. Records of courts of inquiry are not admissible as evidence in any court-martial.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-316. Voting and rulings. (1) Voting by members of a general or special court-martial on questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member in rank of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge of a general or special court-martial shall rule upon interlocutory questions, other than a challenge, arising during the proceedings. Any ruling made by the military judge upon any interlocutory question, other than a motion for a finding of not guilty or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial; except that he or she may not change a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 28-3.1-317, beginning with the junior member in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(a) That the accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That, in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he or she must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(d) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the prosecution.

(4) The provisions of subsections (1), (2), and (3) of this section shall not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum decision is filed, it shall be sufficient if the findings of fact appear therein.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10. **L. 2002:** (2), (3)(a), and (3)(b) amended, p. 611, § 83, effective May 24.

28-3.1-317. Number of votes required. (1) No person may be convicted of an offense except by the unanimous concurrence of the members present at the time the vote is taken.

(2) All sentences shall be determined by the vote of two-thirds of the members present at the time the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10.

28-3.1-318. Court to announce action. A court-martial shall announce its findings and sentence to the parties as soon as determined.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10.

28-3.1-319. Record of trial. General and special courts-martial shall keep a verbatim record of the trial of each case. Upon a request of the accused, a reviewing authority, or the state judge advocate general, the record shall be transcribed and authenticated by the president or the military judge. If the record cannot be authenticated by either the president or the military judge by reason of his or her death, disability, or absence, it shall be authenticated by two members of the court. In all other courts-martial, records of trial shall contain such matter and be authenticated in such manner as the governor prescribes by regulation.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10. L. 2002: Entire section amended, p. 611, § 84, effective May 24.

PART 4

SENTENCES

28-3.1-401. Cruel and unusual punishments prohibited. Cruel and unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code.

Source: L. 83: Entire article added, p. 1180, § 1, effective June 10.

28-3.1-402. Maximum limits. The punishment which a court-martial may direct for an offense shall not exceed limits prescribed by this code.

Source: L. 83: Entire article added, p. 1180, § 1, effective June 10.

28-3.1-403. Effective date of sentences. (1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances, in addition to confinement not suspended, the forfeiture may apply to pay and allowances becoming due before or after the date the sentence is approved by the convening authority.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the terms of confinement.

(3) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command

to which the accused is currently assigned, may in his or her sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(4) All other sentences of court-martial are effective on the date ordered executed. In no case may a sentence be executed until final action is taken on review.

(5) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor.

Source: L. 83: Entire article added, p. 1180, § 1, effective June 10. **L. 2002:** (3) amended, p. 611, § 85, effective May 24.

28-3.1-404. Execution of confinement. (1) A sentence of confinement adjudged by a military court may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state.

(2) The omission of the words “hard labor” from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, sheriffs, officers, and wardens of city or county jails and of all other jails, penitentiaries, or prisons designated by the convening authority shall receive persons ordered into confinement before trial or persons committed to confinement by a military court and shall confine them according to law.

Source: L. 83: Entire article added, p. 1180, § 1, effective June 10.

28-3.1-405. Commitment under sentence of confinement. When a sentence of confinement is imposed to be served other than in a guardhouse, the convening authority shall issue a writ in the following or similar form:

STATE OF _____)
) ss.
COUNTY OF _____)

To the Sheriff of _____ County, _____, State of Colorado.
WHEREAS, _____ of _____ in the _____ County of _____,
a member of the Colorado National Guard, was on the _____ day of _____, 20____, tried
by court-martial and found guilty of _____ in violation of the Colorado Military Code
and was sentenced to serve _____ days imprisonment; and
WHEREAS, as such sentence was approved and ordered executed by the convening
authority, on the _____ day of _____, 20____;
THEREFORE, you were commanded to take the body of the said _____ and
commit him or her to the keeper of the jail, who is hereby commanded to receive the body
of the said _____ and keep him or her safely for the term of _____ days, after which he
or she shall be released.
Fail not, but do as herein commanded and make a return within sixty (60) days from this
date.
Dated at _____, in the _____ County of _____ this _____ day of
_____, 20____.

Source: L. 83: Entire article added, p. 1181, § 1, effective June 10. **L. 2002:** Entire section amended, p. 612, § 86, effective May 24.

28-3.1-406. Collection of fines. (1) All fines imposed as a sentence of a court-martial shall be paid at the time of approval of the sentence by the convening authority.

(2) The commitment to the county jail for nonpayment of fines shall be in the following or similar form:

STATE OF _____)
) ss.
COUNTY OF _____)

To the Sheriff of _____ County _____, State of Colorado.
WHEREAS, _____ of _____ in the _____ County of _____, a member of the Colorado National Guard, was on the _____ day of _____, 20____, tried by court-martial and found guilty of _____ in violation of the Colorado Military Code and was sentenced to pay a fine of _____ Dollars; and

WHEREAS, such fine has not been paid;

NOW, THEREFORE, by authority of the State of Colorado, you are hereby commanded to take the body of the said _____ and commit it to the keeper of the jail in the County of _____, who is hereby commanded to receive the body of the said _____ and keep him or her safely until he or she pays the sum above mentioned, or shall have served one (1) day for each dollar of said fine, after which time he or she shall be released.

Fail not, but make service and return within sixty (60) days from this date.

Dated at _____, in the _____ County of _____ this _____ day of _____, 20____.

Source: L. 83: Entire article added, p. 1181, § 1, effective June 10. **L. 2002:** (2) amended, p. 612, § 87, effective May 24.

28-3.1-407. Initial action on the record. After a trial by court-martial, the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or the governor. The reviewer may approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit and may suspend or defer the execution of the sentence.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. **L. 2002:** Entire section amended, p. 613, § 88, effective May 24.

28-3.1-408. Reconsideration and revision. (1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) (a) Where there is an apparent error or omission in the record, or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action.

(b) In no case, however, may the record be returned:

(I) For reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

(II) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of the code; or

(III) For increasing the severity of the sentence, unless the sentence prescribed for the offense is mandatory.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10.

28-3.1-409. Rehearings. (1) If the convening authority disapproves the findings and sentence of a court-martial, he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case, he or she shall state the reasons for disapproval. If he or she disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial whose composition shall not include any member or military judge of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed unless the sentence is based upon a finding of guilty of an offense considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. **L. 2002:** Entire section amended, p. 613, § 89, effective May 24.

28-3.1-410. Approval by the convening authority. In acting on the findings and sentence of a court-martial, the convening authority may approve only those findings and the sentence or part or amount of the sentence which he or she finds correct in law and fact. Unless he or she indicates otherwise, approval of the sentence is approval of the findings and sentence.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. **L. 2002:** Entire section amended, p. 613, § 90, effective May 24.

28-3.1-411. Review of records - disposition. (1) If the convening authority is the governor, he or she shall refer the record of courts-martial to the state judge advocate general who shall submit his or her written opinion to the governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the governor's action on review of any record is final.

(2) (a) Except as provided in subsection (1) of this section, the convening authority shall refer the record of a general court-martial to the staff judge advocate designated by the state judge advocate general who shall submit his or her written opinion to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. When the convening authority has taken final action, he or she shall forward the entire record, including his or her action thereon and the opinion of the staff judge advocate, to the state judge advocate general for review.

(b) In a case reviewable by the state judge advocate general under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He or she may affirm only the findings of guilty and the sentence or part or amount of the sentence which he or she finds correct in law and fact and determined on the basis of the entire record. In considering the record, he or she may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the staff judge advocate sets aside the findings and sentence, he or she may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he or she sets aside the findings and sentence and does not order a rehearing, he or she shall order that the charges be dismissed.

(c) The state judge advocate general shall instruct the convening authority to act in accordance with his or her decision on the review. If he or she has ordered a rehearing, but the convening authority finds a rehearing impracticable, he or she may dismiss the charges.

(3) Except as provided in subsection (1) of this section, the convening authority of any summary or special court-martial, after taking final action on review, shall forward the entire record, including his or her action thereon, to the staff judge advocate designated by

the state judge advocate general. With respect to such record, the staff judge advocate shall have the same duties and powers as provided for the state judge advocate general in paragraphs (b) and (c) of subsection (2) of this section.

(4) The state judge advocate general may order one or more boards of review, each composed of not less than three commissioned officers of the state military forces, or retired members of the military forces, or members of the United States Air Forces or United States Army reserve, each of whom must be a member of the bar of this state. Each board of review shall review the record of any trial by special court-martial referred to it by the state judge advocate general. Boards of review shall have the same authority on review as the state judge advocate general has under subsection (2) of this section.

Source: L. 83: Entire article added, p. 1183, § 1, effective June 10. L. 2002: (1), (2), and (3) amended, p. 614, § 91, effective May 24.

28-3.1-412. Review counsel. (1) Upon the final review of a sentence of any court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate general.

(2) Upon the request of an accused, the state judge advocate general shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 28-3.1-211 if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the state judge advocate general in the review of cases specified in subsection (1) of this section.

(3) The accused may be represented by civilian counsel, provided at his or her expense, before the reviewing authority, before the staff judge advocate, and before the state judge advocate general.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10. L. 2002: (3) amended, p. 615, § 92, effective May 24.

28-3.1-413. Review by governor. Notwithstanding review procedures provided in this code, in any case where no right to review by the governor exists, the accused may, within thirty days after final action is taken by any reviewing authority, petition the governor to review such final action. The governor may take action as he or she deems appropriate. Failure of the governor to act within thirty days shall constitute a denial.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10. L. 2002: Entire section amended, p. 615, § 93, effective May 24.

28-3.1-414. Error of law - lesser included offense. (1) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law, unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to affirm a finding of guilty may affirm so much of the findings as includes a lesser included offense.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10.

28-3.1-415. Vacation of suspension of sentence. (1) Before the vacation of the suspension of any court-martial sentence, the officer having court-martial jurisdiction over a probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel, if he or she so desires.

(2) The record of the hearing and the recommendation of the officer having court-martial jurisdiction shall be sent for action to the state judge advocate in cases involving a general court-martial sentence. If the state judge advocate vacates the suspension, any unexecuted part of the sentence shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10. L. 2002: (1) amended, p. 615, § 94, effective May 24.

28-3.1-416. Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the governor for a new trial on grounds of newly discovered evidence or fraud on the court-martial.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10.

28-3.1-417. Remission and suspension. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

Source: L. 83: Entire article added, p. 1184, § 1, effective June 10.

28-3.1-418. Restoration. (1) Under regulations prescribed by the governor, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, may be restored, unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge or other punitive discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his or her enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issue, and a commissioned officer dismissed by that sentence may be reappointed only by the governor to the commissioned grade and rank as that former officer would have attained had he or she not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all state purposes.

Source: L. 83: Entire article added, p. 1185, § 1, effective June 10. L. 2002: (2) and (3) amended, p. 615, § 95, effective May 24.

28-3.1-419. Finality of proceedings, findings, and sentences. The proceedings, findings, and sentences of courts-martial as reviewed and approved as required by this code and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this code are final. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided by section 28-3.1-416 or action taken on appeal as provided by section 28-3.1-420.

Source: L. 83: Entire article added, p. 1185, § 1, effective June 10. L. 87: Entire section amended, p. 1176, § 2, effective April, 16.

28-3.1-420. Appeal following review and approval. (1) The accused, within thirty days after the date the final reviewing authority takes action, may take an appeal to the supreme court of the state of Colorado pursuant to the Colorado appellate rules.

(2) When the accused petitions the governor pursuant to section 28-3.1-413 to review the final action of the reviewing authority, the time for filing notice of appeal is extended until thirty days after the governor announces his or her action or the petition is denied due to the governor's failure to act. No action or failure to act by the governor shall form the basis for appeal, nor shall the supreme court order review by the governor.

Source: L. 87: Entire section added, p. 1177, § 3, effective April 16. L. 2002: (2) amended, p. 615, § 96, effective May 24.

PART 5

PUNITIVE ARTICLE

28-3.1-501. Principal defined. A "principal", as used in this code, means any person punishable under this code who commits an offense punishable by this code or intentionally aids, abets, counsels, commands, or procures its commission or intentionally causes an act to be done which if directly performed by him or her would be punishable by this code.

Source: L. 83: Entire article added, p. 1185, § 1, effective June 10. L. 2002: Entire section amended, p. 615, § 97, effective May 24.

28-3.1-502. Abetting offenders. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1185, § 1, effective June 10. L. 2002: Entire section amended, p. 616, § 98, effective May 24.

28-3.1-503. Charges - offenses included. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or of an offense necessarily included therein, but not both.

Source: L. 83: Entire article added, p. 1185, § 1, effective June 10.

28-3.1-504. Attempt to commit offense. (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending even though failing to effect its commission, is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial directs, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10.

28-3.1-505. Conspiracy to commit offense. Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10.

28-3.1-506. Solicitation. (1) Any person subject to this code who solicits or advises another to desert in violation of section 28-3.1-509 or mutiny in violation of section 28-3.1-518 shall be punished as a court-martial directs.

(2) Any person subject to this code who solicits or advises another to commit an act of misbehavior before the enemy or any hostile force in violation of section 28-3.1-523 or sedition in violation of section 28-3.1-518 shall be punished as court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10.

28-3.1-507. Fraudulent enlistment, appointment, or separation. (1) Any person shall be punished as a court-martial directs if he or she:

(a) Procures his or her own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(b) Procures his or her own separation from the state military forces by knowingly false representation or deliberate concealment as to his or her eligibility for that separation.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. L. 2002: Entire section amended, p. 616, § 99, effective May 24.

28-3.1-508. Unlawful enlistment, appointment, or separation. Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him or her to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. L. 2002: Entire section amended, p. 616, § 100, effective May 24.

28-3.1-509. Desertion. (1) Any member of the state military forces is guilty of desertion if he or she:

(a) Without authority, goes or remains absent from his or her unit, organization, or place of duty with intent to remain away therefrom permanently; or

(b) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the state military forces, enlists or accepts an appointment in the same or another one of the state military forces or in one of the armed forces of the United States without fully disclosing the fact that he or she has not been regularly separated.

(2) Any commissioned officer of the state military forces who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. L. 2002: (1) and (2) amended, p. 616, § 101, effective May 24.

28-3.1-510. Absence without leave. (1) Any person subject to this code shall be punished as a court-martial directs when he or she, without authority:

(a) Fails to go to his or her appointed place of duty at the time prescribed;

(b) Goes from that place; or

(c) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. L. 2002: IP(1), (1)(a), and (1)(c) amended, p. 617, § 102, effective May 24.

28-3.1-511. Failure to embark. Any person subject to this code who, through neglect or design, misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. L. 2002: Entire section amended, p. 617, § 103, effective May 24.

28-3.1-512. Contempt toward officials. Any person subject to this code who uses contemptuous words against the president of the United States or the governor which may detrimentally affect the morale or effectiveness of any unit of the state military forces shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10.

28-3.1-513. Disrespect toward superior commissioned officer. Any person subject to this code who behaves with disrespect toward his or her superior commissioned officers shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. L. 2002: Entire section amended, p. 617, § 104, effective May 24.

28-3.1-514. Assaulting or willfully disobeying superior commissioned officer. (1) Any person subject to this code shall be punished as a court-martial directs if he or she:

(a) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against such officer while he or she is in the execution of his or her office; or

(b) Willfully disobeys a lawful command of his or her superior commissioned officer.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. L. 2002: Entire section amended, p. 617, § 105, effective May 24.

28-3.1-515. Insubordinate conduct toward warrant officer or noncommissioned officer. (1) Any warrant officer or enlisted member shall be punished as a court-martial directs if he or she:

(a) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his or her office; or

(b) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(c) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his or her office.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. L. 2002: IP(1), (1)(a), and (1)(c) amended, p. 617, § 106, effective May 24.

28-3.1-516. Dereliction of duty. Any person subject to this code who violates or fails to obey any lawful general order or regulation, including an order to report for state active duty, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

28-3.1-517. Maltreatment of inferiors. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** Entire section amended, p. 618, § 107, effective May 24.

28-3.1-518. Mutiny - sedition. (1) Any person subject to this code who, with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny.

(2) Any such person who, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against such authority is guilty of sedition.

(3) Any such person who fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(4) Any person who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** (1) and (3) amended, p. 618, § 108, effective May 24.

28-3.1-519. Resisting arrest - escape from custody. Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

28-3.1-520. Unlawful release of prisoners. Any person subject to this code who, without proper authority, releases any prisoner committed to his or her charge or who, through neglect or design, suffers any such prisoner to escape shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** Entire section amended, p. 618, § 109, effective May 24.

28-3.1-521. Unlawful detention of another. Any person subject to this code who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

28-3.1-522. Noncompliance with procedural rules. Any person subject to this code who is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code or knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

28-3.1-523. Misbehavior before the enemy or any hostile force. (1) Any person subject to this code shall be punished as a court-martial directs when he or she, before or in the presence of the enemy or any hostile force:

(a) Runs away;

- (b) Abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend;
- (c) Through disobedience, neglect, or intentional misconduct, endangers the safety of any such command, unit, place, or military property;
- (d) Casts away his or her arms or ammunition;
- (e) Is guilty of cowardly conduct;
- (f) Quits his or her place of duty to plunder or pillage;
- (g) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;
- (h) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, hostile forces, combatants, vessels, aircraft, or any other thing, which it is his or her duty so to encounter, engage, capture, or destroy; or
- (i) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies or the state or to any other state, when engaged in battle.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. L. 2002: IP(1), (1)(b), (1)(d), (1)(f), and (1)(h) amended, p. 618, § 110, effective May 24.

28-3.1-524. Subordinate compelling surrender. Any person subject to this code who compels or attempts to compel the commander of any of the state military forces to surrender to an enemy or any hostile force or who strikes the colors or flag to any enemy or any hostile force without proper authority shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

28-3.1-525. Improper use of countersign. Any person subject to this code who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10. L. 2002: Entire section amended, p. 619, § 111, effective May 24.

28-3.1-526. Forcing a safeguard. Any person subject to this code who forces a safeguard shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

28-3.1-527. Captured or abandoned property. (1) All persons subject to this code shall secure all property taken from the enemy or any hostile force and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code shall be punished as a court-martial directs if he or she:

- (a) Fails to carry out the duties prescribed in subsection (1) of this section;
- (b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property whereby he or she receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or
- (c) Engages in looting or pillaging.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10. L. 2002: IP(2) and (2)(b) amended, p. 619, § 112, effective May 24.

28-3.1-528. Aiding the enemy or any hostile force. Any person who aids or attempts to aid the enemy or any hostile force with arms, ammunition, supplies, money, or other thing or who without proper authority knowingly harbors, or protects, or gives intelligence to, or communicates or corresponds with, or holds any intercourse with the enemy or any hostile force, either directly or indirectly, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

28-3.1-529. Misconduct of a prisoner. (1) Any person subject to this code shall be punished as a court-martial directs when he or she, while in the hands of the enemy or any hostile force:

(a) For the purpose of securing favorable treatment by his or her captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others held by the enemy or any hostile force as civilian or military prisoners; or

(b) While in a position of authority over prisoners maltreats them without justifiable cause.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10. L. 2002: Entire section amended, p. 619, § 113, effective May 24.

28-3.1-530. Falsification of official documents. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document knowing the same to be false or makes any other false official statement knowing the same to be false shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-531. Military property - loss, damage, destruction, or wrongful disposition. Any person subject to this code who without proper authority sells or otherwise disposes of, willfully or through neglect damages, destroys, or loses, or willfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of the state shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-532. Waste, spoilage, or destruction of property other than military. Any person subject to this code who while on duty status willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-533. Driving while intoxicated - reckless driving. Any person subject to this code who operates any vehicle while drunk or in a reckless or wanton manner shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-534. Intoxicated on duty - leaving or sleeping on post. Any person subject to this code who is found drunk on duty or sleeping upon his or her post or who leaves his or her post before he or she is regularly relieved shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10. L. 2002: Entire section amended, p. 619, § 114, effective May 24.

28-3.1-535. Malingering. Any person subject to this code who, for the purpose of avoiding work, duty, or service, feigns illness, physical disablement, mental lapse, or derangement or intentionally inflicts self-injury shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-536. Riot - breach of peace. Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Law reviews. For article, "The Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928).

Annotator's note. Since § 28-3.1-536 is similar to repealed § 28-3-1133, relevant cases construing that provision have been included with the annotations to this section.

Governor's declaration that a state of insurrection exists is conclusive of that fact. *Moyer v. Peabody*, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

Militia may arrest and imprison participants. Where the governor has declared an insurrection to exist, the militia has authority to arrest and imprison any person participating in

or aiding and abetting such insurrection and to detain such person in custody until the insurrection is suppressed. *In re Moyer*, 35 Colo. 159, 85 P. 190 (1905).

If arrests are made in good faith, governor is not liable. So long as arrests of those whom the governor considers to stand in the way of restoring peace are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he has not reasonable ground for his belief. *Moyer v. Peabody*, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

28-3.1-537. Provoking or reproachful words. Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

28-3.1-538. Larceny and wrongful appropriation. (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind: With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, is guilty of larceny; or, with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. L. 2002: (1) amended, p. 619, § 115, effective May 24.

28-3.1-539. Robbery. Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another against his or her will, by means of force or violence or fear of immediate or future injury to his or her person or property or to the person or property of a relative or member of his or her family or of anyone in his or her company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. L. 2002: Entire section amended, p. 620, § 116, effective May 24.

28-3.1-540. Forgery. Any person subject to this code who, with intent to defraud, falsely makes or alters any signature to any writing or any part thereof which would, if genuine, apparently impose a legal liability on another or change his or her legal right or liability to his or her prejudice or utters, offers, issues, or transfers such a writing, known to him or her to be so made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** Entire section amended, p. 620, § 117, effective May 24.

28-3.1-541. Maiming. Any person subject to this code who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which seriously disfigures his or her person by any mutilation thereof, destroys or disables any member or organ of his or her body, or seriously diminishes his or her physical vigor by the injury of any member or organ is guilty of maiming and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** Entire section amended, p. 620, § 118, effective May 24.

28-3.1-542. Arson. (1) Any person subject to this code who willfully and maliciously burns or sets on fire an inhabited dwelling or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being is guilty of aggravated arson and shall be punished as a court-martial directs.

(2) Any person subject to this code who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (1) of this section, is guilty of simple arson and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

28-3.1-543. Extortion. Any person subject to this code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

28-3.1-544. Assault. (1) Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial directs.

(2) Any person subject to this code who commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm or commits an assault and intentionally inflicts grievous bodily harm with or without a weapon is guilty of aggravated assault and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

28-3.1-545. Burglary. Any person subject to this code who, with intent to commit an offense punishable under this part 5, breaks and enters the dwelling house of another is guilty of burglary and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10.

28-3.1-546. Perjury. Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code willfully gives, upon a lawful oath or in any

form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10.

28-3.1-547. Frauds against the government. (1) Any person subject to this code shall be punished as a court-martial directs if he or she:

(a) Knowing it to be false or fraudulent, makes any claim against the United States, the state, or any officer thereof or presents to any person in the civil or military service, for approval or payment, any claim against the United States, the state, or any officer thereof;

(b) For the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof, makes or uses any writing or other paper knowing it to contain any false or fraudulent statements, makes any oath to any fact or to any writing or other paper knowing the oath to be false, or forges or counterfeits any signature upon any writing or other paper or uses any such signature knowing it to be forged or counterfeited;

(c) Having charge, possession, custody, or control of any money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it any amount thereof less than that for which he or she receives a certificate or receipt; or

(d) Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10. **L. 2002:** IP(1) and (1)(c) amended, p. 620, § 119, effective May 24.

28-3.1-548. Conduct unbecoming an officer. Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10.

28-3.1-549. Cognizance of disreputable conduct. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of such court. However, cognizance may not be taken of, and jurisdiction may not be extended to, any offense which constitutes a felony under the laws of this state where the local prosecuting authority has initiated a criminal action against the accused in the same matter. Where such an action has not been initiated against the accused, trial counsel shall give notice to the local prosecuting authority that a court-martial has taken cognizance of the offense and shall certify to the court-martial that such notice was given.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10. **L. 86:** Entire section amended, p. 1015, § 4, effective July 1.

PART 6

MISCELLANEOUS PROVISIONS

28-3.1-601. Courts of inquiry. (1) Courts of inquiry to investigate any matter may be convened by the governor.

(2) A court of inquiry shall consist of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the department who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, the counsel, the reporter, and the interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and may be examined before courts of inquiry in the same manner as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member of the court in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member of the court in lieu of the counsel.

Source: L. 83: Entire article added, p. 1193, § 1, effective June 10. L. 2002: (3) amended, p. 362, § 24, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 121, Session Laws of Colorado 2002.

28-3.1-602. Authority to administer oaths. (1) The following members of the military forces may administer oaths for the purposes of military justice, and affidavits may be taken for those purposes before such members or before persons having the general powers of a notary public:

- (a) The state judge advocate general and all assistant state judge advocates;
- (b) All summary courts-martial members;
- (c) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (d) All commanding officers;
- (e) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (f) The president and counsel for the court of any court of inquiry;
- (g) All officers designated to take a deposition;
- (h) All persons detailed to conduct an investigation; and
- (i) All other persons designated by regulations of the governor.

(2) Officers of the state military forces may not be authorized to administer oaths as provided in this section unless they are on duty in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any person designated in this section, together with the title of his or her office, is prima facie evidence of his or her authority.

Source: L. 83: Entire article added, p. 1193, § 1, effective June 10. L. 2002: (3) amended, p. 620, § 120, effective May 24.

28-3.1-603. Sections to be explained. Sections of this code shall be carefully explained to every person at the time of his or her enlistment, appointment, transfer, or induction into or at the time of his or her order to duty in or with any of the state military forces or within ninety days thereafter. A complete text of this code and of the regulations

prescribed by the governor thereunder shall be made available to any member of the state military forces, upon his or her request, for his or her personal examination. The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: **L. 83:** Entire article added, p. 1194, § 1, effective June 10. **L. 86:** Entire section amended, p. 1015, § 5, effective May 3. **L. 2002:** Entire section amended, p. 620, § 121, effective May 24.

28-3.1-604. Complaints of wrongs. (1) Any member of the state military forces, who believes himself or herself wronged by any commanding officer in his or her chain of command and who is dissatisfied with the redress afforded by the grievance procedures set forth in the regulations prescribed by the adjutant general, may petition for redress by filing a complaint of wrongs. The complainant shall deliver the complaint to the military reporting official in the complainant's chain of command who last responded to the complainant's petition for redress before it was submitted to the inspector general pursuant to the regulations of the adjutant general. The complaint shall set forth facts in support of the petition and shall state that the facts are true to the best of the complainant's knowledge and belief. The person to whom the complaint is delivered shall respond to the complaint within forty-five days after receiving the complaint and shall address each allegation of the complaint.

(2) If the complainant is dissatisfied with the redress afforded by the response prepared pursuant to subsection (1) of this section and the complainant reasonably believes that he or she has evidence that rebuts the findings set forth in the response, the complainant may appeal to the military reporting official of the officer who responded to the complaint of wrongs. This appellate authority shall respond to the appeal within forty-five days of receiving the appeal, shall address each allegation of the appeal, and shall deliver a copy of the response to the adjutant general. The procedures set forth in this subsection (2) shall apply through each step of the complainant's chain of command until the complainant reaches the adjutant general.

(3) If the complainant is dissatisfied with the redress afforded by an appeal pursuant to subsection (2) of this section, the complainant may submit a complaint of wrongs directly to the governor. The governor shall respond to the complaint within forty-five days of receiving the complaint and shall address each allegation of the complaint.

(4) The governor may refer all complaints of wrongs to the National Guard bureau inspector general for an independent investigation and report pursuant to federal law. Upon receipt of such report, the governor shall deliver to the complainant all portions of the report that may be released pursuant to federal law.

(5) Retaliation in any form against a complainant for pursuing the remedies described in this section is prohibited.

Source: **L. 83:** Entire article added, p. 1194, § 1, effective June 10. **L. 96:** Entire section amended, p. 86, § 1, effective August 7.

28-3.1-605. Redress of injuries to property. (1) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his or her property has been wrongfully taken by members of the state military forces, said commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, the board has power to summon witnesses and examine them under oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer and, in the amount approved by the commanding officer, shall be charged against the pay of the offenders. The order of the commanding officer directing such charges is

conclusive on any disbursing officer for the payment by him or her to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(3) Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his or her behalf, and to cross-examine those appearing against him or her.

Source: L. 83: Entire article added, p. 1194, § 1, effective June 10. L. 2002: (1) and (3) amended, p. 621, § 122, effective May 24.

28-3.1-606. Presumption of jurisdiction. The jurisdiction of the military courts and boards established by this code shall be presumed, and the burden of proof rests on any person seeking to invalidate the jurisdiction of those courts or boards of jurisdiction in any action or proceeding.

Source: L. 83: Entire article added, p. 1195, § 1, effective June 10.

28-3.1-607. Delegation of authority by the governor. The governor may delegate any authority vested in him or her under this code.

Source: L. 83: Entire article added, p. 1195, § 1, effective June 10. L. 2002: Entire section amended, p. 621, § 123, effective May 24.

ARTICLE 4

State Defense Force

28-4-101.	Short title.	28-4-107.	Equipment - buildings.
28-4-102.	Definitions.	28-4-108.	Service outside state.
28-4-103.	Supplemental military force.	28-4-109.	Forces of other states - privilege.
28-4-103.5.	Persons subject to military duty - state defense force.	28-4-110.	Federal service.
28-4-104.	State defense force - composition.	28-4-111.	Civil groups not enlisted as units.
28-4-105.	Organization - rules and regulations.	28-4-112.	Citizenship a qualification.
28-4-106.	Pay - members - employees of state.	28-4-113.	Oath of officers.
		28-4-114.	Enlistment period - oath.
		28-4-115.	Articles of war.

28-4-101. Short title. This article shall be known and may be cited as the “State Defense Force Act”.

Source: L. 43: p. 444, § 19. CSA: C. 111, § 138. CRS 53: § 94-7-15. C.R.S. 1963: § 94-2-15. L. 86: Entire section amended, p. 1016, § 10, effective May 3.

28-4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) and (2) (Deleted by amendment, L. 2002, p. 589, § 18, effective May 24, 2002.)

(3) “Saboteur” means a person who intentionally destroys, damages, moves, or interferes with any property with reasonable grounds to believe that the act will interfere with the preparation of the United States or any state for defense or for war or with the prosecution of war by the United States.

(4) “State defense force” means the organized military force of the state of Colorado

other than the Army National Guard or Air National Guard and existing as a division of the department of military affairs pursuant to section 24-1-127 (3) (d), C.R.S.

(5) "State defense force active duty" means that duty performed by individuals pursuant to this article.

(6) "Terrorist" means a person who has engaged in, or is suspected of engaging in, acts of terrorism, as that term is defined in 18 U.S.C. sec. 3077 (1), as amended.

Source: L. 43: p. 439, § 1. CSA: C. 111, § 123. CRS 53: § 94-7-1. C.R.S. 1963: § 94-2-1. L. 86: (1) amended, p. 1016, § 11, effective May 3. L. 2002: (1) and (2) amended and (3) to (6) added, p. 589, § 18, effective May 24.

28-4-103. Supplemental military force. The governor of the state of Colorado may establish, enlist, maintain, and train and regulate an organized military force within and for the state of Colorado constituting a part of the military establishment for the defense of the United States and the state of Colorado, in addition to and supplemental to the existing organizations of the National Guard, to the full extent authorized by the laws of the United States and the constitution of the state of Colorado.

Source: L. 43: p. 439, § 2. CSA: C. 111, § 124. CRS 53: § 94-7-2. C.R.S. 1963: § 94-2-2.

Cross references: For the militia, see art. XVII, Colo. Const.

28-4-103.5. Persons subject to military duty - state defense force. (1) Every able-bodied male citizen of Colorado and those who have declared their intention to become citizens of the United States residing therein between the ages of eighteen and sixty-four years, except persons exempt by law, are subject to military duty in the state defense force. However, the following persons or classes of persons are exempted from military service:

(a) Persons exempt by any statute of this state;

(b) The members of any regularly organized fire or police department of any city, county, city and county, or town if such members are on full-time duty with the fire or police departments or if such members are found by the governor to be necessary for the health, welfare, or protection of the community;

(c) Those permanently disqualified for military service because of physical disability and having in their possession a certificate of some licensed physician or advanced practice nurse or surgeon that describes the nature thereof;

(d) Justices, judges, and clerks of courts of record, clerks of municipal courts, county clerks and recorders, sheriffs, and ministers of the gospel;

(e) Practicing physicians, officers and assistants of hospitals, prisons, and jails whose services are declared by the governor to be necessary for the general health, welfare, or protection of the community;

(f) Persons determined to be mentally incompetent by a court of competent jurisdiction and persons convicted of a felony and not pardoned;

(g) All persons who because of religious beliefs claim exemption from military service, if the conscientious holding of such belief by such persons is established under such regulations as the governor prescribes. Such persons shall be exempted from military service in a combat capacity, but no person so exempted shall be exempt from military service in any capacity which the governor declares to be noncombatant.

Source: L. 2002: Entire section added with relocations, p. 590, § 19, effective May 24. L. 2008: (1)(c) amended, p. 135, § 27, effective January 1, 2009.

Editor's note: This section is similar to former § 28-3-102 as it existed prior to 2002.

28-4-104. State defense force - composition. The governor is authorized to organize and maintain within this state such military forces as the governor deems necessary to

defend this state. Such forces shall be known as the state defense force and shall be composed of such citizens of the state as shall volunteer or be ordered by the governor and qualify for service therein. Such forces shall be additional to and distinct from the National Guard. The Colorado state defense force shall be maintained in numbers to be determined by the governor. No officer or enlisted person of this force shall be a member of the National Guard or other armed force of the United States. Such part of this force as ordered by the governor shall be uniformed. Any part or all of this force may be called to state defense force active duty at the pleasure of the governor. All costs and expenses of the state defense force shall be paid from the general fund by separate appropriation to the department of military affairs.

Source: L. 43: p. 439, § 3. CSA: C. 111, § 125. CRS 53: § 94-7-3. C.R.S. 1963: § 94-2-3. L. 82: Entire section amended, p. 451, § 1, effective March 5. L. 86: Entire section amended, p. 1017, § 12, effective May 3. L. 2002: Entire section amended, p. 591, § 20, effective May 24.

28-4-105. Organization - rules and regulations. The governor is authorized to prescribe the strength, branch of service, and rules and regulations not inconsistent with the provisions of this article governing the enlistment age of members of the force and governing the organization, physical requirements, administration, equipment, maintenance, training, and discipline of such force. Such rules and regulations, insofar as he or she deems practicable and desirable, shall conform to the existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by any member of such force from any individual, firm, association, or corporation by reason of his or her membership; except that it is permissible for common carriers, such as airlines, railroads and bus lines, to carry members of such force without charge or at a reduced rate. The Colorado state defense force shall be commanded by the senior officer holding a state commission in the Colorado state defense force. He or she shall be designated by the adjutant general as the commanding officer of the Colorado state defense force. All the rights, powers, privileges, benefits, and emoluments created or existing by virtue of state laws, customs, or regulations heretofore had or enjoyed by the members of the Colorado National Guard shall be conferred upon and vested in the members of the Colorado state defense force. All the duties and responsibilities imposed upon and demanded of the members of the Colorado National Guard by the state laws, customs, or regulations are imposed upon and may be demanded of the members of the Colorado state defense force.

Source: L. 43: p. 440, § 4. CSA: C. 111, § 126. CRS 53: § 94-7-4. C.R.S. 1963: § 94-2-4. L. 86: Entire section amended, p. 1017, § 13, effective May 3. L. 2002: Entire section amended, p. 591, § 21, effective May 24.

28-4-106. Pay - members - employees of state. All officers and enlisted persons of the Colorado state defense force when on state defense force active duty by order of the governor shall receive the same pay and allowances as are paid to officers and enlisted persons of like rank or grade in the Army of the United States. Officers and enlisted persons may also voluntarily perform state defense force active duty in an unpaid volunteer status. Regardless of pay status, the officers and enlisted persons of the Colorado state defense force shall be construed to be employees of the state of Colorado, and, in the event that any such officer or enlisted person incurs injuries or becomes sick, diseased, or deceased while on active duty under orders of the governor of the state of Colorado, he or she shall be entitled to all of the benefits of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., accruing to employees of the state of Colorado.

Source: L. 43: p. 441, § 5. CSA: C. 111, § 127. CRS 53: § 94-7-5. C.R.S. 1963: § 94-2-5. L. 86: Entire section amended, p. 1018, § 14, effective May 3. L. 90: Entire section amended, p. 571, § 60, effective July 1. L. 2002: Entire section amended, p. 592, § 22, effective May 24.

28-4-107. Equipment - buildings. For the use of such forces, the governor is authorized to requisition from the secretary of defense such arms and equipment as may be in possession of and can be spared by the defense department, to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be required, to lease office rooms and barracks and employ such clerical, medical, and other forces as necessary to carry out the provisions of this article, and to set the pay of such clerical, medical, and other forces.

Source: L. 43: p. 441, § 6. CSA: C. 111, § 128. CRS 53: § 94-7-6. C.R.S. 1963: § 94-2-6.

28-4-108. Service outside state. (1) Such forces shall not be required to serve outside the boundaries of the state except that:

(a) Upon the request of the governor of another state, the governor of this state, in his or her discretion, may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. These forces may be recalled by the governor at his or her discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces beyond the borders of this state into another state until such are apprehended or captured by such organization, unit, or detachment or until the military or police forces of the other state or forces of the United States have had an opportunity to take up the pursuit or to apprehend or capture such persons, if such other state has given authority by law for such pursuit by the forces of this state. Any such person who is apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state, without unnecessary delay, shall be surrendered to the military or police forces of the state in which he or she is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

Source: L. 43: p. 441, § 7. CSA: C. 111, § 129. CRS 53: § 94-7-7. C.R.S. 1963: § 94-2-7. L. 2002: Entire section amended, p. 592, § 23, effective May 24.

28-4-109. Forces of other states - privilege. Any military forces or organizations, units, or detachments thereof of another state who are in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons within this state while in fresh pursuit. Any such person who is captured or arrested by the military forces of such other state while in this state, without unnecessary delay, shall be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of sections 16-3-104 and 16-3-106, C.R.S.

Source: L. 43: p. 442, § 8. CSA: C. 111, § 130. CRS 53: § 94-7-8. C.R.S. 1963: § 94-2-8. L. 2002: Entire section amended, p. 592, § 24, effective May 24.

28-4-110. Federal service. Nothing in this article shall be construed as authorizing such forces, or any part thereof, to be called, ordered, or in any manner drafted as such into the military service of the United States, but no person shall by reason of his or her enlistment or commission in any such forces be exempted from military service under any law of the United States.

Source: L. 43: p. 442, § 9. CSA: C. 111, § 131. CRS 53: § 94-7-9. C.R.S. 1963: § 94-2-9. L. 2002: Entire section amended, p. 621, § 124, effective May 24.

28-4-111. Civil groups not enlisted as units. No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

Source: L. 43: p. 443, § 10. CSA: C. 111, § 132. CRS 53: § 94-7-10. C.R.S. 1963: § 94-2-10.

28-4-112. Citizenship a qualification. No person shall be commissioned or enlisted in such forces who is not a citizen of the United States.

Source: L. 43: p. 443, § 11. CSA: C. 111, § 133. CRS 53: § 94-7-11. C.R.S. 1963: § 94-2-11.

28-4-113. Oath of officers. The oath to be taken by officers commissioned in such force shall be substantially in the form prescribed for officers of the National Guard, substituting the words “Colorado state defense force” where necessary.

Source: L. 43: p. 443, § 12. CSA: C. 111, § 134. CRS 53: § 94-7-12. C.R.S. 1963: § 94-2-12. L. 86: Entire section amended, p. 1018, § 15, effective May 3.

Cross references: For the oath required of officers of the Colorado National Guard, see § 28-3-303.

28-4-114. Enlistment period - oath. The period of enlistment shall be as specified in department of military affairs policies and procedures. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlisted men and women of the National Guard, substituting the words “Colorado state defense force” where necessary.

Source: L. 43: p. 443, § 13. CSA: C. 111, § 135. CRS 53: § 94-7-13. C.R.S. 1963: § 94-2-13. L. 86: Entire section amended, p. 1018, § 16, effective May 3. L. 2002: Entire section amended, p. 593, § 25, effective May 24.

28-4-115. Articles of war.

(1) (Deleted by amendment, L. 2002, p. 593, § 26, effective May 24, 2002.)

(2) No officer or enlisted person of such force shall be arrested on any warrant while going to, remaining at, or returning from a place where he or she is ordered to attend military duty; except that nothing in this article shall be construed to prevent that person’s arrest by order of a military officer or for a crime committed while not in actual performance of that person’s state defense force active duty. Every officer and enlisted person of such force, during his or her service therein, shall be exempt from service upon any posse comitatus and from jury duty.

(3) When any member of the state defense force is on state defense force active duty, whether in paid or volunteer status, the individual is subject to the provisions of the “Colorado Code of Military Justice”, as set forth in article 3.1 of this title.

Source: L. 43: p. 443, § 14. CSA: C. 111, § 136. CRS 53: § 94-7-14. C.R.S. 1963: § 94-2-14. L. 86: Entire section amended, p. 1018, § 17, effective May 3. L. 2002: Entire section amended, p. 593, § 26, effective May 24.

VETERANS

ARTICLE 5

Veterans

Cross references: For the veterans center and for the Colorado state veterans nursing homes, see part 2 of article 12 of title 26.

Law reviews: For article, “Veterans’ Benefits and the Uniform Veterans Guardianship Act of Colorado”, see 28 Colo. Law. 53 (February 1999).

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PART 1

RECORDING DISCHARGES

28-5-101. Military discharges recorded free. For the purpose of preserving a record of men and women who served with the armed forces of the United States and who are now or may become residents of Colorado, the clerks and recorders of the various counties of the state are directed to record discharges for such men and women without charging any fees therefor.

Source: L. 45: p. 641, § 1. CSA: C. 150, § 62. CRS 53: § 143-4-1. C.R.S. 1963: § 144-4-1.

PART 2

UNIFORM VETERANS' GUARDIANSHIP LAW

28-5-201. Short title. This part 2 shall be known and may be cited as the "Uniform Veterans' Guardianship Act".

Source: L. 45: p. 660, § 21. CSA: C. 150, § 55 (21). CRS 53: § 143-3-21. C.R.S. 1963: § 144-3-21.

ANNOTATION

Law reviews. For article, "Uniform State Laws of Interest to Colorado Probate Lawyers", see 14 Colo. Law. 1961 (1985).

28-5-202. Definitions. As used in this part 2, unless the context otherwise requires:

- (1) "Administrator" means the administrator of veterans' affairs of the United States or his or her successor.
- (2) "Benefits" means all moneys paid or payable by the United States through the veterans administration.
- (3) "Estate" means income on hand and assets acquired partially or wholly with income.
- (4) "Guardian" means any fiduciary for the person or estate of a ward.
- (5) "Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.
- (6) "Person" means an individual, a partnership, a corporation, or an association.
- (7) "Veterans administration" means the veterans administration, its predecessors, or its successors.
- (8) "Ward" means a beneficiary of the veterans administration.

Source: L. 45: p. 652, § 1. CSA: C. 150, § 55 (1). CRS 53: § 143-3-1. C.R.S. 1963: § 144-3-1. L. 2002: (1) amended, p. 621, § 125, effective May 24.

ANNOTATION

Law reviews. For article, "Estates of Insane Veterans and War Orphans", see 17 Dicta 38 (1940). For article, "Problems in the Adminis-

tration of the Estates of Incompetents", see 29 Dicta 286 (1952).

28-5-203. Administrator as party in interest. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward and in any suit or other

proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits paid by the veterans administration. Not less than fifteen days prior to hearing in such matter, notice in writing of the time and place thereof shall be given by mail, unless waived in writing, to the office of the veterans administration having jurisdiction over the area in which any such suit or any such proceeding is pending.

Source: L. 45: p. 653, § 2. CSA: C. 150, § 55 (2). CRS 53: § 143-3-2. C.R.S. 1963: § 144-3-2.

28-5-204. Guardian appointed when necessary. When, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner provided in this part 2.

Source: L. 45: p. 653, § 3. CSA: C. 150, § 55 (3). CRS 53: § 143-3-3. C.R.S. 1963: § 144-3-3.

28-5-205. Limitation on number of wards. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person alleging that a guardian is acting in a fiduciary capacity for more than five wards as provided in this section and requesting his or her discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him or her from guardianships in excess of five and forthwith appoint a successor.

Source: L. 45: p. 653, § 4. CSA: C. 150, § 55 (4). CRS 53: § 143-3-4. C.R.S. 1963: § 144-3-4. L. 2002: Entire section amended, p. 621, § 126, effective May 24.

28-5-206. Appointment of guardian - petition. (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, and place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of money then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation, and address of the proposed guardian, and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward, the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration.

Source: L. 45: p. 653, § 5. CSA: C. 150, § 55 (5). CRS 53: § 143-3-5. C.R.S. 1963: § 144-3-5.

28-5-207. Evidence of necessity for guardian of infant. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his or her

authorized representative setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment.

Source: L. 45: p. 654, § 6. CSA: C. 150, § 55 (6). CRS 53: § 143-3-6. C.R.S. 1963: § 144-3-6. L. 2002: Entire section amended, p. 622, § 127, effective May 24.

28-5-208. Evidence of necessity for guardian for incompetent. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his or her duly authorized representative that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans administration shall be prima facie evidence of the necessity for such appointment.

Source: L. 45: p. 654, § 7. CSA: C. 150, § 55 (7). CRS 53: § 143-3-7. C.R.S. 1963: § 144-3-7. L. 2002: Entire section amended, p. 622, § 128, effective May 24.

28-5-209. Notice of filing petition. Upon the filing of a petition for the appointment of a guardian under this part 2, notice shall be given to the ward and to such other persons in such manner as is provided by the laws of this state, and also to the veterans administration as provided by this part 2.

Source: L. 45: p. 654, § 8. CSA: C. 150, § 55 (8). CRS 53: § 143-3-8. C.R.S. 1963: § 144-3-8.

28-5-210. Bond of guardian. (1) Upon the appointment of a guardian, he or she shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties, and they shall file with the court a certificate under oath which describes the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his or her debts and liabilities and the aggregate of other bonds on which he or she is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

Source: L. 45: p. 654, § 9. CSA: C. 150, § 55 (9). CRS 53: § 143-3-9. C.R.S. 1963: § 144-3-9. L. 2002: Entire section amended, p. 129, § 622, effective May 24.

Cross references: For the terms and conditions of the bond of a guardian or conservator, see part 4 of article 14 of title 15.

28-5-211. Accounts of securities - notices and hearings. (1) Every guardian who has received or who shall receive on account of his or her ward any moneys or other thing of value from the veterans administration shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by him or her, all earnings, interest, or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his or her hands at the date of the account and how invested.

(2) The guardian, at the time of filing any account, shall exhibit all securities or investments held by him or her to an officer of the bank or other depository wherein said securities or investments are held for safekeeping, or to an authorized representative of the corporation which is surety on his or her bond, or to the judge or clerk of a court of record in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he or she has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate, and one of each shall be filed by the guardian with his or her account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the veterans administration having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of any petition, motion, or other pleading pertaining to an account or to any matter other than an account and which is filed in the guardianship proceedings shall be furnished by the person filing the same to the proper office of the veterans administration. Unless hearing is waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, including the surety on the guardian's bond, the court shall fix a time and place for the hearing on the account, petition, motion, or other pleading not less than fifteen days nor more than thirty days from the date same is filed, unless a different available date is stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and the guardian and any others entitled to notice not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he or she shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

Source: L. 45: p. 655, § 10. CSA: C. 150, § 55 (10). CRS 53: § 143-3-10. C.R.S. 1963: § 144-3-10. L. 2002: (1), (2), and (4) amended, p. 622, § 130, effective May 24.

ANNOTATION

Law reviews. For article, "Problems in the Administration of Estates of Mental Incompetents", see 29 Dicta 286 (1952).

28-5-212. Penalty for failure to account. If any guardian fails to file with the court any account as required by this part 2, or by an order of the court, when any account is due or within thirty days after citation issues as provided by law, or fails to furnish the veterans administration a true copy of any account, petition, or pleading as required by this part 2, such failure may in the discretion of the court be a ground for his or her removal.

Source: L. 45: p. 656, § 11. CSA: C. 150, § 55 (11). CRS 53: § 143-3-11. C.R.S. 1963: § 144-3-11. L. 2002: Entire section amended, p. 623, § 131, effective May 24.

28-5-213. Compensation of guardians. Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of income received during the period covered by the account; except that such percentage compensation shall not be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. In the event five percent of income received during the period would be less than twenty-five dollars and the personal property in the estate totals not more than one thousand five hundred dollars, twenty-five dollars may be taken as the guardian's compensation. If the personal property in the estate exceeds one thousand five hundred dollars and five percent of the income would be less than fifty dollars, the guardian's compensation may be fifty dollars. In any case in which the compensation under the foregoing appropriate rates is inadequate because of extra services performed, the court, upon petition and hearing thereon, may authorize reasonable additional compensation. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a guardian's account or other pleading.

Source: L. 45: p. 656, § 12. CSA: C. 150, § 55 (12). CRS 53: § 143-3-12. C.R.S. 1963: § 144-3-12. L. 65: p. 1232, § 1.

28-5-214. Investments. Every guardian shall invest the surplus funds of his or her ward's estate in such securities or property as authorized under the laws of this state, but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

Source: L. 45: p. 657, § 13. CSA: C. 150, § 55 (13). CRS 53: § 143-3-13. C.R.S. 1963: § 144-3-13. L. 2002: Entire section amended, p. 623, § 132, effective May 24.

Cross references: For fiduciary investments, see part 3 of article 1 of title 15.

ANNOTATION

Law reviews. For article, "The 'Prudent Man Rule' Now Applies to Investments by Fiduciaries", see 28 Dicta 213 (1951).

28-5-215. Maintenance and support. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading.

Source: L. 45: p. 657, § 14. CSA: C. 150, § 55 (14). CRS 53: § 143-3-14. C.R.S. 1963: § 144-3-14.

28-5-216. Purchase of home for ward. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his or her interest, or as a home for his or her dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be

furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment, the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his or her ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such is necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

Source: L. 45: p. 657, § 15. CSA: C. 150, § 55 (15). CRS 53: § 143-3-15. C.R.S. 1963: § 144-3-15. L. 2002: Entire section amended, p. 624, § 133, effective May 24.

28-5-217. Copies of public records to be furnished. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record, without charge, shall provide the applicant for such benefits or any person acting on his or her behalf or the authorized representative of the veterans administration with a certified copy of such record.

Source: L. 45: p. 658, § 16. CSA: C. 150, § 55 (16). CRS 53: § 143-3-16. C.R.S. 1963: § 144-3-16. L. 2002: Entire section amended, p. 624, § 134, effective May 24.

28-5-218. Discharge of guardian - release of sureties. A certificate by the veterans administration showing that a minor has attained majority or that an adult ward has been rated competent by the veterans administration upon examination made in accordance with the law shall be prima facie evidence that the minor has attained majority or that the adult ward's property no longer requires court supervision. Upon hearing after notice as provided by this part 2 and the entry of a record determination by the court that the guardianship is to be dispensed with, the guardian shall be directed by the court to file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account and upon delivery to the ward of the assets due him or her from the guardian, the guardian shall be discharged and his or her sureties released.

Source: L. 45: p. 658, § 17. CSA: C. 150, § 55 (17). CRS 53: § 143-3-17. C.R.S. 1963: § 144-3-17. L. 2002: Entire section amended, p. 624, § 135, effective May 24.

28-5-219. Record not construed as legal adjudication. Neither the fact that a person has been rated incompetent by the veterans administration nor the fact that a guardian has been appointed for a person under the provisions of this part 2 shall be construed as a legal adjudication of insanity or mental incompetency, unless such person also is or has been adjudicated insane or mentally incompetent by a state court of competent jurisdiction.

Source: L. 45: p. 658, § 18. CSA: C. 150, § 55 (18). CRS 53: § 143-3-18. C.R.S. 1963: § 144-3-18.

28-5-220. Commitment to veterans administration. (1) When, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind

or otherwise in need of confinement in a hospital or other institution for his or her proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration, the court, upon receipt of a certificate from the veterans administration showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration. Upon commitment, such person when admitted to any facility operated by such agency within or without this state shall be subject to the rules and regulations of the veterans administration. The chief officer of any facility of the veterans administration to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole, or discharge as restored to reason.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia committing a person to the veterans administration for care or treatment has the same force and effect as to the committed person while in this state as in the jurisdiction in which the court entering the judgment or making the order is situated; and the courts of the committing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person and of determining the necessity for continuance of his or her restraint. Consent is given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans administration to retain custody or transfer, parole, or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration that facilities are available for the care or treatment of any person committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the court having jurisdiction may cause the transfer of such person to the veterans administration for care or treatment. Any person transferred as provided in this section is deemed to be committed to the veterans administration for all purposes as provided in subsection (1) of this section as on original commitment.

Source: L. 45: p. 659, § 19. CSA: C. 150, § 55 (19). CRS 53: § 143-3-19. C.R.S. 1963: § 144-3-19. L. 2002: (1) and (2) amended, p. 624, § 136, effective May 24.

28-5-221. Liberal construction. This part 2 shall be so construed to make uniform the law of those states which enact it.

Source: L. 45: p. 660, § 20. CSA: C. 150, § 55 (20). CRS 53: § 143-3-20. C.R.S. 1963: § 144-3-20.

28-5-222. Repeal and modification of prior laws. Except where inconsistent with this part 2, the laws of this state relating to guardian and ward and the judicial practice relating thereto shall be applicable to such beneficiaries and their estates.

Source: L. 45: p. 660, § 23. CSA: C. 150, § 55 (22). CRS 53: § 143-3-22. C.R.S. 1963: § 144-3-22.

28-5-223. Application. The provisions of this part 2 relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in section 28-5-202 whether the guardian has been appointed under this part 2 or under any other law of this state, special or general, prior or subsequent to the enactment of this part 2.

Source: L. 45: p. 660, § 24. CSA: C. 150, § 55 (23). CRS 53: § 143-3-23. C.R.S. 1963: § 144-3-23.

PART 3

INVESTMENTS BY VETERANS ADMINISTRATION FIDUCIARIES

Cross references: For legal investments and deposits, see part 6 of article 75 of title 24; for investments under the “Uniform Veterans’ Guardianship Act”, see § 28-5-214.

28-5-301. Legal investments. (1) It is lawful for any guardian or conservator of minor or incompetent beneficiaries of the veterans administration to invest the funds of the estate or trust or to permit such funds to remain invested in any of the following:

(a) Bonds or other interest-bearing or noninterest-bearing obligations of the United States of America;

(b) Bonds or other interest-bearing or noninterest-bearing securities, the payment of the principal sum of which and the interest, if any, on which is guaranteed by the United States of America;

(c) Bonds or other interest-bearing or noninterest-bearing securities which are direct general obligations of the state of Colorado or of any school district, junior college district, or county therein or of any water or sanitation district or water and sanitation district created under the provisions of article 1 of title 32, C.R.S.;

(d) Bonds or other interest-bearing or noninterest-bearing securities which are direct general obligations of any city and county or incorporated city or town in the state of Colorado which has existed continuously as a lawful corporation for a period of ten years;

(e) Bonds or other interest-bearing or noninterest-bearing securities which are direct general obligations of any other state of the United States of America or any school district, junior college district, county, city and county, parish, or incorporated city, town, or village within any other state of the United States of America; if the entire general obligation indebtedness of any such school district, junior college district, county, city and county, parish, city, town, or village, including the proportionate share of the general obligation indebtedness of any other subdivisions of such state which have power to levy taxes on the same property, does not at the time of investment exceed fifteen percent of the valuation for assessment of the taxable property therein; if the issuer has existed for at least fifteen years and has not been in default with respect to the principal of any of its general obligation indebtedness at any time within the preceding ten years; if any such issuer, being an incorporated city, city and county, town, or village, has a population of not less than twenty-five hundred people, according to the last preceding federal census; and if the purchase or retention of investments under this paragraph (e) by such fiduciaries acting under the probate jurisdiction of a court is subject to prior approval of such court;

(f) All or any part of issues or series of bonds or notes secured by first lien mortgages or deeds of trust upon real estate situate within the state of Colorado. Such loans shall not exceed fifty percent of the appraised value of the lands, improvements, and water rights, if any, pertaining thereto, but the amount of such loan may equal sixty percent of the appraised value of the land, improvements, and water rights, if any, pertaining thereto if the instruments evidencing such investments contain a requirement for reduction, during each year, of the principal of the loan in an amount equal to at least five percent of the original principal sum. Such loans, when made by such fiduciaries acting under the probate jurisdiction of a court, shall be made in such amounts and for such periods as may be in the best interests of the estate and shall be subject to approval by the court.

(g) State highway fund revenue anticipation warrants of the state of Colorado;

(h) Repealed.

(i) Original and supplemental bonds of the Moffat tunnel improvement district;

(j) Revenue obligations issued to provide, enlarge, or improve electric power or water facilities by any city located in the state of Colorado having a population of not less than twenty-five hundred people at the time of investment if:

(I) The plan under which said obligations were issued provides for the retirement thereof out of the revenue within thirty years from the date of issuance; and

(II) The net revenue from such facility during each of the five years preceding such investment, after provision for ordinary expenses (exclusive of any allowance for depreci-

ation), of operation of the facility, is equal to at least one and one-half times the sum of interest and principal payments due in any year during the remaining life of the issue and like payments due on account of any other issue relating to the same facility;

(k) Bonds of housing authorities issued pursuant to the provisions of article 4 of title 29, C.R.S.;

(l) Improved real property within the state of Colorado if such property at time of purchase is under lease in its entirety, such lease then having an unexpired term of not less than ten years and under which the lessee is obliged to pay taxes, expenses of maintenance, and a rental therein fixed, and the appraised value of the land and improvements is in excess of ten times the net annual rent reserved in the lease; such real property shall be purchased by such fiduciaries acting under the probate jurisdiction of a county court only under order of court;

(m) Time or savings deposits in any state bank or national bank in Colorado which is, at the time the deposit is made, a member of the federal deposit insurance corporation if:

(I) The full amount of the deposit is insured by the federal deposit insurance corporation;

(II) The bank or association agrees to pay interest on the deposit; and

(III) To the extent that the deposit ceases to be insured by the federal deposit insurance corporation, the same is withdrawn or otherwise converted into cash as promptly as the terms of the deposit will permit. Such deposit may be evidenced by an entry in a passbook, or by a certificate of deposit, or in such other manner as is then customary in the community in which the deposit is made.

(n) Notes or bonds secured by mortgage or deed of trust insured pursuant to Title II of the "National Housing Act" if the purchase is made by an approved mortgagee under said "National Housing Act"; except that:

(I) Nothing in this section shall restrict the powers of investment conferred upon any executor, administrator, or trustee by the terms of a will or trust instrument;

(II) Any such fiduciary may retain any real property owned by his or her testate or intestate at date of death or by his or her ward at date of appointment of a guardian or conservator and that any such fiduciary may retain for a reasonable time any real property acquired by him or her by foreclosure of or in satisfaction of a mortgage or trust deed, but if such fiduciary is subject to the probate jurisdiction of the county court, such holding shall not exceed two years unless permitted by order of that court;

(III) Any such fiduciary may purchase or retain any class of property authorized by this section to be purchased or retained, as the case may be, in addition to the investments described in the will or trust instrument, unless the power to invest in such class of property is expressly or impliedly denied by such will or trust instrument;

(IV) Nothing in this section shall be construed to limit the existing right of such fiduciaries to maintain such demand or time deposits in banks as are required in the ordinary conduct of their business; and

(V) Nothing in this section shall relieve any such fiduciary from the duty of exercising reasonable care in the purchase or retention of investments;

(o) Share, certificate, or savings accounts in any state or federally chartered savings and loan association in Colorado that are insured by the federal deposit insurance corporation or its successor if:

(I) The full amount of the account is insured by the federal deposit insurance corporation or its successor;

(II) The association agrees to pay such dividends on the account as permitted by its charter; and

(III) To the extent that the account ceases to be insured by the federal deposit insurance corporation or its successor, the same is withdrawn or otherwise converted into cash as promptly as the terms of the account will permit. Such account may be evidenced by an entry in a passbook, or by a certificate of investment, or in such other manner as is acceptable to the federal deposit insurance corporation or its successor.

16. **L. 81:** (1)(c) amended, p. 1611, § 5, effective July 1. **L. 2002:** (1)(n)(II) amended, p. 625, § 137, effective May 24. **L. 2004:** IP(1)(o), (1)(o)(I), and (1)(o)(III) amended, p. 156, § 72, effective July 1.

Cross references: For the “National Housing Act”, see 12 U.S.C. § 1701 et seq.

ANNOTATION

Law reviews. For article, “Practical Administrative Problems in Average-Sized Estates”, see 27 Dicta 285 (1950). For article, “The ‘Prudent Man Rule’ Now Applies to Investments by Fiduciaries”, see 28 Dicta 213 (1951).

PART 4

LOANS TO MINOR VETERANS

28-5-401. Loans to minor veterans. (1) The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the “Servicemen’s Readjustment Act of 1944”, as amended, and of the minor spouse of any eligible veteran, irrespective of his or her age, in connection with any transaction entered into pursuant to said act, as amended, is removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing, or conveying real or personal property or any interest therein, and litigating or settling controversies arising therefrom if all or a part of any obligations incident to such transaction is guaranteed or insured by the administrator of veterans affairs pursuant to such act. This section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability.

(2) A certificate purporting to have been signed by the administrator of veterans affairs or his or her duly authorized representative stating that all or a part of any obligations incident to such transaction is guaranteed or insured by the administrator, when recorded in the proper county, shall be prima facie evidence of such action by the administrator and shall prima facie be deemed to have been signed and issued by the administrator or his or her representative pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority.

(3) Notwithstanding any contrary provisions of law, such veteran or the minor spouse of such veteran shall not, because of his or her age, avoid such contract, conveyance, obligation, or other transaction entered into pursuant to this section, nor shall such veteran, or the minor spouse of such veteran hereafter urge the fact or interpose the defense that he or she is or was a minor in any action arising out of any loan, conveyance, encumbrance, or other transaction made pursuant to this section.

Source: **L. 45, 1st Ex. Sess.:** p. 64, §§ 1, 2. **L. 47:** pp. 295, 296, §§ 1, 2. **CSA:** C. 18, 40(1). **CRS 53:** § 143-9-1. **C.R.S. 1963:** § 144-8-1. **L. 2002:** Entire section amended, p. 626, § 138, effective May 24.

Cross references: For the “Servicemen’s Readjustment Act of 1944”, see 38 U.S.C. § 3701 et seq.

PART 5

INTERMENT OF VETERANS

Editor’s note: This part 5 was numbered as article 2 of chapter 144, C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 2002, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

28-5-501. Short title. This part 5 shall be known and may be cited as the “Interment of Deceased Veterans Act of 2002”.

Source: L. 2002: Entire part R&RE, p. 240, § 1, effective April 12.

28-5-502. Interment of deceased veterans. (1) It is the duty of the county commissioners in each county of this state to designate some proper person in each county whose duty it is to cause the decent interment of the bodies of honorably discharged military personnel:

- (a) (I) Who died without leaving sufficient means to defray funeral expenses; or
 - (II) Who died leaving a family in indigent circumstances; and
 - (b) (I) Who served in any branch of the armed forces of the United States during any period of any declared or any undeclared war or other armed hostilities against an armed foreign enemy; or
 - (II) Who served on active duty in any branch of the armed services in any campaign or expedition for which a campaign badge is authorized.
- (2) Such burial shall not be made in that portion of any cemetery or burial ground used exclusively for the burial of the pauper dead. Each county, by resolution of its board of county commissioners, shall establish the maximum expense to the county for each burial, exclusive of any federal funds provided for such purposes. In case the deceased has relatives or friends who desire to conduct the funeral services, they shall be permitted to do so, and the expenses shall be paid as provided in this section.

Source: L. 2002: Entire part R&RE, p. 240, § 1, effective April 12.

Editor’s note: This section is similar to former § 28-5-501 as it existed prior to 2002.

28-5-503. Headstone to mark graves. The county commissioners shall also see that headstones furnished by the veterans administration or furnished on behalf of the veterans described in section 28-5-502 shall be set at the expense of the county. Each county, by resolution of its board of county commissioners, shall establish the maximum expense to the county for setting such headstones.

Source: L. 2002: Entire part R&RE, p. 241, § 1, effective April 12.

Editor’s note: This section is similar to former § 28-5-502 as it existed prior to 2002.

28-5-504. County of residence. If the expenses of burial and setting of headstones are paid by the county in which the deceased person is buried, but such deceased person resided in another county in this state at the time of death, the county of residence shall reimburse such expenses to the county wherein the deceased is buried. Such expenses shall be audited and paid as other accounts are audited and paid by the county.

Source: L. 2002: Entire part R&RE, p. 241, § 1, effective April 12.

Editor’s note: This section is similar to former § 28-5-503 as it existed prior to 2002.

28-5-505. Cemetery subdivision - state may acquire and maintain. The state has authority to acquire, establish, maintain, and improve in any cemetery in the state a suitable subdivision to be used as a burial place for honorably discharged veterans. Such subdivision shall consist of lots, each of sufficient area to accommodate at least eight interments of deceased veterans. No charge shall be made for burial space in such subdivision.

Source: L. 2002: Entire part R&RE, p. 241, § 1, effective April 12.

Editor’s note: This section is similar to former § 28-5-504 as it existed prior to 2002.

28-5-506. Care and custody of cemetery subdivision. The care, custody, maintenance, improvement, management, and control of the subdivision referred to in section 28-5-505 may be vested by the state in the city, town, city and county, or county where the subdivision is established, but such vestment may also be delegated by the state to a military veteran service organization.

Source: L. 2002: Entire part R&RE, p. 241, § 1, effective April 12.

Editor's note: This section is similar to former § 28-5-509 as it existed prior to 2002.

PART 6

COLORADO WAR VETERANS' MEMORIAL COMMISSION

28-5-601 to 28-5-603. (Repealed)

Source: L. 79: Entire part repealed, p. 1628, § 1, effective July 1.

Editor's note: This part 6 was numbered as article 9 of chapter 144, C.R.S. 1963. For amendments to this part 6 prior to its repeal in 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 7

DIVISION OF VETERANS AFFAIRS

Editor's note: This part 7 was added with relocations in 2002. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the legislative declaration contained in the 2002 act enacting this part 7, see section 1 of chapter 121, Session Laws of Colorado 2002.

28-5-701. Division of veterans affairs - transfer of functions - terminology.
(1) There is hereby created the division of veterans affairs within the department of military and veterans affairs, the head of which shall be the director of the division of veterans affairs who shall be appointed by the adjutant general acting in his or her capacity as the administrative head of the department. The director shall appoint such assistants and clerical employees as may be deemed necessary to effectively administer this part 7 and part 8 of this article. The director and such assistants and employees shall be appointed pursuant to section 13 of article XII of the state constitution.

(2) Whenever any law of this state refers to the Colorado department of veterans affairs or to the veterans affairs section, said law shall be construed as referring to the division of veterans affairs.

(3) The division and the board shall, on and after July 1, 2002, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the department of human services pursuant to articles 9 and 10 of title 26, C.R.S., prior to said date. On and after July 1, 2002, any officers or employees of the department of human services whose primary duties were to carry out the functions specified in articles 9 and 10 of title 26, C.R.S., prior to said date and whose duties and functions concerned the duties and functions transferred to the division pursuant to this part 7 and part 8 of this article, and whose employment in the division is deemed necessary by the director to carry out the purposes of this article shall be transferred to the department and become employees thereof. Such employees shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(4) (a) On July 1, 2002, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of human services prior to said date pertaining to the duties and functions transferred to the division pursuant to this part 7 and part 8 of this title are transferred to the department and become the property thereof.

(b) On or before September 1, 2002, the department of human services and the department of military and veterans affairs shall agree on the method, scope, and procedures for the transfer of any property, mineral, and water rights involving the western slope military veterans cemetery, as described in section 28-5-708, in order to ensure that the use of said cemetery is continuous and consistent with federal law.

(c) The general assembly requests the department of human services and the state board of land commissioners to transfer, without compensation, by any procedure necessary, any appropriate property, mineral, and water rights involving the western slope military veterans' cemetery, as described in section 28-5-708, to the department of military and veterans affairs, within two months of the completion of a legal survey of the property described in section 28-5-708.

(d) The general assembly further requests the department of human services and the state board of land commissioners to report to the state, veterans, and military affairs committees of the senate and house of representatives, or their successor committees, no later than July 15, 2005, that the transfer of appropriate property, mineral, and water rights requested in paragraph (c) of this subsection (4) has been completed.

(5) Whenever the department of human services is referred to or designated by a contract or other document in connection with the duties and functions transferred to the division pursuant to this part 7 and part 8 of this article, such reference or designation shall be deemed to apply to the department of military and veterans affairs. All contracts entered into by the department of human services prior to July 1, 2002, in connection with the duties and functions transferred to the department of military and veterans affairs pursuant to this part 7 and part 8 of this article are hereby validated, with the department of military and veterans affairs succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to the department for the payment of such obligations.

Source: L. 2002: Entire part added with relocations, p. 344, § 3, effective July 1.
L. 2005: (4)(c) and (4)(d) added, p. 1032, § 1, effective June 2.

Editor's note: This section is similar to former § 26-10-101 as it existed prior to 2002.

28-5-702. Board of veterans affairs - sunset review - repeal. (1) The Colorado board of veterans affairs and its powers, duties, and functions are hereby transferred by a **type 2** transfer from the department of human services to the department of military and veterans affairs. The board shall advise and consult with the division in the administration and enforcement of this article.

(2) The board shall consist of seven members who shall be appointed by the governor and confirmed by the senate, who shall be veterans who have been honorably released or separated from the armed forces of the United States, but who need not be members of a veterans service organization. The initial members of the board shall be the members of the Colorado board of veterans affairs as such board existed in the department of human services prior to July 1, 2002, and the terms of such members shall expire as the original terms of such members were scheduled to expire. Thereafter the governor shall appoint members for terms of four years, beginning the day after the expiration of the preceding term. Vacancies occurring during any term shall be filled by the governor for the unexpired portion of the term in which they occur. If a vacancy occurs while the senate is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the next meeting of the senate, at which time the governor shall nominate a person to fill the vacancy, which nomination shall be subject to senate confirmation. Members of the board shall hold office until their successors are appointed by the governor and are

confirmed by the senate. Not more than four of the members serving at any one time shall be members of the same political party.

(3) The members of the board shall serve without compensation but may be reimbursed, out of any funds appropriated to the division, for actual and necessary traveling expenses and other expenses incurred in the performance of official duties.

(4) The members of the board shall select one of their members to serve as the chair of the board and one to serve as the vice-chair of the board, for a term of two years for each office. Such officers shall hold office at the pleasure of the board. The board shall also appoint a secretary who may or may not be a member as the board may determine. The secretary shall attend all meetings of the board, keep a full and true record of its proceedings, preserve at its general office all its books, documents, and papers, and perform such other duties as the board may prescribe.

(5) The board shall hold meetings at such times and at such places as shall be determined by it. Special meetings may be called at any time by the chair or vice-chair and shall be called at the request of any three members.

(6) (a) This section is repealed, effective July 1, 2017.

(b) Prior to said repeal, the board shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 2002: Entire part added with relocations, p. 345, § 3, effective July 1.
L. 2007: (6) amended, p. 468, § 1, effective July 1.

Editor's note: This section is similar to former § 26-10-103 as it existed prior to 2002.

28-5-703. Rules - duties. (1) (a) The board shall propose for adoption by the adjutant general such rules and regulations, not in conflict with this article or other laws, as it may deem necessary to govern the programs administered pursuant to this article.

(b) Any rules adopted by the board of human services in accordance with the requirements of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., relating to county veterans service offices and veterans affairs other than the state veterans nursing homes shall be enforceable and shall be valid until amended or repealed by the adjutant general.

(2) The division shall be responsible for the proper administration of this article. The board shall study periodically the problems of veterans and based on such studies shall propose such program or statutory changes as it may deem advisable or necessary for veterans' assistance by the state of Colorado or political subdivisions thereof. The board shall make a continuing study of any program put into effect. The board shall perform such other duties as may be assigned to it by law and shall advise and assist the governor, any department in the executive branch, and the general assembly or any committee thereof in regard to veterans' matters.

(3) On or before December 31, 2002, and on or before December 31 each year thereafter, the board, with the assistance of the division, shall report on the status of all programs providing services to the state's veterans, including but not limited to any recommendations for changes to policies, procedures, or law, to:

(a) The governor;

(b) The state, veterans, and military affairs committee of the house of representatives; and

(c) The state, veterans, and military affairs committee of the senate.

(4) The board shall serve in an advisory capacity to:

(a) The state board of human services and the department of human services regarding the operations and maintenance of state and veterans nursing homes operated pursuant to article 12 of title 26, C.R.S.;

(b) The division of employment and training in the department of labor and employment regarding the provision of services to state veterans pursuant to the "Colorado Work Force Investment Act", part 2 of article 83 of title 8, C.R.S.;

(c) The department of revenue regarding the issuance of special license plates to veterans and active or retired military personnel; and

(d) Any department, division, board, or other entity that provides services specifically to state veterans, and any executive director, director, board, or other entity that has rulemaking authority pursuant to state law regarding proposed rules that are directed specifically to veterans.

Source: **L. 2002:** Entire part added with relocations, p. 346, § 3, effective July 1. **L. 2003:** (3)(c) amended, p. 2012, § 105, effective May 22. **L. 2012:** (4)(b) amended, (HB 12-1120), ch. 27, p. 110, § 28, effective June 1.

Editor's note: (1) This section is similar to former § 26-10-104 as it existed prior to 2002.

(2) The effective date for amendments to subsection (4)(b) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

28-5-704. Departments to cooperate. (1) To effectuate the purpose of this article, the governor may direct any department, division, board, bureau, commission, or agency of the state, or any political subdivision thereof, to:

(a) Cooperate with and assist and advise the division and the board in the performance of their duties and functions under this article and to provide such other assistance and data as will enable the division and the board to properly carry out their activities and effectuate the purposes of this article; and

(b) Coordinate with, seek advice from, or utilize as a resource the division and the board in implementing programs that provide services specifically to state veterans.

Source: **L. 2002:** Entire part added with relocations, p. 347, § 3, effective July 1.

Editor's note: This section is similar to former § 26-10-105 as it existed prior to 2002.

28-5-705. Duties. (1) The division, in accordance with its rules, shall perform the following duties and functions:

(a) (I) Formulate, establish, and supervise a plan and standard procedures to further prompt and efficient service to all veterans in the state of Colorado on a uniform basis, whether by the division or by any county veterans service office;

(II) Establish and maintain liaison with all county veterans service officers and advise them of such plan and procedures;

(III) Make reasonable requests of such county veterans service officers for their cooperation in the execution of such plan and procedures and in the handling of veterans' cases and other matters;

(IV) Maintain liaison with the veterans administration and other appropriate agencies of the federal government;

(V) Provide all county veterans service officers with pertinent information, suggestions, forms, rulings, and other material in such form and in such manner as the division may deem appropriate to assist all county veterans service officers in the performance of their duties;

(VI) Distribute to such county veterans service officers any available bulletins, manuals, pamphlets, or other appropriate material, prepared either by the division or elsewhere, for the purposes stated in this section; and

(VII) Do such additional things, including the holding of conferences, whenever advisable, with the county veterans service officers either in their counties or in the office of the division or elsewhere and either singly or in groups, as the division may deem advisable to assist such officers in the proper performance of their duties and to keep them properly advised of current developments in the veterans' field;

(b) Render personal service to members and former members, or the surviving spouses, administrators, executors, conservators, guardians, or heirs of members or former members, of the Colorado state defense force and the Colorado National Guard in any claim they may have against the state or federal government;

(c) Assist all discharged members of the armed forces of the United States, the surviving spouses, administrators, executors, conservators, guardians, or heirs of any such veterans, or any other persons who may have proper claims by filing and prosecuting such claims on behalf of such persons for insurance, pensions, compensation, hospitalization, vocational training, education, loans, readjustment allowances, or any other benefits which such persons may be or may become entitled to receive under any of the laws of the United States, the state of Colorado, or any other state by reason of such service;

(d) Cooperate with and assist veterans' organizations, county veterans service officers, veterans' advisory groups, and all other organizations, now in existence or formed on or after July 1, 1973, which provide assistance to those persons mentioned in paragraph (c) of this subsection (1);

(e) Perform services in this state for the veterans administration on a contractual, grant, or other basis, and perform such other duties and render such other services in furtherance of the purposes of this article or any other law in providing reasonable and proper assistance to veterans;

(f) Establish a training and certification program for newly appointed county veterans service officers. Such program shall be presented to the board for approval prior to implementation or modification.

(g) Prepare, develop, construct, and maintain a state military veterans' cemetery pursuant to section 28-5-708 and seek reimbursement from the federal department of veterans affairs for all allowable costs for such project as permitted by federal law.

Source: L. 2002: Entire part added with relocations, p. 347, § 3, effective July 1.

Editor's note: This section is similar to former § 26-10-106 as it existed prior to 2002.

28-5-706. Contributions to division - veterans private contributions fund - created.

Any city, county, or political subdivision of the state or any association or individual may contribute funds, services, or facilities to the department, and the adjutant general may accept and use such funds, services, or facilities for the purpose or purposes intended by the contributor; except that no fund, service, or facility shall be accepted if the conditions attached thereto require the use or expenditure thereof in a manner contrary to law. Any said funds shall be transmitted to the state treasurer, who shall credit the same to the veterans private contributions fund, which fund is hereby created.

Source: L. 2002: Entire part added with relocations, p. 349, § 3, effective July 1.

Editor's note: This section is similar to former § 26-10-107 as it existed prior to 2002.

28-5-707. Assistance to county veterans service officers. (1) (a) The division shall provide satisfactory supervision, direction, and assistance to all county veterans service officers and shall provide such services and facilities to the county veterans service officers as may be determined by the division to be necessary. Out of any moneys appropriated by the general assembly to the division for veterans' affairs purposes, the division is authorized to issue vouchers for the semiannual payment to the general fund of each county, to be disbursed upon the authority of the county commissioners thereof, only for the purposes of this part 7 and part 8 of this article, of an amount equal to the amount such county commissioners may have authorized to be disbursed out of other moneys in such county general fund for such purposes for that period. The general assembly shall annually establish in the general appropriations bill the rate of state-funded payments for full-time and part-time county veterans service officers; except that, if a county is receiving payments under paragraph (b) of this subsection (1) for a veterans service office established for adjacent counties, the payment shall be the total of the semiannual payments for the counties that have jointly formed the veterans service office.

(b) If adjacent counties jointly establish a veterans service office for the counties pursuant to section 28-5-801 (2), the division may issue a voucher to the general fund of the

county containing the veterans service office in an amount equal to the total of the semiannual payments that would have been provided to each of such counties under paragraph (a) of this subsection (1).

(2) Such semiannual payments shall be made only on application by such county commissioners to the division, which application shall state and certify the amount such county commissioners have authorized to be disbursed for such purposes out of other moneys in such county general fund for the period covered by the application.

Source: L. 2002: Entire part added with relocations, p. 349, § 3, effective July 1.

Editor's note: This section is similar to former § 26-10-108 as it existed prior to 2002.

28-5-708. Western slope veterans' cemetery - fund - rules. (1) (a) There is hereby established in the state treasury the western slope military veterans' cemetery fund, referred to in this section as the "fund". The division is authorized to accept gifts, grants, contributions, and donations for the purposes of this section. The fund shall consist of such moneys received through gifts, grants, contributions, or donations, from any person or entity, and any moneys appropriated to the fund by the general assembly. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(b) Subject to available appropriations, the division may contract for professional services necessary for the implementation of this section.

(2) (a) The general assembly hereby authorizes the establishment and maintenance of a state military veterans' cemetery for the western slope, referred to in this section as the "cemetery". The division is directed to prepare, develop, construct, and maintain such cemetery at the site described in paragraph (b) of subsection (3) of this section. The division may enter into contracts or agreements with any person or public or private entity to prepare, develop, construct, operate, and maintain such cemetery. The cemetery shall be for the purpose of providing for the interment of Colorado residents who are military veterans and their spouses and dependents, as determined by the division. In addition, the adjutant general by rule may permit the interment of other veterans and their spouses and dependents in the cemetery and permit the division to assess a reasonable fee for the interment of such non-Colorado residents. All such fees collected shall be credited to the fund created pursuant to paragraph (a) of subsection (1) of this section. The adjutant general, in consultation with the board, shall promulgate such rules as may be necessary to establish and maintain the cemetery in compliance with applicable state and federal statutes and rules.

(b) The general assembly may appropriate moneys from the general fund to the fund for the implementation of this section, including but not limited to the payment of costs associated with the operation and maintenance of the cemetery.

(c) (I) If the entire general fund appropriation made to the department of human services, for allocation to the division of veterans affairs, for the fiscal year that commenced on July 1, 1999, is not needed to pay the costs for design and construction of the cemetery, the remainder of such appropriation may be used prior to July 1, 2002, by the department of human services and on or after July 1, 2002, by the department to pay any costs associated with the operation and maintenance of the cemetery without further appropriation by the general assembly.

(II) Any appropriation made on and after July 1, 2002, for the operation and maintenance of the cemetery shall be appropriated to the department of military and veterans affairs.

(3) (a) The general assembly hereby finds, determines, and declares that any use of the property described in paragraph (b) of this subsection (3) as the cemetery is for a public purpose expressly authorized by the general assembly and therefore permissible under any grant of right-of-way applicable to such property executed by the state board of land commissioners.

(b) The division, in preparing, developing, constructing, and maintaining the cemetery, may use for such purposes a parcel consisting of approximately twenty acres of unimproved property within the eastern portion of the real property known as the Grand Junction regional center and shall enter into all necessary agreements to secure the appropriate property rights for such parcel.

(4) The division is hereby authorized to provide for surveys, engineering studies, conceptual and architectural plans, environmental impact studies, and other similar preliminary design and construction work as part of the pre-application for funding approval by the federal department of veterans affairs for the cemetery. The division is authorized to seek full reimbursement for such pre-application and design work from the federal department of veterans affairs.

(5) The general assembly shall appropriate annually from the fund to the department, for allocation to the division, for any costs associated with the operation and maintenance of the cemetery and for the implementation of this section.

Source: L. 2002: Entire part added with relocations, p. 349, § 3, effective July 1.

Editor's note: This section is similar to former § 26-10-110 as it existed prior to 2002.

28-5-709. Colorado state veterans trust fund - created - report. (1) (a) There is hereby created in the state treasury the Colorado state veterans trust fund that shall consist of the moneys transferred thereto pursuant to subsection (2) of this section. In addition, the state treasurer may credit to the trust fund any public or private gifts, grants, or donations received prior to July 1, 2002, by the department of human services or, on or after July 1, 2002, by the department of military and veterans affairs for implementation of the purposes specified in this subsection (1).

(b) The moneys in the trust fund shall be used for:

(I) Capital improvements or needed amenities for existing or future state veterans nursing homes;

(I.5) Costs incurred by the legislative oversight committee and the state and veterans nursing home commission created in part 3 of article 12 of title 26, C.R.S., to evaluate the quality of care provided to veterans and their families at certain state and veterans nursing homes;

(II) Costs incurred by existing or future state veterans cemeteries;

(III) Costs incurred by the division;

(IV) Veterans programs operated by nonprofit veterans organizations that meet criteria adopted by the board and that are selected by the board as grant recipients; and

(V) Repealed.

(c) The division may retain up to five percent of the amount annually appropriated from the trust fund for the actual costs incurred by the division and the board in implementing the provisions of this article. Notwithstanding the provisions of section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the trust fund shall be credited to the trust fund. All unexpended and unencumbered moneys remaining in the trust fund at the end of any fiscal year shall remain in the trust fund and shall neither revert to the general fund nor be transferred to the tobacco litigation settlement trust fund created in section 24-22-115.5, C.R.S., nor be transferred or credited to any other fund.

(2) (a) Pursuant to section 24-75-1104.5 (1) (g), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning in the 2006-07 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall annually transfer to the trust fund one percent of the total amount received by the state pursuant to the provisions of the master settlement agreement, other than attorney fees and costs, during the preceding fiscal year; except that the amount so transferred to the trust fund in any fiscal year shall not exceed one million dollars. The state treasurer shall transfer the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(b) Repealed.

(3) (a) (I) All of the funds appropriated to the trust fund pursuant to subsection (2) of this section in fiscal year 2000-01 shall be credited to the trust fund and retained as principal in the trust fund.

(II) For fiscal years 2001-02 through 2005-06, seventy-five percent of the amount of annual appropriations made pursuant to subsection (2) of this section, shall be credited to the trust fund and retained as principal in the trust fund. For fiscal years 2001-02 through 2005-06, twenty-five percent of the amount of annual appropriations made pursuant to subsection (2) of this section, and one hundred percent of any interest earned on the principal in the trust fund shall be subject to annual appropriation by the general assembly and may be allocated by the board for the purposes outlined in subsection (1) of this section.

(III) For fiscal years 2006-07 and 2007-08, seventy-five percent of the amount of the annual transfer made pursuant to subsection (2) of this section shall be credited to the trust fund and retained as principal in the trust fund. For fiscal years 2006-07 and 2007-08, twenty-five percent of the amount of the annual transfer made pursuant to subsection (2) of this section and one hundred percent of any interest earned on the principal in the trust fund shall be subject to annual appropriation by the general assembly and may be allocated by the board for the purposes outlined in subsection (1) of this section.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (3):

(A) For the 2003-04 through 2006-07 fiscal years, twenty-five percent of the amount of annual transfers made pursuant to subsection (2) of this section shall be credited to the trust fund and retained as principal in the trust fund, and seventy-five percent of the amount of annual transfers made pursuant to subsection (2) of this section and one hundred percent of any interest earned on the principal in the trust fund shall be subject to annual appropriation by the general assembly and may be allocated by the board for the purposes outlined in subsection (1) of this section.

(B) For the 2007-08 fiscal year, thirty-five percent of the amount of the annual transfer made pursuant to subsection (2) of this section shall be credited to the trust fund and retained as principal in the trust fund, and sixty-five percent of the amount of the annual transfer made pursuant to subsection (2) of this section and one hundred percent of any interest earned on the principal in the trust fund shall be subject to annual appropriation by the general assembly and may be allocated by the board for the purposes outlined in subsection (1) of this section.

(C) to (E) (Deleted by amendment, L. 2009, (HB 09-1329), ch. 393, p. 2122, § 1, effective June 2, 2009.)

(II) (Deleted by amendment, L. 2009, (HB 09-1329), ch. 393, p. 2122, § 1, effective June 2, 2009.)

(c) For the 2008-09 fiscal year and each fiscal year thereafter, ten percent of the amount of the annual transfer made pursuant to subsection (2) of this section shall be credited to the trust fund and retained as principal in the trust fund, and ninety percent of the amount of the annual transfer made pursuant to subsection (2) of this section and one hundred percent of any interest earned on the principal in the trust fund shall be subject to annual appropriation by the general assembly.

(3.5) (a) Notwithstanding any provision of this section to the contrary, on March 5, 2003, the state treasurer shall deduct two million two hundred eighty thousand nine hundred dollars from the Colorado state veterans trust fund and transfer such sum to the general fund.

(b) Notwithstanding any provision of this section to the contrary, on August 15, 2008, the state treasurer shall deduct two million nine hundred seventeen thousand three hundred dollars from the general fund and transfer such sum to the Colorado state veterans trust fund. Such amount shall be retained as principal in the trust fund, and any interest earned on the principal shall be subject to annual appropriation by the general assembly and may be allocated by the board for the purposes outlined in subsection (1) of this section.

(4) (a) Funds shall be allocated out of the trust fund using the following process:

(I) The director of the state and veterans nursing homes or the director of the division of veterans affairs shall submit to the board a written request for funds to be used for the purposes described in subsection (1) of this section; or

(II) A nonprofit veterans organization, in compliance with the procedures and timelines adopted by the board, shall submit to the board a grant application, in a form adopted by the board, requesting funding for a veterans program.

(b) The board shall vote on each request for funds and on each grant application submitted by a nonprofit veterans organization that meets the criteria established by the board. A majority vote shall be sufficient to approve an allocation of moneys out of the trust fund.

(5) The board shall adopt guidelines that address, at a minimum, the following issues:

(a) The form of an application for use by nonprofit veterans organizations in applying for grants pursuant to this section;

(b) Criteria for identifying nonprofit veterans organizations that may apply for and receive grants pursuant to this section;

(c) Criteria for selecting appropriate veterans programs to receive grants pursuant to this section;

(d) The term and amounts of grants awarded to nonprofit veterans organizations pursuant to this section; and

(e) Standards for determining the effectiveness of veterans programs that receive grants pursuant to this section.

(6) The department may contract with one or more private or public entities for program monitoring and evaluation of any veterans program operated by a nonprofit veterans organization that receives funding pursuant to this section. The board may allocate funds to the division for the costs incurred in entering into such contracts.

(7) (a) The board shall prepare a report evaluating the implementation of this section, including the number and type of improvements or additions to nursing homes that have been made, the number and type of improvements to veterans cemeteries, the number of veterans served through the veterans outreach program, the number and types of veterans programs operated by nonprofit veterans organizations that receive grants pursuant to this section, and the results achieved as a result of allocations made out of the trust fund.

(b) The department shall submit the report to the department of public health and environment for inclusion in the report prepared by the department of public health and environment pursuant to section 25-1-108.5 (3), C.R.S.

Source: **L. 2002:** Entire part added with relocations, p. 351, § 3, effective July 1; (1)(a) amended, p. 689, § 4, effective July 1. **L. 2003:** (3.5) added, p. 464, § 6, effective March 5; (1)(b)(III), (2)(a), and (3) amended, p. 2565, § 9, effective June 5. **L. 2004:** (2)(a) amended and (2)(b) repealed, p. 1713, §§ 15, 16, effective June 4. **L. 2005:** (1)(b)(I.5) added, p. 597, § 3, effective July 1. **L. 2006:** (1)(a), (2)(a), (3)(a), and (3)(b)(I) amended, pp. 1040, 1041, §§ 11, 13, effective May 25; (3)(b) amended, p. 1108, § 1, effective May 25; (1)(a) amended, p. 145, § 25, effective August 7. **L. 2008:** (3.5) amended, p. 867, § 1, effective August 5. **L. 2009:** (2)(a) amended, (SB 09-269), ch. 333, p. 1769, § 10, effective June 1; (3)(a)(III), (3)(b)(I)(C), (3)(b)(I)(D), (3)(b)(I)(E), and (3)(b)(II) amended and (3)(c) added, (HB 09-1329), ch. 393, pp. 2122, 2123, §§ 1, 2, effective June 2. **L. 2010:** (1)(b)(III) and (1)(b)(IV) amended and (1)(b)(V) added, (HB 10-1140), ch. 138, p. 463, § 2, effective April 16.

Editor's note: (1) This section is similar to former § 26-10-111 as it existed prior to 2002.

(2) Amendments to subsection (1)(a) by House Bill 06-1310 and Senate Bill 06-033 were harmonized.

(3) Subsection (1)(b)(V)(B) provided for the repeal of subsection (1)(b)(V), effective July 1, 2012. (See L. 2010, p. 463.)

Cross references: For the legislative declaration contained in the 2005 act enacting subsection (1)(b)(I.5), see section 1 of chapter 168, Session Laws of Colorado 2005. For the legislative declaration in the 2010 act amending subsections (1)(b)(III) and (1)(b)(IV) and adding subsection (1)(b)(V), see section 1 of chapter 138, Session Laws of Colorado 2010.

28-5-710. Board of veterans affairs - world war II memorial dedication - fund - grants - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 688, § 3, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2002, p. 688.)

28-5-711. Veterans resource information clearinghouse. (1) There is hereby created in the division of veterans affairs the veterans resource information clearinghouse to provide information concerning support, services, and other assistance available to veterans of the United States armed forces and their families from state and local government agencies and programs, congressionally chartered veterans organizations, and nonprofit service organizations. To the extent practicable, the division shall make information available through the veterans resource information clearinghouse in a variety of formats to help ensure a high degree of public accessibility.

(2) The division shall identify the agencies, programs, services, and organizations to be included in the veterans resource information clearinghouse. The department of military and veterans affairs shall adopt policies to establish criteria that the division shall apply to ensure that the nonprofit service organizations included in the clearinghouse are legitimate, legally operated organizations.

(3) The division shall operate the veterans resource information clearinghouse subject to available state and federal resources that are appropriated or otherwise available to the division. In addition, the division may solicit, accept, and expend public or private gifts, grants, and donations for the operation of the veterans resource information clearinghouse, including but not limited to donations of volunteer services and in-kind donations.

Source: L. 2009: Entire section added, (HB 09-1291), ch. 385, p. 2088, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 2009 act adding this section, see section 1 of chapter 385, Session Laws of Colorado 2009.

PART 8

VETERANS SERVICE OFFICE AND OFFICERS

Editor's note: This part 8 was added with relocations in 2002. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the legislative declaration contained in the 2002 act enacting this part 8, see section 1 of chapter 121, Session Laws of Colorado 2002.

28-5-801. Establishment of veterans service offices. (1) The board of county commissioners of each county in this state shall establish a county veterans service office and shall appoint a county veterans service officer for such county, and such board of county commissioners may also appoint any assistant and such clerical help as may be deemed necessary, each at such compensation as shall be fixed by such board, together with the necessary and actual traveling and other expenses incurred in their work as shall be approved by such board of county commissioners and such other expenses as such board may deem necessary for the proper operation of such office, payable monthly out of the county general fund in the manner provided by law. The board of county commissioners, in its discretion, may appoint any county officer, official, or employee as such county veterans service officer or as such assistant, if qualified to serve as such under the provisions of section 28-5-802, or as clerical help to such county veterans officer, at such additional compensation for such additional duties as shall be fixed by the board of county commissioners.

(2) The boards of county commissioners of adjacent counties may act jointly in establishing a veterans service office for such counties and in appointing a veterans service officer and an assistant and such necessary clerical help as may be deemed necessary to operate such office for such counties, at such compensation as may be fixed by the joint action of the boards of county commissioners joining in the appointment of such officer and assistant and clerical help, together with the actual and necessary expenses incurred in the conduct of their work, as shall be approved by such boards of county commissioners. The salaries and expenses and all other jointly approved expenses necessary for the proper operation of such office shall be paid monthly by the boards of county commissioners out of their respective county general funds in the manner provided by law, each county bearing its share thereof in the proportion that the population of each county bears to the total population of the counties combining to establish such office.

Source: L. 2002: Entire part added with relocations, p. 353, § 3, effective July 1.

Editor's note: This section is similar to former § 26-9-101 as it existed prior to 2002.

28-5-802. Qualifications - term of office. (1) The county veterans service officer or assistant at the time of appointment, shall be a resident of the state, shall have served in the United States Army, Air Force, Navy, Marine Corps, or Coast Guard, or any auxiliary branch thereof and shall have been honorably discharged therefrom or shall be an officer released from active duty with the armed forces and placed on inactive duty therein. Before such appointments shall be made, the board of county commissioners making such appointments shall have sought the advice and counsel of the chief officer of each post of the regularly established and existing veterans organizations of the county wherein such officer or assistant is to serve as to the qualifications and experience of the applicant for such position. Such appointee shall be well-qualified based on his or her education and experience to perform the duties of county veterans service officer. The division shall recommend education and experience qualifications for the position of county veterans service officer.

(2) Such appointments shall be for the term of two years. At the expiration of such term or in case of a vacancy, the board of county commissioners making the appointments may either reappoint the present incumbents to the positions of county veterans service officer or assistant, or may consider new applicants and make appointments of other applicants as such county veterans service officer or assistant in the manner specified in this article.

Source: L. 2002: Entire part added with relocations, p. 354, § 3, effective July 1.

Editor's note: This section is similar to former § 26-9-102 as it existed prior to 2002.

28-5-803. Duties. It is the duty of the county veterans service officer and his or her assistant to assist any resident of the state of Colorado who is a veteran, or their surviving spouse, administrator, executor, guardian, conservator, or heir of any said veteran, or any other person who may have proper claim, by the filing of claims for insurance, pensions, compensation for disability, hospitalization, vocational training, or any other benefits which such person may be or may have been entitled to receive under the laws of the United States or the state of Colorado by reason of such service.

Source: L. 2002: Entire part added with relocations, p. 354, § 3, effective July 1.

Editor's note: This section is similar to former § 26-9-103 as it existed prior to 2002.

28-5-804. Cooperation with division of veterans affairs. The county veterans service officer shall cooperate with the division of veterans affairs, its officers and employees, and other national, state, or county veterans service officers in the performance of his or her duties. He or she, on request, shall assist the division in every reasonable way, including the

rendering of any reports requested by the division and the handling or processing of any veterans cases or other matters according to standard procedures established by the division in furtherance of efficient and prompt service to all veterans in the state of Colorado on a uniform basis. Such officer shall always work in the best interest of his or her clients in an attempt to maximize the amount of federal veteran benefits that they receive. Additionally, the county veterans service officer shall undertake programs and engage in activities to reduce state public assistance expenditures as directed by the division.

Source: L. 2002: Entire part added with relocations, p. 354, § 3, effective July 1.

Editor's note: This section is similar to former § 26-9-104 as it existed prior to 2002.

28-5-805. Office space and supplies. The board of county commissioners shall furnish the county veterans service officer and assistant with office space and necessary supplies.

Source: L. 2002: Entire part added with relocations, p. 355, § 3, effective July 1.

Editor's note: This section is similar to former § 26-9-105 as it existed prior to 2002.

DIVISION OF AVIATION

ARTICLE 6

Division of Aviation

28-6-101 to 28-6-114. (Repealed)

Source: L. 91: Entire article repealed, p. 1135, § 224, effective July 1.

Editor's note: This article was added in 1988. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to the aeronautics division in the department of transportation, see article 10 of title 43.

